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NCLT ALLOWS AMALGAMATION WHILE REJECTING INVOCATION OF GAAR



Recently, the National Company Law Tribunal, Chandigarh Bench (**Tribunal**), while approving the Scheme of Amalgamation [(Re Panasonic Life Solutions India Private Limited CP. (CAA) No. 8/Chd/Hry/2021) (**Scheme**)] has rejected the invocation of General Anti Avoidance Rules (**GAAR**) by the income tax department (**ITD**). This article dissects the Tribunal's order allowing the Scheme.

A. Facts:

- The Scheme provided merger of Panasonic India Private Limited (**Transferor**) with Panasonic Life Solutions India Private Limited (**Transferee**) under Section 230-232 of the Companies Act, 2013 (**Act**).
- The jurisdictional Registrar of Companies, Regional Director and Official Liquidator have given their reports and have not raised significant objections to the Scheme. Furthermore, no objection was received from the public.

- The jurisdictional ITD objected, inter alia, stating that the merger is nothing but a vehicle to transfer accumulated losses eligible for set off from Transferor to Transferee Company and invoked provisions of GAAR.

B. In a nutshell, ITD raised the following objections to the Scheme:

- ITD contended that the Scheme is not at arm's length and could not be termed as a prudent acquisition on any commercial or business terms.
- ITD further alleged that the Scheme's main objective appears to be to take benefit of accumulated losses that are eligible for set off in future periods. A reference to the provisions of Section 79 and Section 72A of the Income Tax Act, 1961 has been made by ITD.
- There will be a loss of revenue on account of possible non-payment of



the capital gains realizable by the shareholders of the Transferor Company while selling shares of the Transferee Company in the future as these shareholders are residents of Singapore and the Netherlands and they enjoy such benefits under the provisions in the respective Double Tax Avoidance Agreements (DTAAs).

- By issuing shares of Transferee Company, the shareholders of Transferor Company will benefit despite having a negative net worth.
- The merger is nothing but a vehicle to transfer accumulated losses eligible for set off from Transferor to Transferee Company which would attract GAAR and the provisions of Section 96(1) of the Income Tax Act, 1961. The ITD placed heavy reliance on the decision rendered by other Tribunals in the case of ***Gabs Investments Pvt. Ltd. and Ajanta Pharma Ltd. (CSP No.995 and 996 of 2017 and CSA No.791 and 792 of 2017) decided on 30.08.2018 and Wiki Kids Ltd. and Ors. Vs. Regional Director, South East Region and Ors. in Company Appeal (AT) No.285 of 2017 decided on 21.12.2017.***

C. In response to ITD's objection, the Petitioner Companies' submissions are summarized below:

- The Petitioner submitted in detail the commercial rationale driving the

amalgamation, which includes a reduction in operating and marketing costs, economies in procurement, increased value to customers, and offering holistic customer solutions, besides enhancing the shareholders' value.

- The Petitioners argued that the amalgamation between the companies should fulfill the conditions laid down in Section 2(1B) of the Income Tax Act, 1961, to qualify as a tax-neutral merger. Reference is also made to section 47 of the Income Tax Act, 1961, which exempts certain transfers which, inter alia, includes Indian company who transferred capital asset in an amalgamation and shareholder who receives any shares consequent to amalgamation. It is therefore submitted that the tax neutrality in the hands of the amalgamating company and the shares of the amalgamating company is conferred by the provisions of the Act and therefore, no case can be made out of prejudice to revenue if compliances with the aforementioned provisions of the Income Tax Act, 1961 are made.

- Regarding carry forward of losses and depreciation, the Petitioners pointed out that the compliance with conditions laid down under Section 72A of the Income Tax, 1961 read with Rule 9(C) of the Rules can always be verified by the Assessing Officer (AO) at the time of completing the assessment of the petitioner companies for the relevant assessment year.

- On the allegations of revenue loss relating to capital gains in the hands of shareholders of Transferor Company upon the ultimate sale of shares in Transferee Company, Petitioners submitted that the non-resident shareholders of the Transferor



Company would anyway have had no obligation to pay capital gain taxes subject to relief under India's Tax Treaty with the Netherlands and Singapore on the transfer of shares of the Transferor Company if the transaction had not taken place. The exemption available with respect to taxability of potential capital gains is on account of shareholders being residents of the foreign country and being entitled to the benefit of the respective DTAA.

On valuation of shares, it was submitted that the determination of the swap ratio was on the basis of the share entitlement ratio issued by a registered valuer and it had duly captured the basis of computation of such valuation. Furthermore, the imputed value of shares denotes the face value of the shares being issued by the Transferee Company and not its actual value. It is further stated that the valuation report obtained in this regard ensures that the value with the shareholders of the Transferor Company remains the same both pre and post-merger transaction.

Regarding the submissions in relation to the applicability of GAAR, it is stated that the provisions of Section 96 of the Income Tax Act are not applicable as the amalgamation "is not an impermissible avoidance arrangement," and its main purpose is not to obtain a tax benefit. Petitioners

placed reliance upon **Vodafone International Holdings B.V. Vs. Union of India & Anr. : 41 ITR 1.**

Lastly, Petitioner placing reliance on **Gabs Investments and Wiki Kids Ltd. (Supra)** argued that the facts in the present case are totally different.

D. After hearing submissions of ITD and Petitioners, the Tribunal ruled in favour of the Scheme. The Tribunal's ruling is summarized as follows:

The facts of **Gabs Investments (Supra)**, the facts of the case are clearly distinguishable from the present case. In the case of **Gabs Investments Pvt. Ltd. (Supra)**, the Scheme's objective was to simplify the shareholding structure and reduce shareholding tiers to streamline the promoter group's shareholding. In the present case, the petitioner companies have clearly made out a case of operational synergy between the amalgamating companies. The rationale of the Scheme has been discussed in detail, which justifies the claim of the applicants that the Scheme is for business consolidation and the tax arrangements are merely a consequential fallout of the implementation of the Scheme.

On the argument of ITD that Scheme lacks arm's length basis, the Tribunal noted that in the case of **CIT v. EKL Appliances Ltd. 345 ITR 241**, wherein the Court, in the context of transfer pricing provisions, frowned upon re-characterization of the transaction, inter alia, observing that the tax administrator(s) should not disregard and/or restructure legitimate business transactions or substitute other transactions for them.

In so far as carry forward and set-off



of losses are concerned, the Tribunal emphasizes that the treatment regarding carry forward and set-off of losses are clearly spelled out under Section 72A of the Income Tax Act, 1961, read with Rule 9(C) of the Rules. Furthermore, conditions regarding carrying forward and set-off losses in cases of certain companies are equally clearly spelled out in Section 79 of the Income Tax Act, 1961. These provisions, in our opinion, are sufficient to protect the interest of revenue in any case of amalgamation. The Tribunal also clarified that the Scheme's approval could not override the existing provisions of the Income Tax Act. In any case, the above issues will come up for the consideration of the AO at the time of assessment of the petitioner companies, and the Department can analyze the Scheme and is entitled to take any decision as per the provisions of the Income Tax Act on any issues including those discussed above.

As regards the provision of GAAR, the Income Tax Department is at liberty to invoke the provisions if the AO during the course of assessment or reassessment proceedings subject to and in accordance with the provisions of the Income Tax Act, 1961.

E. GAAR In a nutshell:

It is important to understand GAAR provisions concerning the schemes of arrangement. The provisions of GAAR are

laid down in Chapter X-A (sections 95-102) of the Income Tax Act, 1961. According to section 95, notwithstanding anything contained in the statute, an arrangement (such as a scheme for merger) entered into by an assessee can be declared as an 'impermissible avoidance arrangement,' and consequences relating to tax liability shall be determined subject to Chapter X-A. Hence, for GAAR to be invoked, the IT Department shall first have to declare an arrangement as an 'impermissible avoidance arrangement' under Chapter X-A.

To understand the scope and applicability of GAAR qua schemes of arrangement, it is instructive to refer to a clarificatory circular on the applicability of GAAR, which was issued by the Central Board of Direct Taxes (Circular No. 7/2017, January 27, 2017). In this clarificatory circular, it was stated that GAAR shall not interfere with the right of the taxpayer to select or choose a method of implementing a transaction. This essentially implies that a taxpayer's choice of using a more tax-efficient method of implementing a transaction (when multiple methods are available) shall not attract GAAR.

Furthermore, vide aforesaid circular, CBDT has clarified that if at the time of sanctioning an arrangement the Court or Tribunal has explicitly and adequately considered the tax implications, GAAR will not apply to such an arrangement. However, there is subjectivity around the terms 'explicitly' and 'adequate' used by





CBDT in its clarification. In the absence of any precedents/guidelines to infer the meaning ascribed to 'explicitly' and 'adequately', there may be challenges in determining when NCLT has explicitly and adequately considered the tax implications while sanctioning the arrangement. Hence, mere approval of the merger by NCLT may not be regarded as a defense against the GAAR provisions. In this context, it is noted that, in **Re JCT Limited**, ITAT, Kolkata laid down the principle that once the High Court approves a Scheme, it cannot be said to be against public interest and is binding on the members, creditors and all the statutory authorities, including the revenue authorities. The income tax authorities have full opportunity to file their objection during the amalgamation process, i.e., before the issuance of the final order. Furthermore, in a catena of judgments, some of the High Courts and Supreme Court have also laid down a principle that once the Scheme is approved, it assumes statutory force and is binding on all stakeholders. However, it is pertinent to note that, like in the present case, Tribunals across benches order approving Schemes specifically provide the flexibility to the revenue authorities to challenge the transaction at a later stage and do not preclude them from imposing the requisite tax as applicable on the merger transaction.

Conclusion:

In conclusion, the Tribunal has rightly upheld the Scheme citing commercial rationale and business synergy, and to that extent, it is a very welcome ruling. It is also important to note that Tribunal has asserted qua Section 79, 72A of ITA to the effect that these sections contain specific anti-avoidance safeguards regarding set-off of losses, and therefore, GAAR should not be invoked unless the objective of amalgamation is only to take benefit of losses. Having said that, the important takeaway of the ruling re-emphasizes the need for a careful approach while devising the Scheme by clearly establishing the objective and commercial rationale of the arrangement. Hence, the structuring of the Scheme assumes a very important role.



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DECODING INDIA-UAE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

A Free trade Agreement (FTA) is a treaty between two/ two or more countries to agree on certain cross-border trade obligations. It makes trade between contracting countries as trouble-free as possible with specified duty exemptions to increase investment and trade flows within integrated economies. After World War II, countries collaborated and created the General Agreement on Tariffs and Trade (GATT) on a multilateral platform, which acts as a guiding document for finalising trade deals.

FTAs can construct the economic framework within which the businesses and governments can operate. A well-designed and comprehensive FTA can provide multiple benefits, including access to the global market, preferential tariffs, and new business opportunities. FTA helps overcome international trade barriers like tariffs and cultural and non-tariff barriers created to provide special privileges to domestic manufacturers. Usually, the following types of FTAs are entered between two/ two or more countries:

- **Preferential Trade Agreement (PTA)**: A Preferential Trade

agreement gives a preferential right of entry to specific products to two or more partnering countries, usually by reducing duties on an agreed number of tariff line items. Here a positive list is maintained, i.e., the list of the products on which the two partners have agreed to provide preferential access, sometimes by reducing the tariff rate to zero for some products.

- **Free Trade Agreement (FTA)**: A Free Trade Agreement is more comprehensive than a preferential trade agreement wherein two or more countries agree to provide preferential trade terms and tariff concessions to the partner country. Here a negative list of products and services is maintained by the negotiating countries on which the terms of FTA are not applicable and except that all other goods and services are covered within the framework of FTA.
- **Comprehensive Economic Cooperation Agreement (CECA)**: A Comprehensive Economic



Cooperation Agreement is more comprehensive than FTA. CECA cover the regulatory aspect of trade and encompasses an agreement covering the regulatory issues. CECA generally cover negotiation on trade tariff and tariff quota rate.

- **Comprehensive Economic Partnership Agreement (CEPA):** A Comprehensive Economic Partnership Agreement is much broader and more complicated than CECA. In an equal economic standing, CECA is considered a stepping-stone to accomplishing CEPA. In addition to the tariff reductions, CEPA also covers negotiation on the trade in services and investment with other areas of economic partnership. It may also consider negotiation in trade facilitation, customs cooperation, competition, and IPR.
- **Framework Agreement:** The framework agreement primarily defines the scope and provisions of the potential agreement between the trading partners. It provides some new discussion areas and sets a period for future liberalisation.
- **Early Harvest Scheme:** An Early Harvest Scheme (EHS) is a precursor to an FTA/CECA/CEPA between two trading partners. At this stage, the negotiating countries identify certain tariff-liberal products pending the conclusion of

actual FTA negotiations. It works as a step towards enhanced engagement and confidence building.

- **Global System of Trade Preferences (GSTP):** Under the agreement establishing GSTP, tariff concessions are exchanged among developing countries that have signed the agreement.

As a part of 'Atmanirbhar Bharat', India has set itself an ambitious target to grow exports. India has felt the need to strengthen its economic ties with countries worldwide, widely when free and regional trade agreements are increasing globally to achieve the export target. It has become essential for India to expand its relationship with suitable trade partners and build its position as a global trade hub.

Some of the vital trade agreements entered by India are:

- South-Asian Free Trade Agreement (SAFTA)
- India – ASEAN Comprehensive Economic Cooperation Agreement
- India – Thailand Free Trade Agreement
- Indo – Sri Lanka Free Trade Agreement (ISFTA)
- India – South Korea Comprehensive Economic Partnership Agreement
- India – Japan Comprehensive Economic Partnership Agreement
- India – Singapore Comprehensive Economic Cooperation Agreement
- India- Malaysia Comprehensive Economic Cooperation Agreement

India and United Arab Emirates (UAE) have been trading partners since the beginning of the early 1950s. UAE has always been one of India's largest and most important trading partners. The

CEPA with UAE was inked on 18 February 2022 and is India's first complete free trade agreement to be signed with any country in a decade. The last prominent FTA India signed was with Japan in 2011. The negotiations between India and UAE were concluded in a record span of 88 days, and CEPA was operationalised w.e.f. 1 May 2022.

Key Highlights of India-UAE CEPA:

- Expected to increase bilateral trade between two countries from the current \$60 billion to \$100 billion in the next five years.
- Zero access duty to 97% of Indian products (accounting for 99% of Indian exports to UAE in value terms) in a phased manner over the next ten years.
- Boost labour-intensive sectors like gems and jewellery, textiles, leather, footwear, sports goods, plastics, furniture, agricultural and wood products, engineering products, medical devices, and automobiles.
- Establishes a robust legal framework on technical regulations, standards, and conformity assessment procedures to ensure the smooth flow of trade in goods.
- Establishes a mechanism for consultations on non-tariff measures that may create barriers to trade
- Contains legal provisions to regulate cross-border trade in services and offers service providers an open and non-discriminatory environment for cross-border trade. Market access to India service providers in UAE in 11 service sectors consisting of 111 sub-sectors: business services, communication services, educational services, financial services, tourism, and travel-related services.
- Provides for Sanitary and Phytosanitary to protect human, animal, and plant life or health and strengthen communication, consultation, and cooperation between two nations. Encourage the development and adoption of science-based international standards, guidelines, and recommendations, and promote their implementation by the two countries.
- Establishes clear rules on Audit, Certification, and Import Checks.
- Ensures that standards, technical regulations, and conformity assessment procedures do not create unnecessary barriers to trade between two nations.
- Contains specific provisions to increase efficiency in customs procedures affecting the movement of cross-border trade, such as issuing customs rulings before import, facilitating cross-border clearance for economic operators, and adopting international best



practices of customs management techniques.

- Separate annexure on pharmaceutical products included for automatic registration and marketing authorisation of Indian generic medicines are meeting specified criteria in 90 days in the UAE.
- Establishes a framework to promote consumer confidence in digital trade and foster an environment conducive to advancing digital marketing, including e-commerce and the digital transformation of the global economy.
- Provides a permanent safeguard mechanism which will protect exporters and businesses of both nations from any unwarranted surge in volumes of any product.
- Strengthens partnership and cooperation frameworks to enable both countries to benefit from the experiences and expertise of the other in managing government procurement.
- Recognition provided for SMEs' role in maintaining dynamism and enhancing the competitiveness of their respective economies.
- Stringent Rules of Origin for strict monitoring of trade flows between two nations to prevent circumvention of products from other countries. The agreed rules are based on compound criteria of change in tariff classification (CTC) of the good plus a minimum percentage value-added.
- Encourages economic cooperation between two nations to liberalise

and facilitate trade and investment and foster economic growth. Establish an Economic Cooperation committee to identify new opportunities for future collaboration or capacity-building activities.

- Strengthens the protection and enforcement of intellectual property rights to promote technological innovation and to transfer and disseminate technology to the nations' mutual advantage.
- Encourages mutual investments by establishing the UAE-India Technical Council on Investment to promote, facilitate activities, and identify new investment opportunities.
- The incorporation of a separate detailed Chapter on dispute resolution provides an effective and efficient mechanism for settling disputes concerning the interpretation and application of the agreement.

India-UAE CEPA is a comprehensive agreement with 18 Chapters covering Trade in Goods, Rules of Origin, Trade in Services, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) measures, Dispute Settlement, Movement of Natural Persons supplying services,



Telecom, Customs Procedures, Pharmaceutical products, Government Procurement, IPR, Investment, Digital Trade and Cooperation in other Areas. The CEPA between India and the UAE covers almost all the tariff lines dealt in by India (11,908 tariff lines) and the UAE (7581 tariff lines), respectively.

The Central Government vide Notification No. 39/2022-Cus (NT) dated 30 April 2022 has notified the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022, effective from 01 May 2022, which among other things provide:

- **Origin Criteria**: Provides for origin criteria to be met for claiming preferential treatment under India-UAE CEPA, i.e., wholly obtained criteria or product-specific value addition criteria.
- **Wholly obtained products**: Provides a list of the products which shall be wholly obtained or produced in the territory of the exporting country.
- **Insufficient or non-qualifying operations**: Provides the nature of the processes by which a product shall not be considered an originating product.
- **De-Minimis**: Provides for a situation where non-originating materials, not meeting the required change in tariff classification, shall be considered as originating.
- **Transportation**: Provides for transportation of the originating products between two countries for claiming preferential treatment.
- **Certificate of Origin**: Provides for proforma and minimum information to be included in the Certificate of Origin like HS Code, description and quantity of the products, name of the consignee, exporter or manufacturer, and origin criteria.
- **Certification Procedure**: Provides for the validity of the Certificate of Origin and the period for issuance of the Certificate of origin (before, at or within five working days of the date of exportation).
- **Issuing authorities for a Certificate of origin**: Provides a list of the issuing authorities designated to issue a Certificate of Origin under these Rules.
- **Application for obtaining Certificate of Origin**: Provides detailed procedure to be followed and documents/ details to be submitted by the final producer, manufacturer, or exporter of the product to obtain a Certificate of Origin from the issuing authorities of the exporting country.
- **Preservation of documents**: Provides for the minimum period for which information and supporting documents are required to be retained by the issuing authorities of the Certificate of Origin.
- **The obligation of the exporter or manufacturer**: Provides for various obligations on the part of the exporter or manufacturer like providing truthful declaration relevant to the determination of origin, maintaining records of minimum information, and supporting documents, and making available records for inspection of

origin criteria.

- **Denial of Preferential Treatment**: Provides for the situation where the Customs Administration of the importing countries may deny preferential treatment in the event of non-meeting of origin criteria.
- **Verification of Certificate of Origin**: Provides a detailed procedure for determining the authenticity and correctness of the information given in the Certificate of Origin.
- **Temporary suspension of Preferential Treatment**: Provides for the situation where the preferential treatment may be suspended because of consistent failure by the exporter, manufacturer, or producer to comply with the Rules.
- **Third-party invoicing**: Permits preferential tariff treatment even in 'Third Party invoicing' where the invoice is not issued by the exporter or producer of the product.

Vide Notification No. 22/2022-Cus., dated 30 April 2022, the Central Government has notified concessional rate of duty for goods imported availing the benefit of India-UAE CEPA, giving effect to the first tranche of the CEPA. It is important to note that the India-UAE CEPA specifically provides applicability to Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ("CAROTAR, 2020").

CAROTAR, 2020

Chapter VAA and Section 28DA were inserted in the Customs Act, 1962, among other things, providing for a basic level of

due diligence on the part of an importer to satisfy that the claimed originating criteria have been met and that mere submission of a Certificate of Origin may not be sufficient.

As required by section 28DA, Central Government notified CAROTAR, 2020 vide Notification No. 81/2020-Cus (NT) dated 21 August 2020. The said Rules aim to supplement the existing operational certification procedures prescribed under different trade agreements and require the following conditions to be fulfilled for availing of benefits under FTAs

- **Declaration**: An importer intending to claim a preferential rate of duty under a trade agreement shall be required to make a necessary declaration in the bill of entry that imported goods qualify as originating goods under the respective agreement when filing a statement of entry. Indicate details like tariff notification for preferential rate, Certificate of the original reference number, date of issuance of the Certificate of Origin, originating criteria, and transportation details, in the Bill of Entry.
- **Origin-related information**: An importer claiming a preferential rate of duty under a trade agreement shall possess knowledge as indicated in Form I (containing basic minimum details for claiming the preferential rate of duty) to the Rule. Supporting documents related to Form importer shall maintain for at least five years from filing the Bill of Entry.
- **Requisition of information**: In case of doubt concerning origin criteria prescribed in the respective Rules of Origin, Customs authorities may seek necessary

information and supporting documents from the importer during Customs clearance or after that. Upon receipt of notification and satisfaction, the claim for a preferential duty rate shall be duly accepted and communicated to the importer. In case insufficient information is provided for the conclusion of the origin criteria prescribed in the respective Rules of Origin, the verification proposal may be forwarded to the nodal officer appointed.

- **Rejection of preferential claim by Principal Commissioner or Commissioner of Customs:** In case of relinquishment of claim or sufficient evidence for non-meeting of origin criteria, the Principal Commissioner or Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of a preferential rate of duty without any further verification.
- **Verification Request:** The proper officer, through a nodal officer appointed, may request for verification of Certificate of Origin from verification authority in case of doubt regarding the Certificate's authenticity, doubt as to non-meeting of origin criteria, due diligence, etc. Such verification shall be completed within the timeline prescribed under respective trade agreements or within sixty days. If the verification authority fails to respond or information provided by the verification authority is sufficient to prove that the origin criterion is not met, the claim for a preferential duty rate shall be denied.
- **Rejection of preferential claim for identical goods:** Where originating criteria for an exporter

or producer do not meet, the Principal Commissioner or Commissioner of Customs may, for the reasons to be recorded in writing, reject the other claims of a preferential rate of duty, for identical goods imported from the same exporter or producer.

India – UAE CEPA is a ground-breaking agreement in delivering India's strategy to adapt to an increasingly complex and fast-changing environment by strengthening the economy and driving the global post-COVID 19 recoveries through international trade. CEPA will not only facilitate the free flow of goods, services, capital, technology, and people but will propel the two friendly nations towards magnificent bilateral and economic relations. India – UAE CEPA has the potential to promote upward mobility throughout the economic value chain, resulting in hundreds of thousands of job opportunities in both countries. CEPA will be a valuable tool in the hands of the Indian industry in achieving the Hon'ble Prime Minister's vision of 'Atmanirbhar Bharat'.



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VDAS BOON OR BANE ON THE GOVERNMENT TO DECIDE!

The blockchain and research firms, [1] Chainalysis and Finder ranked India 2nd in Global cryptocurrency adoption index in October 2021 and February 2022. This ranking was outdone by Vietnam, trailed by India and Pakistan. In another study, they named Australia as the leader in Cryptocurrency ownership followed by Ghana. As far as India was concerned, the Cryptocurrency ownership vis-à-vis Global ownership has increased from a measly 14.7 per cent to a 23.4 per cent in January 2022 and subsequently to 29.9 per cent in April 2022. This is enough to estimate the impact of India in the Cryptocurrency arena!

Lately, NFTs, have also created a buzz in the market! A lot of money has been made with simple images of apes, collages, three white dots against a black background etc. [2]The costliest NFT (Beeple's 'The First 5000 days') sold till date to a single buyer amounts to a whopping \$69 million (INR 539 Crores!) while the costliest NFT (Pak's 'The Merge') sold till date by a single seller to multiple buyers amounts to a mind boggling \$91.8 m (INR 716 Crores). Merely, one year after this

sale, Christie's auction house located in Mumbai, India has crossed \$ 100 million in NFT sales.

Enough Said. What are these NFTs and cryptocurrencies???

Since the stakes involved are humongous, one must understand what an NFT is. Before deep diving into NFT, a small brief about blockchain would help us understand NFTs better. Blockchain plays a vital role in the cryptos and NFTs – to maintain an extremely secure and decentralized (no centralized entity for supervision and decision making!) record of transactions. Blockchain consists of “Blocks” that stores information and the information set in it gets linked to the previously formed block thus, forming a Blockchain.

Now, coming back to what an NFT is. NFT is a Virtual Digital Asset (VDA) that is non-fungible (unique) and has a unique id. NFTs represent and emulates art, music, videos etc. Accordingly, it helps the NFT owners to own the original items i.e., art work, music works/records, sports memorabilia, collectibles etc.

virtually/digitally or rather without owning them physically.

Similarly, Cryptocurrency is a form of VDA which make use of cryptography (mechanism for securing information!) to help secure transactions. Further, such currencies do not have a central issuing authority (decentralized) and functions on blockchain technology just like NFTs.

Functionality and Storage

NFT functions on the blockchain technology and provides proof of ownership via its authentication mechanism. However, unlike cryptocurrency they cannot be traded at equivalent values (i.e., bitcoin can be exchanged for bitcoin). NFTs can be bought at various popular online marketplaces like Opensea, Nifty gateway etc. Once bought, it would be essential to store an NFT in a digital wallet. Coinbase, Alphawallet amongst others offer a digital solution for safe storage of NFTs.

NFT FRENZY! NFT around the world!

Our very own Mahanayak, Shri Amitabh Bachchan was one of the first Bollywood actors to take the plunge. He auctioned some of his late father's poems and some of his own collectibles as NFTs. Other actors like Salman Khan, Kamal Hasan, legendary Rajnikant as well as our favourite cricketers like Rohit Sharma, Dinesh Karthik soon followed suit. [3]

In the west as well, Jack Dorsey (co-founder and ex-CEO of twitter) sold his first tweet for a mind boggling \$2.9 Million (INR approx. 23 crores). International sportsmen have also made the most of this frenzy – LeBron James (basketball player) sold a video of his slam dunk for \$200,000 (INR Approx 16 lakhs). Not just this, the National Basketball Association (NBA) collected video highlights from live games and converted them to memorabilia that fans can collect and trade..such highlights has generated \$ 600 million in sales. Such huge craze has led to NFT sales being

recorded at \$10.7 bn in third quarter of 2021; more than 8 times higher than the previous quarter!!! [4]

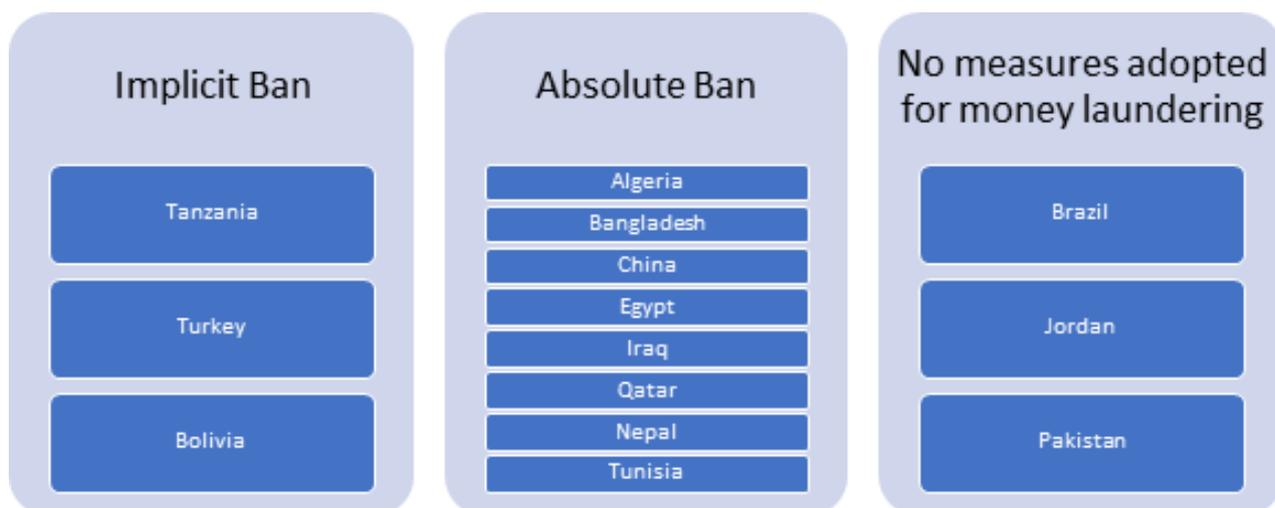
But are these legal?

Due to its usage in the dark web and other regulatory issues, Bitcoin has not been a popular contender for gaining recognition as a legal tender. However, El Salvador has taken everyone by surprise and has become the first country that has recognized bitcoin as its legal tender. Various other countries around the globe like France, Denmark, Germany, Iceland, Spain, Mexico, the United Kingdom, and Japan have considered bitcoin transactions as legal and have developed various rules and regulations revolving around such transactions. [5]

While in the US, the US Treasury has been issuing guidance for usage of Bitcoins and have guided that bitcoin can be exchanged for like value of a different currency. Lately, a bi-artisan cryptocurrency bill aimed at increasing federal oversight over the budding and increasingly popular cryptocurrency and digital asset industry has been launched. It would make use of digital assets easier in their daily lives.

There has been significant development in the Crypto space in the last few years where certain countries have extended an implicit or absolute ban on cryptocurrency, a certain country has declared it as legal tender while some countries are looking to do the same. Further, certain countries are taking transacting in cryptocurrency lightly i.e., no measures to counter terrorism or money laundering with the help of cryptos. While An Implicit ban would refer to a ban where banks /financial institutions are prohibited from dealing in cryptos, also, crypto exchanges are prohibited from functioning, an absolute ban refers to a ban where cryptocurrencies are illegal. The list of countries that have banned cryptos as well as those that have not

adopted any measures for money laundering has been tabulated below. Moreover, China



has banned crypto trading as well crypto mining. Surprisingly, prior to placing ban on crypto mining, at least two-thirds of the mining took place in China. Now, the US is the largest market for Crypto Miners. [6] Similarly, the legality of NFTs is under question. NFTs as discussed above, gives rights to a specific item underlying such purchase. One angle that creeps in, in the case of NFT is the access to Intellectual Property rights (IPR) related to those specific goods. The US has with a view to develop a national policy for Digital Assets has issued 'Executive Order on Ensuring Responsible Development of Digital Assets' recently. Draft legislation is underway which shall give more clarity on what NFTs are as a means to manage IPRs and other purposes.

Where does India stand amongst all of this? Does it have an Implicit ban for now and it is heading towards an absolute ban? Only time will tell...

India and its saga with Cryptos

Thanks to the Supreme Court judgement in *Internet and Mobile Association of India v. Reserve Bank of India Citation*, temporary relief was provided to the crypto world in India since quite a few banks were blocking the buyers from making payments to crypto exchanges for

purchase of Crypto currencies. Such banks had also blocked the bank accounts of various crypto exchanges prior to issuance of the Supreme Court judgement.

The Indian Government and the Crypto world have always been at logger heads for a long time. Last year, the Indian Government has suggested on regulating Crypto Currency via the [Cryptocurrency and Regulation of Official Digital Currency Bill, 2021](#), which is yet to be tabled by the Government. Further, such a bill would also lay down the foundation for creation of an official digital currency to be issued by the RBI. The Bill intends to regulate all private crypto currencies in India. Being the sixth largest economy in the world, would legalizing Crypto be a progressive or a regressive move?

Finance Bill, 2022: A new beginning for VDAs in India?

On February 01, 2022, via the Finance Bill 2022, the Government raised the curtain and brought all the virtual assets in the ambit of direct taxation. The Government defined 'virtual digital assets' (VDA) which included **cryptocurrency as well as Non-Fungible Tokens**. Further, it was also stated that the Government vide notification can also exclude certain assets from the definition of virtual assets. As per

the Hon. Finance Minister's speech, "***The magnitude and Frequency have made it imperative for a specific tax regime***". Accordingly, with effect from April 1, 2023, the Government introduced levy of income tax on virtual digital assets which include cryptocurrency and NFTs.

The Finance Bill, 2022 is indicative of the aspect that the Government intends to regulate NFTs and cryptocurrency. However, with the Government's intention to launch Central Bank Digital Currency (CBDC), the Government has hit two birds with one stone – one bird being putting the crypto world's future in jeopardy with regressive tax system and the other being introducing its own digital currency.

Introduction of taxability, no set off against other incomes or same income nor any carry forward possible of such loss from sale of VDA, gives us a glimpse of the approach that the Government intends to adopt in respect of Cryptocurrencies and NFTs. The Government has hinted that the assessee would get into such transactions at his own expense.

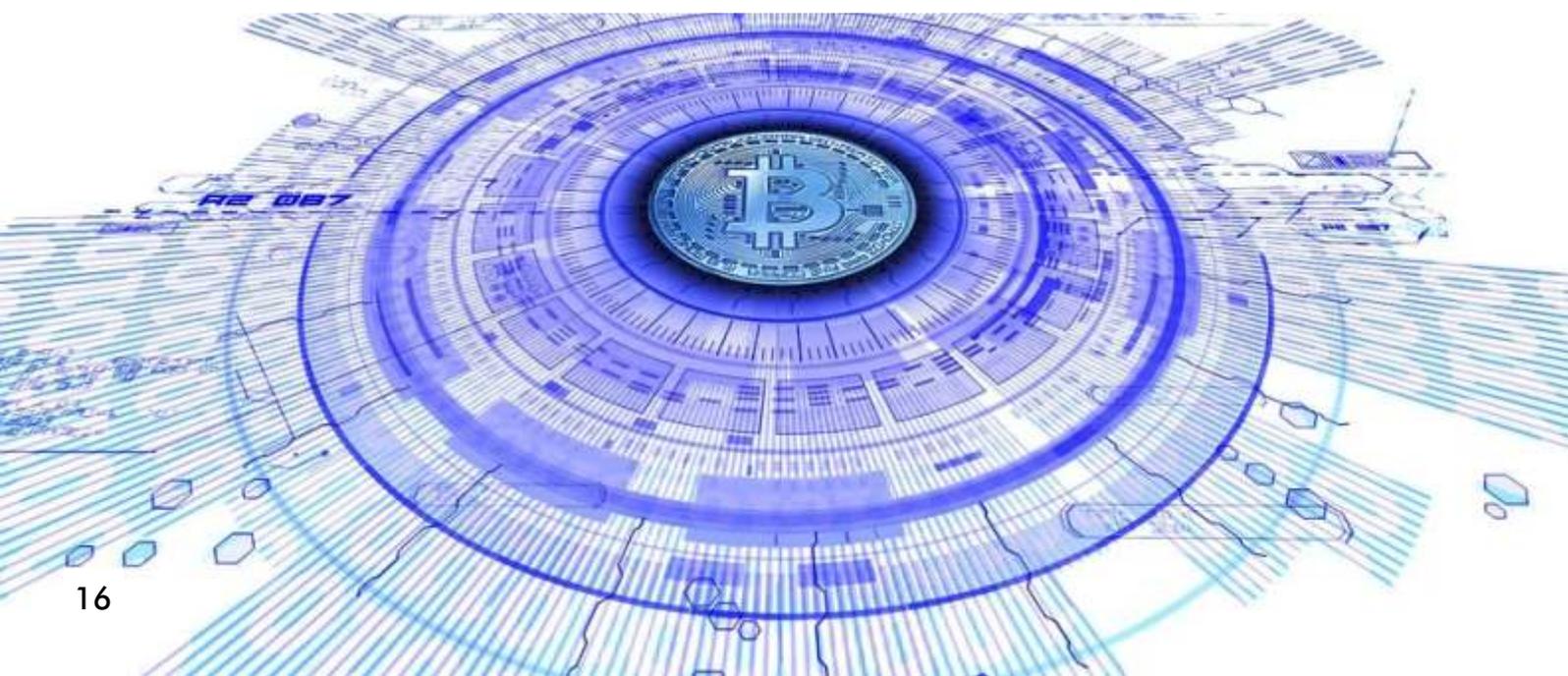
Now that the Government has cleared its position on Cryptos with respect to income tax, it would be imperative to understand its position on applicability of GST on VDAs especially cryptos and NFTs.

GST Implications on transacting in Cryptos -

Primarily, there is no doubt on the Government's intention to tax cryptos and NFTs under GST. The same is evident from the below two instances:

Previously, The Central Economic Intelligence Bureau (CEIB) in year 2020 had proposed to the CBIC that the cryptocurrency market in the country would reach at about Rs 40,000 crore and suggests to **classify bitcoins as 'intangible asset' and levy GST @18%** on margins made while trading in such currency. However, there are no concrete steps taken by the CBIC in this regard. [7] Even, in 2021, a question was posed before the finance ministry in the parliament – 'whether the earnings from cryptocurrencies is being subject to tax?' To which the ministry replied that any income irrespective of where it is derived from should be offered to income tax; hence, any profits or gains from dealing in cryptocurrencies should be subject to income tax. The ministry added, that any supply of goods or service which has not been exempted would be liable to GST; no supply in relation to crypto currency has been exempted from GST specifically.

A grapevine also did rounds in media in March 2022, wherein GST officers at the



condition of not being named said that the Government is pondering upon levying 28% GST on cryptos and NFTs. [8]

But how will VDAs be taxed? Where do they get classified in terms of GST law? For the purpose of levy of GST whether cryptocurrency would be goods or services or be classified as an actionable claim and not subjected to GST? Whether it can form a part of 'Money'? Moreover, would VDAs be considered as intangible assets for the purpose of GST?

Let us try to find the answers to the above questions in relation to cryptos and NFTs in accordance with GST:

Firstly, let us analyse whether NFTs/ cryptos can be classified as goods or services. As per section 2(52) of CGST Act, 2017, "'goods' mean every kind of movable property **other than money** and securities but includes actionable claim...." Therefore, in order to be classified as goods it is imperative to exclude NFTs from money, securities and actionable claim. As per Section 2(75) of CGST Act, 2017, "*Money means the Indian legal tender or any foreign currency, any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.*"

Basis the above definition, one can infer that unless NFTs/ Cryptocurrencies are legal Indian tender, or any foreign currency, or they have been recognised and notified by RBI, VDAs cannot be classified as 'Money'. Next, it would become important to analyse whether NFTs/ Cryptocurrencies can be classified as 'Securities'. Since the definition of securities under GST Act points towards the definition of securities as per securities contracts act, it must be reproduced here: Further, Sec 2(h) of Securities Contracts (Regulation) Act 1956, defines "Securities"

as under:

"Securities" include-

(i) *shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

(ia) *derivatives;*

(ib) *units or any other instruments issued by any collective investment scheme to the investors*

in such schemes;

(ii) *government securities;*

(iia) *such other instruments as may be declared by the Central Government to be securities;*

and

(iii) *rights or interest in securities."*

However, since NFTs/ Cryptocurrencies do not fall under any of the points above, NFTs cannot be classified as "Securities".

Finally, let us discuss whether VDAs can fit in the definition of "Actionable Claims". Since GST Act refers to Transfer of Property Act for the same, reliance can be placed there:

As per section 3 of Transfer of Property Act, 1882, 'actionable claim' means "*a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any **beneficial interest in movable property not in the possession either actual or constructive, of the claimant,.....***"

The question that arises here is whether NFTs can be called as 'actionable claims' as the owners of the same have beneficial interest in a movable property (underlying asset on which NFT is created). Similarly, what would cryptocurrency be? The crypto industry has represented that SEBI should be the regulatory body for cryptos, however nothing has been finalised as yet! Infact, SEBI has recently, expressed that it would be challenging for them to

safeguard the interest of consumers and enforce any regulatory regime owing to their decentralised nature.

In view of the above discussion, the GST Council must at the earliest provide clarity on levy of GST on Cryptos and NFTs, its valuation and rate of tax. Further, some FAQs/clarification on applicability of GST on sale of Cryptos and NFTs, levy, its valuation etc would be very helpful. Without releasing FAQs/clarification, the tax authorities are left without jurisdiction and the taxpayers are left helpless when a notice is issued for recovery of GST on sale of Cryptos and NFTs.

Conclusion:

Post Finance Budget 2022, the future of Cryptos and NFTs in India looks tax-

expensive basis the taxation imposed, no set off against another head or same head permitted nor any deduction of expenditure against the income permitted. Similar rules may soon creep in from GST perspective also. We are expected to play the Wait and Watch game till the Govt takes the next step. Any effort to subject Cryptos to GST at the highest slab would create an uproar in the market. However, keeping in mind the measures taken in Finance Act, 2022, taxpayers should brace themselves for a jerk since similar measures may be expected under GST provisions. But as Sylvester Stallone has famously said, ***"It ain't over till it's over"***, all taxpayers should hold their horses and be optimistic in hope of any relief.

Sources :

[1]<https://timesofindia.indiatimes.com/business/cryptocurrency/blockchain/cryptocurrency-adoption-index-and-patterns-in-india-finders-report-april-2022/articleshow/91795988.cms>.

[2][https://www.business2community.com/nft/mostexpensivenft#:~:text=Finally%2C%20the%20most%20expensive%20NFT,\(which%20were%20single%20NFTs\).](https://www.business2community.com/nft/mostexpensivenft#:~:text=Finally%2C%20the%20most%20expensive%20NFT,(which%20were%20single%20NFTs).)

[3] <https://economictimes.indiatimes.com/magazines/panache/from-big-b-to-rajinikanth-2021-was-the-year-of-nft-craze-for-indian-celebrities/articleshow/88524421.cms>

[4] <https://economictimes.indiatimes.com/tech/technology/nft-sales-surge-to-10-7-billion-in-q3-as-crypto-asset-frenzy-hits-new-highs/articleshow/86772103.cms>

[5]<https://www.finmes.com/2022/03/which-countries-have-legalized-the-use-of-bitcoin.html#:~:text=El%20Salvador&text=Other%20countries%20like%20France%2C%20Denmark,around%20its%20use%20and%20trade.>

[6]<https://decrypt.co/89148/over-50-countries-have-placed-bans-on-crypto-library-of-congress-report>.

[7] <https://www.businesstoday.in/latest/economy-politics/story/centre-may-impose-18-percent-gst-on-bitcoin-trading-282951-2020-12-29>

[8]<https://www.financialexpress.com/digital-currency/28-gst-on-cryptocurrency-another-shocker-for-crypto-community-in-india/2517642/>



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THE QUANDARY OF TAX IMPLICATIONS ON DAMAGES

The provisions concerning imposition of liquidated damages, such as those mentioned hereinafter, are a source of much consternation under the indirect taxation:

- A decides to resign from its current employment. The employment agreement requires A to serve three months' notice period. A fails to honour the notice period and is accordingly obligated to deposit three months' salary.
- Contractor B fails to complete construction within agreed timeline under an engineering, procurement and construction contract. The contract requires the contractor to pay a specified sum based on period of delay.
- D grants non-exclusive license for patented drawings and designs to E, an original equipment manufacturer, for manufacture of automobile parts. The agreement stipulates that E shall be liable to pay a specified sum to D upon unauthorised use of such license.

The term 'liquidated damages' unlike unliquidated damages, refer to quantified damages specified in the terms of the contract. The provisions either stipulate a

specific sum of money or a mechanism to compute such sum.

Treatment under service tax regime

The subject matter of levy under the *erstwhile* Finance Act, 1994 ('Finance Act') was provision of 'service'. The term 'service' was defined under Section 65B(44) as "*any activity carried out by a person for another for consideration, and includes a declared service*". Section 66E provided an exhaustive list of declared services which *inter alia* covered "*agreeing to the obligation to tolerate an act or situation*". The definition of 'declared service' however did not transcend the core elements of 'service': (i) Presence of service provider and service recipient relationship, (ii) Activity undertaken by service provider for service recipient, and (iii) Consideration. The use of the term "for" in the phrase 'activity carried out by a person for another' implied the doing of an act 'in favour of' or 'for the benefit of' service recipient. Therefore, benefit to the service recipient and consideration were *sine qua non* for an activity to qualify as 'service', and even 'declared service'.

The Apex Court has consistently held that the object of damages is to give the plaintiff compensation for damage or injury suffered¹. To the contrary,

consideration refers to a reasonable equivalent or other valuable benefit passed on by the promisee to the promisor². The liability to pay sums, such as early termination or notice pay charges, charges for delayed or short lifting of goods or inadequacy of services, arise only upon breach of the contract. There is no underlying activity carried out “for” the defaulting party. The CBIC vide its Circulars³ had clarified that amounts collected by stock brokers as delayed payment charges and amounts collected on delayed payment of a telephone bill are not consideration. Such charges are penal in nature, and thus not exigible to service tax. The issue of service tax on liquidated damages has now been settled by the High Courts⁴ and Customs, Excise and Service Tax Appellate Tribunal⁵.

Treatment under Goods and Services Tax

The subject of levy under GST is 'supply' of goods and services. Section 2(102) of Central Goods and Services Tax Act, 2017 ('CGST Act') defines 'services' as anything apart from 'goods'. Schedule II specifically provides that “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” shall qualify as service. Section 7(1A) inserted with retrospective effect from July 1, 2017 states: “where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II”. As a result, Schedule II activities are now required to first qualify as 'supply' under Section 7(1),

in order to form either supply of goods or of services.

The definition of 'supply' under Section 7 of the CGST Act can be dissected into following distinct clauses:

- **Omnibus clause:** It covers all forms of supply made for a consideration in the course or furtherance of business;
- **Mutuality of interest clause:** It covers supplies between an association and its members;
- **Import of service clause:** It covers import of service for a consideration, whether in the course of furtherance of business, or otherwise; and
- **Sans consideration clause:** It covers supplies made without consideration and specifically mentioned under Schedule I of the CGST Act.

Evidently, the Mutuality of interest clause and Import of service clause are clearly inapplicable in the present case. The Sans consideration clause read with Entry 2 of Schedule I covering supplies between related persons will ordinarily become applicable in case of notice pay amount issue, or in any other case where the parties are related. Ordinarily, the Omnibus clause will be applicable, covering 'all forms of supply' undertaken for consideration in the course or furtherance of business, with following illustrations, viz. sale, lease, transfer, barter etc. The definition of 'supply' derived from various dictionaries are as under:

Source	Definition
Cambridge Dictionary	To provide something that is wanted or needed
Merriam Webster Dictionary	The quantity or amount (as of a commodity) needed or available
Longshoreman Dictionary	To provide people with something that they need or want
Britannica Encyclopedia	To make something available to be used; to provide someone or something with something that is needed or wanted

1 *Common Cause v. UOI*, (1999) 6 SCC 667; *Ghaziabad Development Authority v. UOI*, (2000) 6 SCC 113

2 *Sonia Bhatia v. State of UP*, (1981) 2 SCC 585

3 Circular No. 96/7/2007-ST dated August 23, 2007; Circular No. 121/2/2010-ST dated April 26, 2010



Supply in its general sense thus requires the presence of a need or want which is fulfilled through the supply. There is an underlying desire on part of the recipient of supply which is fulfilled by the supplier by way of the supply. Any reasonable person, being the defaulting party would desire the non-invocation of liquidated damages. The non-defaulting party therefore acts against the wants or needs of the defaulting party.

The other prerequisite for supply is consideration. The term consideration has been defined under Section 2(31) of the CGST Act, to include monetary as well as non-monetary consideration. The case of non-monetary consideration does not arise inasmuch as liquidated damages are alleged to form the consideration for toleration of an act or situation. As for the monetary consideration, Section 2(31)(a) defines it to include any payment made in respect of, in response to or for the inducement of supply of goods or services or both. The consideration is in lieu of an underlying supply. The invocation of liquidated damages clause by the aggrieved party is to receive compensation for a loss or injury suffered and is detrimental to the defaulting party. Therefore, liquidated damages do not form consideration for any supply of goods or services.

The common law principle of *surrogatum* governs the tax treatment of damages. This principle directs a taxpayer to

consider what the payment was intended to replace, and to then determine the tax treatment of the replaced amount. Applying this principle to liquidated damages reveal that such sums are paid to replace the injury suffered by one party on account of another. Therefore, these amounts bear relation only to the loss or injury suffered, and not to any supply.

Furthermore, imposition of liquidated damages does not qualify as toleration of an act or situation in itself. Paragraph 5(e) of Schedule II employs the expression 'to tolerate an act or situation'. The term tolerating has been defined as 'to allow to be or to be done without prohibition, hindrance, or contradiction'¹⁶, 'allow the existence, occurrence, or practice without interference' and 'to allow to exist, happen, or be done'¹⁷. A person imposing liquidated damages for breach of contract is the complete antithesis to toleration inasmuch as the aggrieved party effectively does not allow unhindered or uncontradicted breach of contract.

The following decisions of other VAT and GST jurisdictions provide ample strength to the above understanding:

- **GSTR 2001/4** issued by the Australian Taxation Officer ('ATO') noted that the most common form of contractual remedy is a claim for damages arising out of the termination or breach of a contract or for some wrong or injury suffered. It was ruled that such damage, loss or injury, being the substance of the dispute, cannot in itself be characterised as a supply made by the aggrieved party.

- **GSTR 2003/11** issued by the ATO in respect of treatment of payments made on early termination of lease of goods under GST clarified that a payment received to compensate the lessor for damage or loss flowing from early termination, as a

4 GE T & D India Limited v. CCE, 2020 (1) TMI 1096 - MADRAS HIGH COURT;

5 Lemon Tree Hotel v. CCE, [2019 (7) TMI 767 - CESTAT NEW DELHI; Southeastern Coalfields Limited v. CCE, 2020 (12) TMI 912 - CESTAT NEW DELHI; Rajcomp Info Service Limited v. CCGST, 2022 (2) TMI 955 - CESTAT NEW DELHI



result of a default by the lessee, is not a consideration for supply.

In the case of ***Societe Thermale v. Ministere de l'Economie, [2007] STI 1866, Celex No. 605J0277***, European Court of Justice dealt with the issue of tax on sum retained by hotelier as a fixed cancellation charge where clients exercised the cancellation option. The Court held that the charges were paid as compensation for the loss suffered and did not have direct connection with supply of any service for consideration. Accordingly, the charges could not be subjected to tax.

In the case of ***Vehicle Control Services Limited, (2013) EWCA Civ 186***, the Court held that damages or penalty for parking in wrong places / manner did not form consideration for any service, as it was payable for the breach of contract with parking manager.

The HMRC in its ***VAT Notice 708*** dated August 13, 2014 has amply clarified that liquidated damages do not form a payment for any supply. Accordingly, no VAT is leviable on the said sum.

In ***New Zealand Case S65, (1996) 17 NZTC 7408***, it was observed that when an association accepts

payment of fine or penalty, the member does not gain rights additional to those which are already enjoyed by virtue of being a member. In this sense, it cannot be said that the association 'makes' a supply where it already has a pre-existing obligation to continue to provide the benefits of membership. It was further held that the term 'supply' limited the breadth of the phrase 'supply of services' which was only so wide as to include activities where the provider has done something 'for' and not 'against', the recipient. To rule otherwise, would lead to absurdity because it would allow the concept of supply to encompass situations where a person sues for recovery of property or steals something from someone.

Judicial trends under GST

Anxious taxpayers have proactively sought advance rulings in order to determine the taxability of liquidated damages. However, more often than not the decisions of the Authority for Advance Rulings have held such payments to be *in lieu* of a supply of service under Paragraph 5(e).⁸

In the case of ***In re: Amneal Pharmaceuticals Private Limited, 2022 (3) TMI 1143 - AAAR GUJARAT*** while dealing with taxability of 'notice pay recoveries' one of the members of



⁶ Merriam Webster Dictionary, accessible at < <https://www.merriam-webster.com/dictionary/tolerating> >
⁷ Britannica Encyclopedia, accessible at < <https://www.britannica.com/dictionary/tolerate> >

Appellate Authority for Advance Ruling ('AAAR') held that such sums do not form consideration for any supply. The only supply under the employment agreement is that of employment for a consideration i.e. salary. The employer has no discretion to tolerate the act of early termination. Further, the act of notice pay recovery is only an extinguishment of the obligation of the employee which does not constitute an independent/voluntary activity by the employer. Similar reasoning has been adopted in the following cases:

- ***In Re: Bharat Oman Refineries Limited, 2021 (12) TMI 999-AAAR, Madhya Pradesh;***
- ***In Re: Syngenta India Limited, 2022 (1) TMI 903-AAR, Maharashtra;***
- ***In Re: Emcure Pharmaceuticals Limited, 2022 (1) TMI 186-AAR, Maharashtra***

Damages on account of lost consideration

It is important to note that liquidated damages could also be on account of recovery of any lost consideration for the underlying supply. Retention money held back under a construction contract is utilised to cover the cost of any defect or inadequacy noticed during the defect

liability period. Where the imposition of damages is on the count of recovery of any lost consideration for the underlying supply, application of the principle of *surrogatum* renders such the damages to be consideration, exigible to GST.

Conclusion

A contract is executed for performance and to benefit the parties involved. It cannot be misinterpreted as a contract for toleration, unless and until specifically mentioned. The principle of *surrogatum* serves as an efficient tool, which requires one to determine whether the underlying activity qualifies as 'supply' under Section 7(1) of the CGST Act. One must also proceed to test whether the supply indeed qualifies as toleration of an act or situation. The simplest way to determine this is to check if the recipient receives any additional rights under the contract in lieu of the sum paid. For example, damages or penalty paid for unauthorised use of a private land is not toleration of an act inasmuch as the trespasser does not gain the right to continue with such trespass upon payment of such amount. However, payment of an access fee allows a person to continue accessing a private land, and thus qualify as toleration of an act or situation.

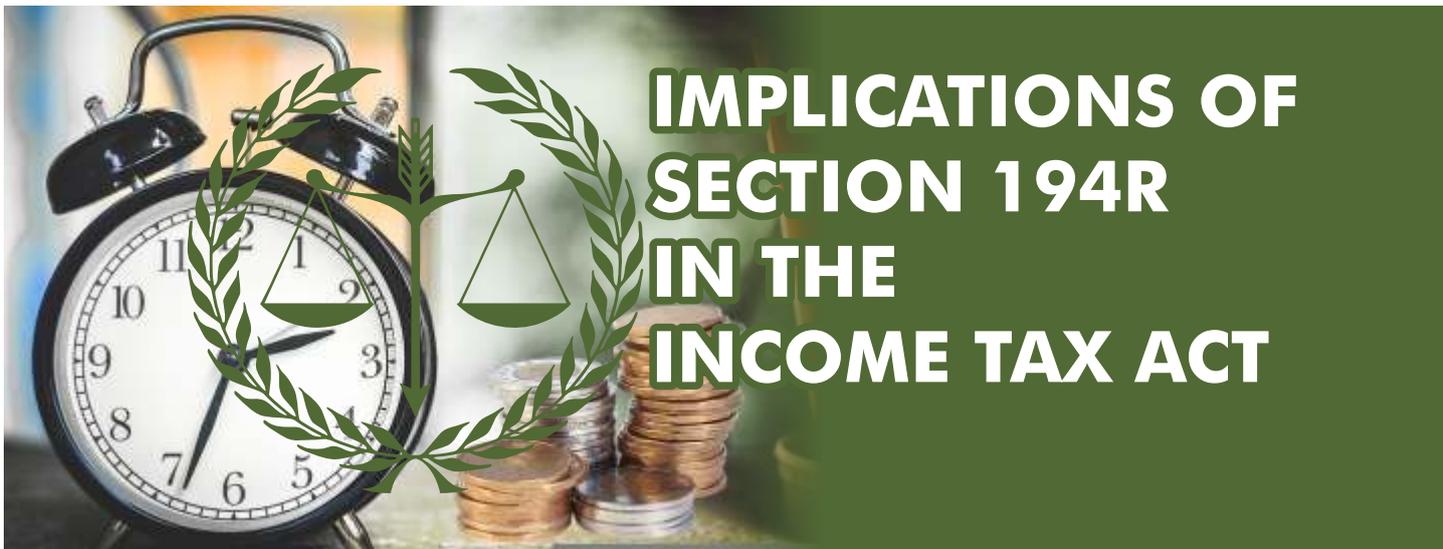
8 *In re: Achampet Solar Private Limited, 2022 (59) GSTL 478 (AAR-Telangana), In re: Fastrack Deal Comm Private Limited, 2021 (1) TMI 368 - AAR, GUJARAT; In re: Haryana State Warehousing Corporation, 2021 (48) GSTL 399 (AAR - Haryana)*



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IMPLICATIONS OF SECTION 194R IN THE INCOME TAX ACT

Introduction

The Finance Act, 2022 inserted a new section 194R for TDS deduction on benefit or perquisite arising from business or profession. This new provision is coming into effect from July 1, 2022. It mandates a resident person, who is responsible for providing any benefit or perquisite to deduct tax at source at the rate of 10% of the value of aggregate of value of such benefit or perquisite. The benefit or perquisite may or may not be convertible into money but should arise either for carrying out of business, or from exercising a profession, by such resident. While the understanding at the time of the passing of the Finance Act was that Section 194R would apply only to those benefits/perquisites that qualify as business income under Section 28(iv), the CBDT Circular issued on June 16, 2022 has clarified that the provider of benefits/perquisites need not check if the benefits/perquisites are taxable under Section 28(iv). Moreover, the CBDT has also issued other clarifications in this regards such as:

- Section 194R applies even if the benefits are paid in cash.
- Capital assets such as cars and land are also covered under Section 194R
- Sales and cash discounts do not fall within the purview of Section 194R

- Government entities are exempt from Section 194R
- Valuation of the benefit shall be based on fair market value of the benefit.
- Reimbursable expenses shall be counted as benefits/perquisites.
- Expenses on leisure trips or to participate in conferences would also be considered benefits/perquisites.

The new provision is set to come into effect from July 1, 2022 and there still remains confusion regarding the implications of this new section. We, through this article, have discussed at length the various implications that may arise as a result of invocation of Section 194R.

Implications of Section 194R

Following implications of Section 194R merit discussion:

- One of the first concerns that plagues Section 194R is the clarification that the taxability of the benefits/perquisites need not be examined. While, this may reduce the burden of the provider of the benefits/perquisites, the non-assessment of taxability of benefits/perquisites makes it



difficult for the recipient of benefits/perquisites to claim TDS credit. It is pertinent here to discuss, Section 28(iv) in brief. Section 28(iv) does not cover monetary benefits, as held in the decision of *Mahindra & Mahindra Ltd.* (404 ITR1), however, the CBDT clarifications have stated that the perquisites and benefits may be partly/fully in kind. This may lead to a double deduction of TDS, as the cash components of the benefits partly in kind and partly in cash, may be taxed twice.

- The guidelines of CBDT state that the valuation of the benefit should be based on the fair market value of the benefit/perquisite. This guideline is subject to certain exceptions, one exception being that the benefit must be purchased, prior to its provision and not after. This exception may hold good for capital assets, but it has not been clarified, how would this exception operate where benefits/perquisites are in the form of services or facilities. Moreover, in the absence of a clear definition of fair market value, it may be difficult to ascertain the exact value of the benefits/perquisites.

- The guidelines are loosely framed and consideration has not been given to the fact that the FMV of different goods may differ based on the places where they are provided.

- Charging TDS on reimbursable expenses may lead to implementation challenges. One condition for such expenses to be included in the ambit of benefits/perquisites is that, the invoice should be in the name of the service provider. However, the service providers may devise mechanisms to avoid TDS by creating receipts in the names of third-parties or even service recipients themselves, to avoid TDS.

- Sales discounts, cash discounts and rebates are exempt from Section 194R. However, free samples are included within its ambit. This would again face implementation challenges, as there may not be fair reporting of any free samples received.

- An important thing to note about Section 194R is that it is applicable only to residents. Hence, if you provide any benefit/perquisite to a non-resident, this provision will not be attracted.

Who may be Impacted?





pharmaceutical representatives, social media influencers etc. are some professionals that routinely are the recipients of benefits and perquisites, arising in the course of their business/profession. The additional obligation of deducting TDS on the provision of benefits/perquisites, may deter the provision of benefits/perquisites.

Businesses and professions where giving of benefits/perquisites is common, to conduct a FMV assessment of each benefit/perquisite, prior to giving it to the intended recipients would increase costs as well as curb convenience. Brands which use variety of social media influencers to promote their products, will now have to think twice. Moreover, where the benefits/perquisites are completely in kind, deduction of TDS would also prove to be complex and confusing. However, it may be noted that Section 194R does not apply to individuals and HUF whose gross receipts and turnover does not exceed INR 1 Crore in business or INR 50 Lacs in profession.

Conclusion

The coming into effect of S.194R would increase the compliance burden on companies covered by the said provision. Remuneration in the form of benefits and perquisites would need to be identified in order to remain compliant. Companies can comply by keeping a track of the following:

- Reimbursable expenses.
- Benefits/perquisites being given.
- Expenses spent on conferences

If the perquisites are purchased prior to their provision, then receipts to that effect should be maintained.

Government on the other hand would need to devise a strong implementation plan to ensure that Section 194R is not violated, as many may not report the benefits/perquisites received/granted.



CA Manmeet Pal Singh

Partner
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ALPHA RAJAN & PARTNERS EXPANDS THEIR **DUBAI** TEAM, ADDS **NIKITA MISRA** AS PARTNER TO STRENGTHEN THEIR PRESENCE IN THE **MIDDLE EAST**



Nikita Misra
Partner
Alpha Rajan & Partners



Akshat Pande
Co-founder &
Managing Partner
Alpha Rajan & Partners



Rajan Gupta
Co-Founder &
Managing Partner
Alpha Rajan & Partners

Alpha Rajan & Partners has announced the joining of their new Partner – Nikita Misra to head their UAE/MENA practice desk and its Dubai office. The Firm had recently set up an affiliate entity in Dubai to focus on the UAE/MENA region.

About Nikita Misra

With over 12 years of experience, Nikita specializes in advising and handling corporate transactions, drafting and vetting commercial contracts and on corporate restructurings. Prior to joining Alpha-Rajan & Partners, she has worked with various law firms and corporate legal departments in India before moving to Dubai in 2018. She has also assisted clients with their internal POSH policies and trained their employees, managers, and Internal Complaint Committee on issues pertaining to POSH laws.

She has advised leading multinationals including Havells India and real estate majors including Emaar MGF, Sobha Real Estate Developers among many others.

Based out of Dubai, she will be heading the Dubai operations of the Firm and will be responsible for expanding footprints in the UAE/MEAN region and developing the practice.

About the Dubai Office

The Firm's Dubai entity is strategically located within IFZA free trade zone, one of the UAE's dynamic business gateways. IFZA Dubai is a leading free zone that provides local and international businesses the ideal platforms, infrastructure and location that optimize the benefits of the UAE's geographic position, world-class infrastructure and business- and tax-friendly environments

As part of its strategic growth plan, the Firm has been on a hiring spree. With this addition, there are now 5 Partners and 20 Associates. While Nikita will be heading the UAE/MENA operations, Co-Founders & Managing Partners – Akshat Pande and Rajan Gupta will continue to support the team and be available for the clients.

Welcoming Nikita, Mr. Akshat Pande, Co-founder & Managing Partner of the Firm said, "I am delighted to have her onboard, she is exceptional. This is part of our strategic growth plan for driving our expansion into the transactional and international markets. Our clients will benefit from their cumulative expertise, knowledge, and commitment".

Speaking on this development, Mr. Rajan Gupta – Co-Founder & Managing Partner of the Firm said, "I extend my best wishes and welcome Nikita in our Firm. This is an

extension of our strategic outbound growth plan. While it's a new phase of our firm, our focus and philosophy remains the same – client service and satisfaction is paramount".

Nikita Misra, Partner said "I am thrilled to have joined Alpha Rajan & Partners. They are known for their quality work. I feel encouraged at the prospect of learning and growing as a professional while I explore my true potential trying to develop the Dubai operations of the Firm".

ABOUT ALPHA RAJAN & PARTNERS

Alpha-Rajan & Partners (ARP) is a multidisciplinary firm with its principal offices in New Delhi and Bengaluru; and an overseas office in Dubai. Focused on providing holistic services to deliver exceptional client experience, the Firm is a preferred counsel for the multinational companies doing business in India. With wide-ranging experience the firm has traversed multifarious areas of law, covering all aspects of commercial transactions including projects, regulatory & compliance, funds & investments, labour & employment, real estate, tax and dispute resolution.

As lead counsels, the Firm has been at the forefront of transactions and litigations for our Indian as well as multinational clients from multiple sectors, including e-commerce & retail, agro-tech & food, start-ups, healthcare, IT/ ITES, lifestyle & hospitality, import/export, real estate & constructions, media & communications, sports & management consulting, manufacturing, infrastructure, BSFI, FMCG, amongst others.

PAST EVENTS AND ACTIVITIES



5th Annual Direct Tax Summit and Awards 2022

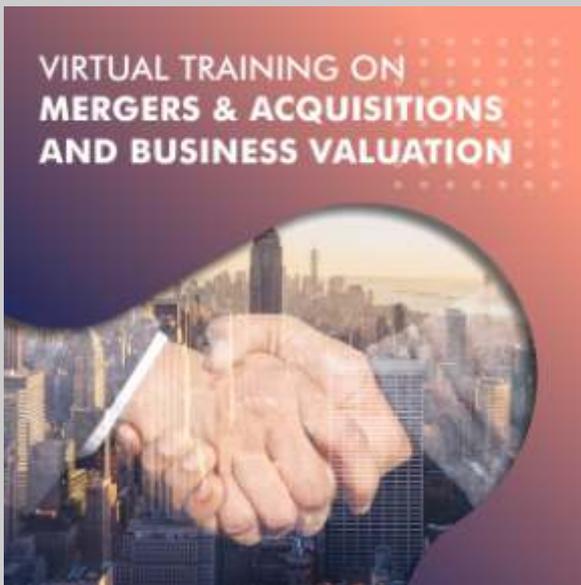
5th Annual Direct Tax Summit and Awards 2022 scheduled on 11th March 2022, commenced with the welcome address given by Director of Achromic point - Aashish Verma, Overview of Recent Developments in International Tax in India 2021-2022 was given by Naveen Aggarwal Partner, North India Tax Head, India Global - U.S. Corridor Leader KPMG in India.

The First Panel on Taxation of Digital Economy, Pillar One & Pillar Two was taken by Maulik Doshi Deputy Managing Director - Transfer Pricing and International Tax, Nexdigm as a moderator along with his panelists Shashishekar Chaugule, FCA, Insolvency Professional, Registered Valuer, Mahesh Jain, Asia Pacific - Tax & T3 PCO Lead at Corteva, Pushendra Dixit, General Manager & Global Tax Head at PVR Group, Sachit Jolly, Partner at DMD Advocates & Navneet Singal, Head of Tax and Digital Transformation at Syngene International Limited.

Regulating Cryptocurrency in the New Digital Era was taken by Aakanksha Goel, Partner at TR Chadha & Co LLP; Abhay Saboo, Director, Transfer Pricing at Sudit K Parekh & Co.LLP spoke upon Transfer Pricing.

The Second Panel on Faceless Assessment was taken by Kavita Jha, Partner at Vaish Associates Advocates as a moderator along with his panelists Haroon Qureshi, Vice President – Taxes at Genpact, Vidur Puri, Senior Partner at SCV & Co. LLP, Sandeep Chilana, Managing Partner at Chilana & Chilana law offices, Umang Dhingra, Head of Tax – India at GlaxoSmithKline Asia Pvt Ltd, CA Maneet Pal, Partner at I.P. Pasricha & Co & Alok Pareek, Head of Tax at Discovery India.

PAST EVENTS AND ACTIVITIES



Virtual Training on Mergers & Acquisitions and Business Valuation

In this Virtual Training on Mergers and Acquisitions scheduled on 8th, 9th, 10th & 11th March, 2022, where Introduction and Negotiation techniques from the M&A World was discussed by Yashojit Mitra, Partner at Economic Laws Practice. Lalit Kumar, Partner & Kumarmanglam Vijay, Partner at J Sagar Associates jointly shared their insights on M&A Deal Documentation, Legal Issues & Tax Implications.

Session on Corporate Restructuring was taken by Subodh Dandawate,

Associate Director - Regulatory Services at Nexdigm. In the last session Anand Shah, Director & Kinjal Shah, Manager - Valuation services at KNAV provided insights on Unlocking Key Factors that Influence Valuation.



Digital Payments: New Trends and Evolution of the Industry Virtual Conference and Awards 3.0

Digital Payments: New Trends and Evolution of the Industry Virtual Conference and Awards 3.0 on 25th March 2022, commenced with the welcome address given by Director of Achromic point - Aashish Verma, Dr. Prashant Mali President & Founder Cyber Law Consulting (Advocates & Attorneys) Addressed the regulatory climate for digital payments.

Trends in Payment Frauds: Fireside Chat was taken by Vishal Narula, Managing Director at Alvarez and Marsal & Mr Ghanshaym Singla,

Group Head of Internal Audit and Forensic at PayTm.

The Panel Discussion on Roadmap for secure digital payments was taken by Akshay Garkel, Partner & Leader Cyber at Grant Thornton Bharat LLP as a moderator along with his panelists Kush Wadhwa, Senior Director – Disputes and Investigations at Alvarez and Marsal, Hardik Sheth, Audit & Risk Professional from Tech Mahindra Business Services, Anirban Banerjee, Global Head Business Advocacy & Excellence at TCS BFSI Operations, Tata Consultancy Services, Puneet Bhasin, Advocate Cyber Law Expert & Praveen Khanna, Vice President Alliances at ScoreMe Solutions.

PAST EVENTS AND ACTIVITIES



Digital Training on Contracts Drafting, Negotiation, Contractual Fraud and Dispute Resolution

Digital Training on Contracts Drafting, Negotiation, Contractual Fraud and Dispute Resolution conducted on 21st, 22nd, 23rd, 24th, 26th, 28th, 29th & 30th March 2022, In this Arrchana A Panchall, Partner at JSA Advocates & Solicitors discussed about Elements in Drafting Commercial Contracts; Legal Issues Arising from Contractual Clauses was taken by Prashant Jain, Partner at Samisti Legal. Session on Negotiation Skills and Techniques to Ensure Effective Negotiations was explained by Arti

Narsana, Principal Associate at Vaish Associates Advocates.

Isha Sinha, General Manager | Group Head – Legal at Medicover Hospitals spoke on Understanding the Arbitration Process as an Alternative Dispute Resolution Mechanism. Protecting Your Corporation's Asset – Intellectual Property was taken by Rohan K. George, Partner at Samvad partners, Whereas, International Arbitration and Impact of Cross Border Issues were discussed by Alipak Banerjee, Leader, International Dispute Resolution at Nishith Desai Associates.

Mumtaz Bhalla, Partner at Economic Laws Practice shared her insights on Planning For, Avoiding and Resolving Cross Border Contractual Disputes. Last session on Procurement Fraud was taken by Shashank Karnad, Partner & CEO Forensic Services at Mahajan & Aibara.



Private Equity Masterclass

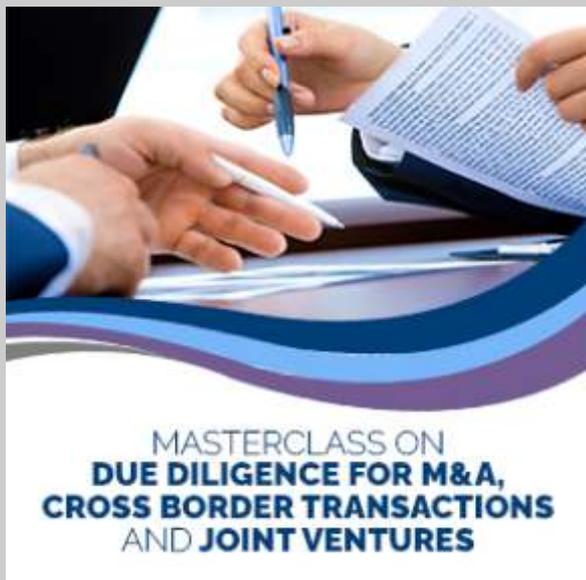
In this Digital Training on Private Equity Masterclass scheduled on 24th March 2022, here, Introduction was given by Sanjeev Gupta, Managing Director at NEXGEN Financial Solutions Pvt. Ltd.; Snehal Pawar, Valuation Services at KNAV and Kinjal Shah, Valuation Services at KNAV spoke upon Private Equity Fund and Structures. Legal Documentation was discussed by Arrchana A Panchall, Partner at JSA Advocates & Solicitors.

PAST EVENTS AND ACTIVITIES



Fireside Chat - Overseas Investment through APP whether legal / illegal

Fireside Chat on Overseas Investment through APP whether legal / illegal conducted on 29th March 2022, was done by Manish Tyagi, Partner at MHA Legal & Shashishekhar Chaugule, FCA, Insolvency Professional, Registered Valuer.



Masterclass on Due Diligence for M&A, Cross Border Transactions and Joint Ventures

In this Masterclass on Due Diligence for M&A, Cross Border Transactions and Joint Ventures scheduled on 14th April 2022, here, Basics of the Due Diligence Processes was discussed by Runit Maheshwari, Director at Alvarez & Marsal India Private Limited, whereas, Financial Due Diligence (FDD) – Navigating potential financial Pitfalls of a transaction was taken by Harshal Choudhary, Principal Consultant, Transactions Advisory at Nexdigm.

Rahul Gosain, Managing Director and Lead - Business Intelligence at Alvarez & Marsal spoke upon Forensic Due Diligence and Law Enforcement Insights on Cross-Border M&A Transactions. Yatin Narang, Associate Partner & Priyanka Jain, Associate Partner at Vaish Associates Advocates shared their insights on Legal and Tax Due Diligence. Last session on Effective Due Diligence Report was taken by Anup Vijay Kulkarni, Partner at J Sagar Associates.

PAST EVENTS AND ACTIVITIES



Digital Training on Forensic Accounting and Corporate Fraud Investigations

Digital Training on Forensic Accounting and Corporate Fraud Investigations scheduled on 21st & 22nd April 2022, here, Forensic Accounting and Fraud Investigations was discussed by Kalpesh Mehta, Senior Director at Alvarez and Marsal: whereas, Fraud Risk Management, Applicable Standards & Best Practices, Financial Forensics & Forensic Audit Techniques was taken by Vicky Gala, Director at Alvarez and Marsal. Kumar Sai Polavarapu, Director at EY spoke upon The power of Data Analytics in addressing fraud risks.

Rohit Dhingra, Managing Director at FTI Consulting moderated the Panel discussion on Roadmap to a Secure Future along with his panelists Dhruv Phophalia, Managing Director and India Leader – Disputes and Investigations at Alvarez and Marsal, Shreyas Jayasimha, Advocate | Arbitrator | Mediator at Aarna Law (India), Simha Law (Singapore), Faraz Sagar, Partner at Cyril Amarchand Mangaldas & Zameer Nathani, Senior Vice President and General Counsel at UFO Moviez India Limited.

PAST EVENTS AND ACTIVITIES



4th Annual Insolvency and Bankruptcy Code Conference and Awards 2022

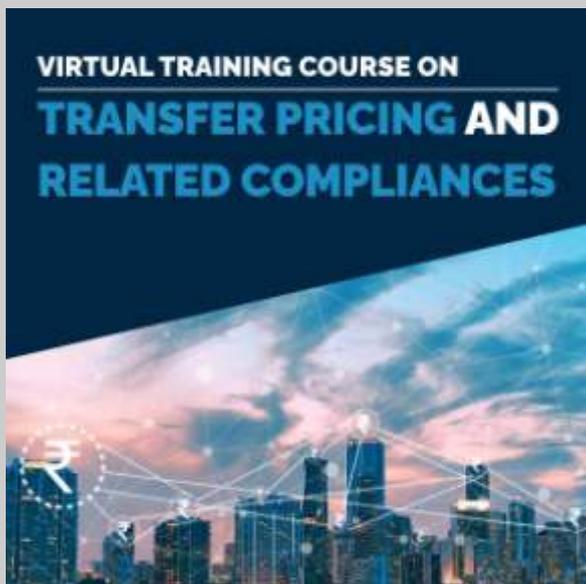
4th Annual Insolvency and Bankruptcy Code Conference and Awards 2022 on 30th April 2022 Hotel Eros Nehru Place (Hybrid), commenced with the welcome address given by Director of Achromic point - Aashish Verma, Vishal Barfiwala, Senior Director at Alvarez & Marsal & Abhilash Lal, Resolution Professional shared their insights on IBC process from different perspectives.

Our Chief Guest Justice S. J. Mukhopadhaya Former Judge Supreme Court of India discussed about the Evolution of Insolvency and

Bankruptcy Code 2016 (Journey So Far). Drafting and other issues. Defending / formulating strategies was taken by Gajanand Kirodiwal, Senior Associate at Atlas Law Partners & Varun Vaish, Associate Partner at Atlas Law Partners; whereas, Sanjeev Ahuja, Founder at MissingBridge spoke upon Mediation in IBC.

The Panel Discussion on Cross Border Insolvency/ Group Insolvency/ Pre-Packs, was taken by Satwinder Singh, Partner at Vaish Associates Advocates as a moderator along with his panelists Nitin Jain, Partner at Agam Law Associates, Khushboo Vaish, Senior Director at Alvarez & Marsal, Sunil Gupta. Vice President at Resurgent, Ritu Goyal, Senior Partner & Co-Founder at Naks & Partner (Advocates & Solicitors) & Rajan D Gupta, Partner at Alpha Rajan & Partners Advocates & Solicitors. Kashish Grover, Chief Investment Officer at LegalPay shared his insights on Interim Finance - Vital to resolve Resolution Professional's challenges.

PAST EVENTS AND ACTIVITIES



Virtual Training Course on Transfer Pricing and Related Compliances

Virtual Training Course on Transfer Pricing and Related Compliances conducted on 18th, 20th, 22nd, 25th, 27th & 29th April 2022, Introduction on Transfer Pricing was given by Sunil Nayak, Principal at Dhruva Advisors; whereas, Transfer Pricing Policy & Compliance was taken by Akankshi Bhatia Manager –Transfer Pricing, India at B S R & Co. LLP.

Rahul Mehta, Principal at Dhruva Advisors spoke upon Transfer Pricing Controversy Management. Transfer Pricing of intangibles was taken by SP Singh & CA. Ankit Arora at

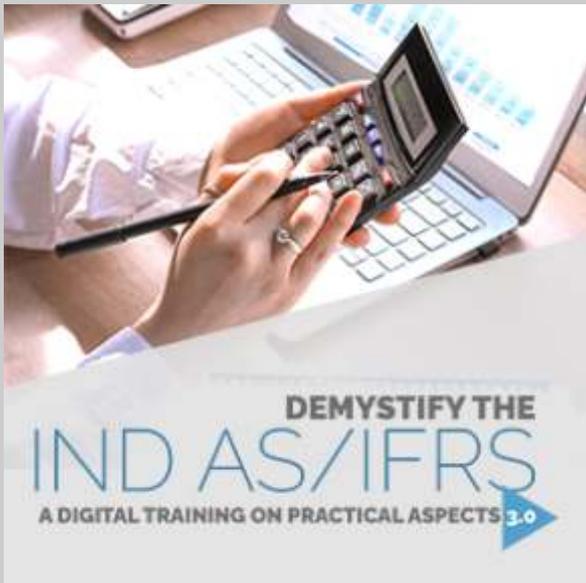
GSAP & Associates LLP. Divya Yadav at BSR & Co. LLP shared her insights on Business Restructuring (BR) and Valuation. Last session on Transfer Pricing – Interplay with other taxes was taken by Vidhu Sah, Assistant Manager | Global Transfer Pricing Services at B S R & Co. LLP.



Virtual Session on Labour Codes - Key Issues and recent Amendments- 4.0

In this Virtual Session on Labour Codes - Key Issues and recent Amendments- 4.0 conducted on 28th, 29th & 30th April 2022. Here, Sessions on Wages, Social Security, Industrial Relations & Health & Working Conditions was discussed by Savitha kesav Jagadeesan, Senior Resident Partner at Kochhar and Co. & Gaurav Chatterjee, Partner at Kochhar and Co.

PAST EVENTS AND ACTIVITIES

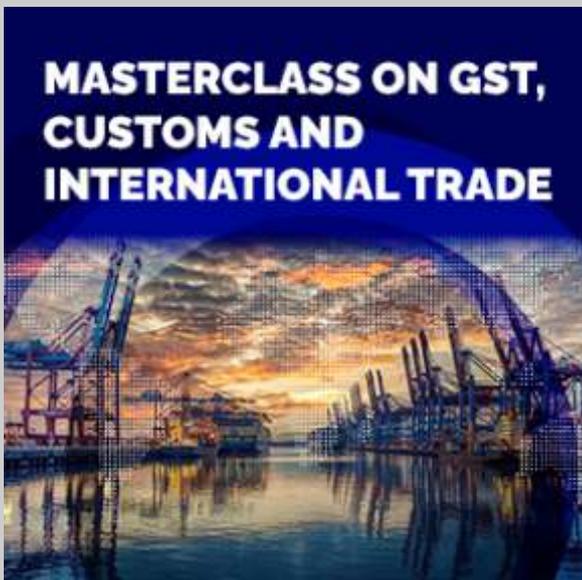


Demystify the Ind AS /IFRS - A digital training on practical aspects 3.0

In this Demystify the Ind AS /IFRS - A digital training on practical aspects 3.0 conducted on 9th, 10th, 11th, 12th & 13th May 2022, where the Income and Expenses IND AS 115, 20, 19, 102 & 12 were discussed by Anil Arora, Senior Manager & Robin Joseph, Director Assurance at Deloitte in India, Assets and Liabilities was taken by Resham Singh, Senior Manager, Audit & Assurance at Deloitte India. Ahtasham Ansari, Director & Gurjap Singh, Senior Manager at Deloitte in India spoke upon Group Accounts; Presentation and Disclosures was taken by

Abhishek Jain, Senior Manager, Audit & Assurance at Deloitte India.

Gaurav Khurana, Director, Audit & Assurance at Deloitte India shared his insights on Financial Instruments and foreign exchange which received a lot of attention from the audience.



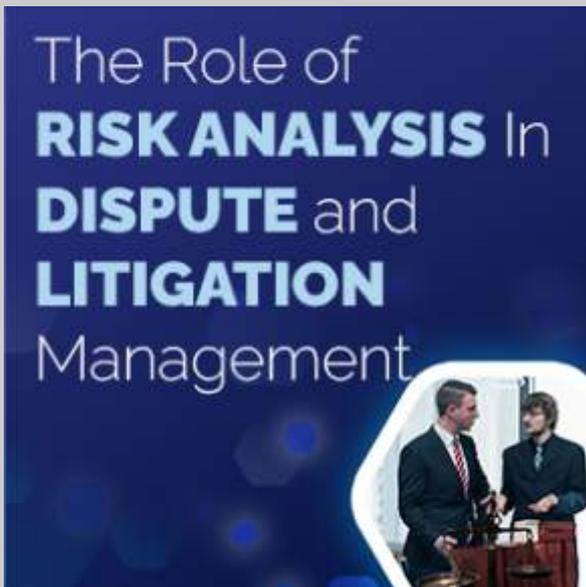
Masterclass on GST, Customs and International Trade

In this Masterclass on GST, Customs and International Trade conducted on 10th, 11th, 12th, 13th, 14th May 2022, where Refunds under GST & Intricacies of ITC was discussed by Yogesh Gaba, Managing Partner - Indirect Tax at GABA & CO.; Raturaj Bhide, Principal at Dhruva Advisors LLP spoke upon Lucrative Customs Schemes and Litigation under Foreign Trade Policy.

Session on Appeal, Revision, Offence, Penalty, Inspection, Search, Seizure, and Arrest in GST was taken by Kunal Gandhi, Partner at U.S.Gandhi & Co, Chartered Accountants. Kulraj Ashpnnani, Principal at Dhruva Advisors

LLP shared his insights on Emerging Issues in GST instigating Litigation. Writ petitions including Anti-Profiteering and credits was taken by Lalitendra Gulani, Partner at ANANTHAM LEGAL; Legacy Disputes carried forward under GST was taken Kishore Kunal, Advocate on Record at KK & Co., Law Chambers

PAST EVENTS AND ACTIVITIES

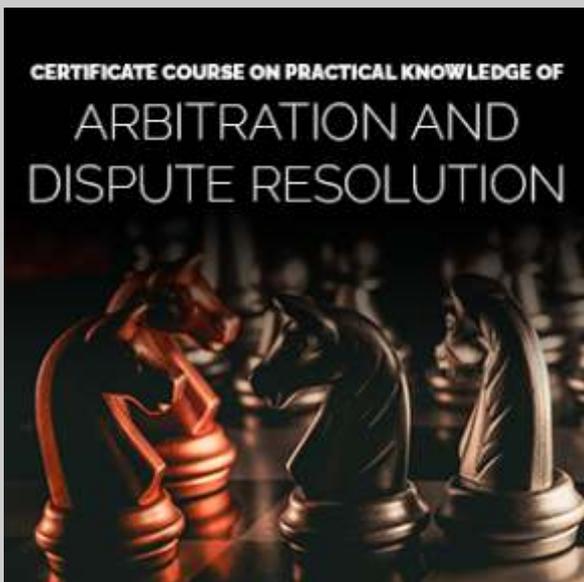


The Role of Risk Analysis in Dispute and Litigation Management

In this Virtual Training on The Role of Risk Analysis In Dispute and Litigation Management scheduled on 16th, 17th, 18th, 19th & 20th May 2022, where Tackling the Jurisdictional Challenge was discussed by Arjun Krishnan, Partner At Samvad Partners; Poornima Hatti, Partner at SAMVAD Partners spoke upon Litigation Tactics and How To Manage Your Dispute Resolution Strategy.

Using Insolvency Procedures During Litigation to Maximize Asset Recoveries was taken by Dhruv Phophalia, Managing Director and India

Leader – Disputes and Investigations at Alvarez and Marsal. Gaganpreet Puri, Managing Director, Risk & Regulatory Leader at Alvarez & Marsal Shaping and Managing Your Risk Appetite spoke upon Shaping and Managing Your Risk Appetite. Last session on Arbitration - Issues and Recent Trends was taken by Naresh Thacker, Partner at Economic Laws Practice.



Certificate Course on Practical Knowledge of Arbitration and Dispute Resolution

Certificate Course on Practical Knowledge of Arbitration and Dispute Resolution scheduled on 20th & 21st May 2022. In this Fundamentals of Arbitration as Dispute Resolution, Drafting and Understanding Arbitration Clauses, Appointment of arbitrator, constitution of arbitral tribunal and practical aspect of arbitration & Remedies against an arbitral order, arbitral award, execution and enforcement proceedings was taken by Ankit Tripathi Associate, Sujoy Datta, Principal Associate & Surekh Kant Baxy, Senior Associate at Vaish

Associates Advocates.

PAST EVENTS AND ACTIVITIES



Digital Training on FEMA- Legal & Compliance

In this Digital Training on FEMA- Legal & Compliance scheduled on 26th May 2022, where the Foreign Direct Investments was taken by Aakanksha Joshi, Partner at Economic Laws Practice. External Commercial Borrowings (ECB) were discussed by Utsav Johri, Partner at J Sagar Associates.

Session on Investigations by Enforcement Directorate / Compounding by RBI was taken by Anup Vijay Kulkarni, Principal Associate at J Sagar & Associates; Megha Saraf, Partner at J Sagar Associates shared his insights on Export and import of Goods and Services. Last session on Overseas Direct Investments by a person

resident in India was taken by Abhishek Sanyal, Partner at Economic Laws Practice.



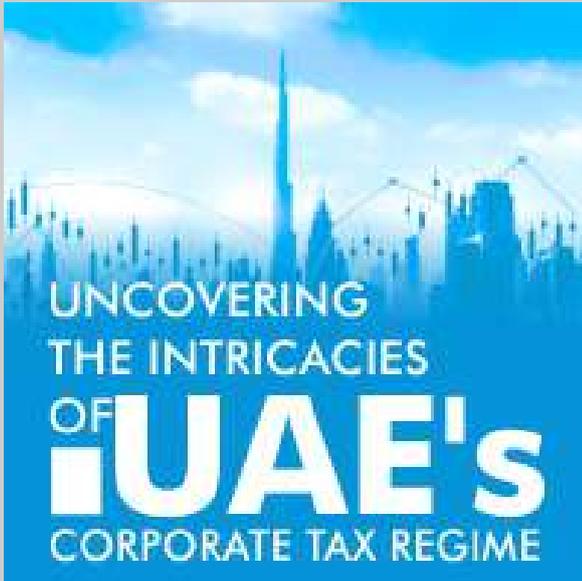
Masterclass on Companies Act- Key Issues and Recent Amendments

Masterclass on Companies Act- Key Issues and Recent Amendments scheduled on 3rd June 2022, Overview of recent changes in Companies Act 2013 & Inter-Corporate Transactions and Related Party Transactions was given by Manish K Tyagi, Partner at MHA Legal; Corporate Social Responsibility (CSR) was discussed by Anup Vijay Kulkarni, Partner at J Sagar Associates.

Session on SEBI Regulations was taken by Manendra Singh, Associate Partner at Economic Laws Practice. Shashank Karnad, Partner & CEO

Forensic Services & Malhar Kulkarni, Senior Analyst - Forensic Services at Mahajan & Aibara Chartered Accountants LLP shared their insights on Frauds under Companies Act 2013.

PAST EVENTS AND ACTIVITIES



Uncovering the intricacies of UAE's Corporate Tax regime

In this virtual event on Uncovering the intricacies of UAE's Corporate Tax regime conducted on 9th June 2022, Trupti Mehta, Director at Nexdigim UAE & Nishit Parikh, Partner, Tax at Sudit K Parekh & Co. LLP shared their insights on various aspects of the consultation paper and in its impact on the corporates. They would also cover aspects which corporates should consider and be prepared before the law is implemented.

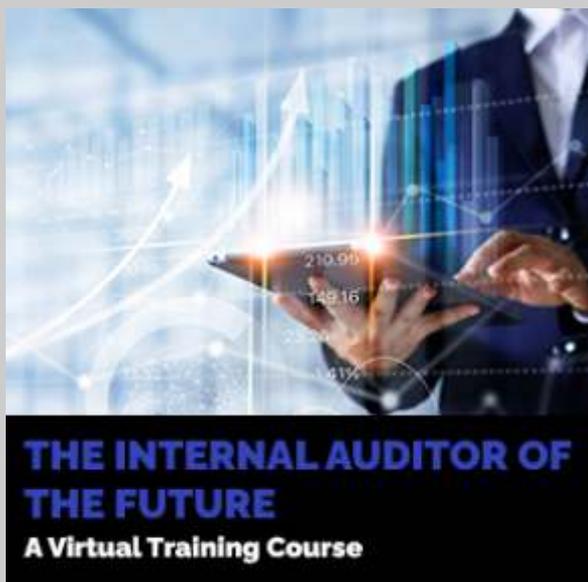


Digital Training on Understanding & Mitigating Supply Chain Fraud

In this Digital Training on Understanding & Mitigating Supply Chain Fraud scheduled on 10th June 2022. Supply Chain Fraud was discussed by Alok Saraswat, Associate Vice President - Fraud Control Unit & Sales Compliance at Future Generali India Life Insurance Co. Ltd., The Impact of Supply Chain Fraud was explained by Ajay Upadhyay, Partner-Forensic Services, Risk Consulting at KPMG. Praveen Khanna, Vice President at Scoreme Solutions Private Limited shared his insights on Leveraging financial information and

alternative data sources. How to Prevent and Detect Supply Chain Fraud was taken by Sahil Gupta, Director at Alvarez and Marsal.

PAST EVENTS AND ACTIVITIES



The Internal Auditor of the Future- A Virtual Training Course

The Internal Auditor of the Future- A Virtual Training Course conducted on 16th June 2022. In this Internal Audit in the Age of Digital Revolution was discussed by Mohit Gupta, Partner - Governance, Risk, Resilience and Compliance at Mazars in India. Risk Based Auditing & Internal Controls was taken by Vetrivelan A B, Associate Director at Deloitte India. Rohit Das, Associate Partner, Cyber at Grant Thornton shared his insights on Internal Audit in the age of evolving Cyber risks.

Saket Mehra, Partner at Grant Thornton

moderated the panel discussion on Internal auditing in a post-pandemic world- Building a Highly Skilled Remote Working Audit Team in the New Wave of Digital Business World along with his panelists Surath Mukherjee, Chief Internal Auditor at ACC Limited, Varun Wadhwa, Head Compliance & Internal Audit at CBRE India, Saurav Kumar Mohanty, Director of Risk Management at FIS Global, Ashish Jain, Chief Internal Audit Officer at Nayara Energy Limited, CA Niraj Kumar, Vice President & Group Head of Internal Audit, Forensic and Risk at OYO Hotels & Asish Saraf, Lead Internal Audit - Retail Finance at Piramal Capital & Housing Finance.



Certificate Course on International Tax

In this Certificate Course on International Tax scheduled on 21st, 22nd & 23rd June 2022, where the Introduction to International Tax was given by Parth Savla, Principal & Sanjana Hegde, Principal at Dhruva Advisors, International Tax Treaties were discussed by Vidur Puri, Senior Partner at SCV & Co. LLP & Shashishekhar Chaugule, FCA, Insolvency Professional, Registered Valuer.

Session on BEPS and MLI was taken by Saurabh Shah, Principal at Dhruva Advisors; Guiding Concepts of Transfer Pricing was taken by Piyush Aggarwal, Assistant Manager in the Global Transfer Pricing Services practice at BSR & Co.

LLP. Priyanka Jain, Associate Partner at Vaish Associates Advocates shared her insights on Penalties and Dispute Resolution.



Upcoming Events – 2022



Webinar on Customs Law and Regulations

5th July 2022

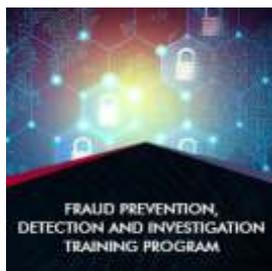
[Know more](#)



Virtual Training on Mergers & Acquisitions and Business Valuation

15th July 2022

[Know more](#)



Fraud Prevention, Detection and Investigation Training Program

20th July 2022

[Know more](#)



GST and Customs- Contemporary Issues - In-Person Event

21st July 2022 – New Delhi, Hotel Eros

[Know more](#)



Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond - In-Person Event

29th July 2022 – New Delhi, Hotel Eros

[Know more](#)



Data Analytics for Internal Auditors

4th August 2022

[Know more](#)



Webinar on BEPS and MLI

10th August 2022

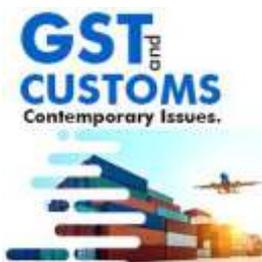
[Know more](#)



Hands on Digital Training on Drafting Commercial Contracts

24th August 2022 – Session 1 & 2 | 25th August 2022 – Session 3 & 4 | 26th August 2022 – Session 5 & 6

[Know more](#)



GST and Customs- Contemporary Issues - In-Person Event

25th August 2022 – Mumbai, Hotel Orchid

[Know more](#)



Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond - In-Person Event

26th August 2022 – Mumbai, Hotel Orchid

[Know more](#)

Virtual Session on Labour Codes - Key Issues and recent Amendments- 5.0

2nd September 2022 – Session 1 | 3rd September 2022 – Session 2

[Know more](#)



Demystify the Ind AS /IFRS - A digital training on practical aspects 4.0

6th September 2022 – Session 1 | 7th September 2022 – Session 2 |
8th September 2022 – Session 3

[Know more](#)

Workshop on Data Privacy, Digital Forensics and Cyber Investigations

9th September 2022

[Know more](#)

Certificate Course on International Tax

14th September 2022 – Session 1 & 2 | 15th September 2022 – Session
3 & 4 | 16th September 2022 – Session 5 & 6

[Know more](#)

Masterclass on Companies Act- Key Issues and Recent Amendments

22nd September 2022

[Know more](#)

Virtual Training Course on Transfer Pricing and Related Compliances

11th October 2022 - Session 1 | 12th October 2022 - Session 2

[Know more](#)

Digital Training on Vendor Risk Management

14th October 2022

[Know more](#)

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CORPORATE
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2022



The Corporate Membership of Achromic Point is open for Calendar year 2022 (January 2022 – December 2022).

Anyone becoming a member under the scheme shall be entitled to the following benefits :-



Will be able to attend all programs (Maximum of 8) organised by Achromic Point and Achromic Point Academy free of charge throughout the calendar year 2022



The member may depute any other officer only from his/her organisation with the authorization on Company Letter Head certifying that the nominated person is from his/her organisation



Individual member may depute his/her partner, employee from the same firm (Authorization letter would be needed)



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