



# News Letter

Volume - 4, June'2023

## Changes to Tax Rates in Certain Cases

- i. The Finance Act, 2020 had introduced a new optional regime under Section 115BAC of the Income-tax Act, 1961 ('IT Act'), whereunder individuals and Hindu undivided families ('HUFs') could opt to be taxed at the prescribed slab rates, without the benefit of claiming any exemptions ('New Regime'). This New Regime has now been extended to association of persons, body of individuals etc.
- ii. The Government has announced new slab rates/ benefits under the New Regime; the key benefit being that the highest surcharge under the new regime would be 25% (as opposed to 37% earlier); thereby reducing the effective tax rate from 42.7% to 39% under the New Regime. The effective tax rate under the earlier regime continues to be 42.7% (i.e., with a surcharge of 37%). In effect, no changes to the earlier regime. It is applicable from 1st April, 2023.
- iii. The New Regime has been made the default regime now. However, taxpayer has the option to be governed by the earlier regime.

## Measures Affecting Start-ups

- i. Extension of Date of Incorporation for Eligible Start-ups: Under Section 80-IAC of the IT Act, a deduction of an amount equal to 100% of the profits and gains derived from an eligible business is allowed to an eligible start-up for three consecutive assessment years ('Ays') out of ten AYs, subject to prescribed conditions, including that the eligible start-up has been incorporated prior to April 01, 2023. It is now proposed to extend the period of incorporation of eligible start-ups to March 31, 2024.
- ii. Carry Forward and Set Off of Losses: Section 79 of the IT Act restricts the ability of a company, in which public are not substantially interested, from carrying forward tax losses in case of a change in shareholding beyond 51%. However, this Section allows a relaxation to 'eligible start-ups' provided all the shareholders of such company as on the last date of the year in which loss was incurred, continue to remain shareholders of the company on the last day of the year in which the loss is sought to be set-off, provided the loss has been incurred during the period of seven years beginning from the year in which the company is incorporated. It is now proposed

extend this period of seven years to ten years.

- iii. These amendments will take effect from April 01, 2023 and will apply in relation to AY 2023-24 and subsequent Ays.

### **Applicability of Section 56 (2) (viib) to Non-residents**

As per existing Section 56(2)(viib) of the IT Act, where a company, in which public are not substantially interested, receives any consideration from a resident for issue of shares which exceeds their face value, the difference between the consideration so received and the Rule 11UA value of such shares is taxable in the hands of the company as 'income from other sources'. Issue of shares to non-residents was not covered under the provision. However, the FB 2023 now seeks to enhance the scope of this provision to include consideration received by the company for issue of shares to non-residents as well. This amendment would apply from AY 2024-25 and onwards.

### **Concessional Rate of Tax on New Manufacturing Co-operative Societies**

- i. Currently, Section 115BAB of the IT Act provides for a concessional corporate tax rate of 15% (plus applicable surcharge and cess) to certain companies engaged in the business of manufacturing or production of any article or thing, subject to, inter alia, the condition that the manufacture or production of the article or thing has commenced prior to March 31, 2024.
- ii. A new Section 115BAE is now proposed to be inserted to provide similar benefit of concessional rate of tax to co-operative societies, subject to satisfaction of the conditions prescribed. This amendment would apply from AY 2024-25 and onwards.

### **Tax Incentives Relating to IFSC**

- i. As per existing Section 47(viiad) of the IT Act, any transfer of assets of the 'original fund' or of its wholly owned special purpose vehicle, to a resultant fund, in case of its relocation on or before March 31, 2023, is exempt from tax. The FB 2023 proposes to extend this benefit to relocations up to March 31, 2025. This amendment would apply from AY 2023-24 and onwards.

- ii. The existing Section 10(4E) of the IT Act exempted any income accruing or arising to or received by a non-resident as a result of transfer of non-deliverable forward contracts or offshore derivative instruments or over the counter derivatives, entered into with an offshore banking unit of International Financial Services Centres ('IFSC'), subject to satisfaction of prescribed conditions. FB 2023 proposes to extend the scope of this exemption to also include any distribution of income on an offshore derivative instrument. It is further clarified that such exempted income will include only such amount that has been charged to tax in the hands of the offshore banking unit under Section 115AD of the IT Act.
- iii. These amendments would apply from AY 2024-25 and onwards.

### **Taxation of REITs and Invites**

- i. As per the scheme of taxation of Real Estate Investment Trust ('REIT') and Infrastructure Investment Trust ('InvIT'), they have been accorded a pass-through status with respect to certain income streams like interest, dividend and rental income, as applicable, received from a special purpose vehicle.
- ii. The FB 2023 proposes to insert a new Section 56(2)(xii) to provide that any sum received by a unit holder from a business trust which is not: (a) in the nature of the incomes specified under Section 10(23FC) or 10(23FCA), and (b) chargeable to tax under Section 115UA(2) of the IT Act, would be taxable in the hands of the unitholder as 'income from other sources'. Further, it is provided that any sum received by a unit holder from a business trust on account of redemption of units held by him will be reduced by the cost of acquisition of such units to the extent the cost does not exceed such sum.
- iii. Section 197 has been amended to allow issuance of lower tax withholding certificates to non-residents in respect of distributions received from such business trusts.
- iv. These amendments would apply from AY 2024-25 and onwards.

## **Enhancement of Scope of Section 9 in Certain Cases**

It is proposed to amend Section 9 of the IT Act to provide that any sum of money in excess of INR 50,000 received by 'resident but not ordinarily resident' from a resident, without consideration, would be deemed to accrue or arise in India. This amendment would apply from AY 2024-25 and onwards.

## **Taxation of Capital Gains in Case of Market Linked Debentures**

A new Section 50AA is proposed to be inserted to provide that the full value of consideration received or accruing as a result of transfer/redemption/ maturity of 'market linked debentures', as reduced by their cost of acquisition and expense incurred wholly in relation to their transfer/ redemption/ maturity, would be taxable as short-term capital gains under the IT Act. The term 'market linked debentures' has been defined to mean "a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to the market returns on other underlying securities or indices, and includes any security classified or regulated as a market linked debenture by the Securities and Exchange Board of India".

## **Conversion of Physical Gold into Electronic Gold Receipts and Vice Versa**

Section 47 of the IT Act is proposed to be amended to exempt any conversion of physical gold into electronic gold receipts issued by a vault manager and vice versa. Further, consequential amendments have been made to provide for a carry forward of cost of acquisition benefit and holding period benefit in cases of such conversions. These amendments would apply from AY 2024-25 and onwards.

## **Cost of Acquisition in Certain Cases**

Section 55 of the IT Act is proposed to be amended to provide that the 'cost of acquisition' of self-generated intangible asset/ other rights will be 'nil'. Further, the 'cost of improvement' of a capital asset being any intangible asset or any other right, whether self-generated or acquired, would be deemed to be 'nil'. This amendment would apply from AY 2024-25 and onwards.

### **Full Value of Consideration under JDA**

It is clarified that 'full value of consideration' under Section 45(5A) of the IT Act, in a transaction involving transfer of a capital asset under a joint development agreement ('JDA'), will be taken to be the stamp duty value of share of the assessee in the capital asset, as increased by any consideration received in cash or by a cheque or draft or by any other mode. This amendment would apply from AY 2024-25 and onwards.

### **Limit on Deduction on Reinvestment in Residential Property**

Sections 54 and 54F of IT Act provide for deduction on capital gains from the transfer of long-term assets if the assessee invests in a residential property in India within a specified time frame. It is now proposed to amend these provisions to limit on the maximum deduction under these provisions to INR 10,00,00,000. The provisions of the 'Capital Gains Account Scheme' have also been consequently amended, limiting the deposit to INR 10,00,00,000. These amendments would apply from AY 2024-25 and onwards.

### **TDS on Income by way of Winnings from Online Games**

- i Section 194B of the IT Act is proposed to be amended to provide that the obligation to effect tax deducted at source ('TDS') under this provision would apply where the aggregate amount of payment to a user during the financial year exceeds INR 10,000.
- ii. Further, a new Section 194BA is proposed to be inserted, which provides that any person responsible for paying another person any income by way of winning from any online game will deduct tax on net winnings in his user account, computed in the prescribed manner. The mode of calculation and manner of compliance with this TDS obligation is yet to be prescribed. This amendment would apply from AY 2024-25 and onwards.

### **Amendment in Relation to Taxation Post Business Reorganisation in Terms of IBC**

FB 2023 seeks to substitute a new provision in place of the existing Section 170A of the IT Act, to deal with the assessment of modified returns filed by the successor post business reorganisation in terms

of Insolvency and Bankruptcy Code, 2016 ('IBC'). Furthermore, it is proposed to decriminalise Section 276A of the Act that provided for prosecution of a liquidator who failed to comply with certain requirements of Section 178 of the IT Act in relation to a company in liquidation. However, ongoing prosecutions will continue. These amendments would apply from AY 2023-24 and onwards.

### **Thin Capitalisation Restriction Not to Apply to Certain NBFCs**

It has been proposed that the restriction on deductibility of interest expenditure as per Section 94B of the IT Act would not apply to non-banking financial companies ('NBFCs') 'as may be notified by the Central Government in the Official Gazette in this behalf'. This amendment would apply from AY 2024-25 and onwards.

### **Taxation of Benefit or Perquisite Received in Cash**

FB 2023 seeks to amend Section 28(iv) of the IT Act to clarify that any benefit or perquisite, arising from business or exercise of a profession, in the form of cash or kind or partly in cash or partly in kind, would be chargeable to income-tax under the head 'profits and gains of business or profession'. Corresponding amendments are also proposed to Section 194R of the IT Act, which provides for TDS in the hands of the payer of the benefit or perquisite. These amendments would apply from AY 2023-24 and onwards.

### **Increase in Threshold Limits of Presumptive Taxation Scheme for Professionals/ Businesses**

It is proposed to increase the threshold limits for presumptive taxation scheme in Section 44AD of the IT Act and Section 44ADA of the IT Act to INR 3,00,00,000 and INR 75,00,000, respectively, subject to a certain condition. These amendments would apply from AY 2024-25 and onwards.

### **Presumptive Taxation Scheme in case of Non-residents**

It is proposed to amend Section 44BB and Section 44BBB of the IT Act, which provide for taxation of non-residents on a presumptive basis. It is proposed that where, under either of these provisions, a non-resident has opted to be taxed in any given year, such non-resident, thereafter, would not be allowed to set off unabsorbed

depreciation and brought forward losses. These amendments would apply from AY 2024-25 and onwards.

### **Tax Treaty Relief at the Time of TDS under Section 196A of IT Act**

Section 196A of the IT Act is sought to be amended to enable the beneficial rate of tax as per the applicable tax treaty, rather than 20% rate as provided for in the existing Section 196A of the ITA, on the payment of any income to a non-resident, in respect of units of mutual fund specified under Section 10(32D) of the IT Act. This amendment would apply from AY 2023-24 and onwards.

### **Removal of Exemption of TDS on Interest on Listed Securities to Residents**

In terms of the proviso to Section 193 of the IT Act, no tax was deductible in case of interest payment on securities issued by a company where such securities were in dematerialised form and listed on a recognised stock exchange. This exemption is now being proposed to be removed. This amendment would apply from AY 2024-25 and onwards.

### **Inclusion of Valuation of Inventory under Special Audit**

Section 142(2A) of the IT Act empowered the Assessing Officer to direct a special audit of the accounts of the assessee before the completion of assessment if he felt necessary to do so. It is proposed to substitute Section 142(2A) of the IT Act to include the power of the assessing officer to direct a valuation of the inventory of the assessee by a cost accountant. This amendment would apply from AY 2023-24 and onwards.

### **Jurisdiction of High Courts in Case of Non-residents – PBPT Act**

- i Currently for the purposes of filing an appeal before the High Court against the adjudicating authority under the Prohibition of Benami Property Transactions Act, 1988 ('PBPT Act'), is the High Court where the persons against whom such proceedings have been initiated, ordinarily reside or carry on business or personally works for gain. However, in the case of non-residents, the jurisdiction had not been defined.



- ii. To enable the determination of the jurisdiction of the High Court in the case of non-residents, it has been proposed that the High Court within the jurisdiction of the initiating officer will be the appropriate High Court. This amendment will apply with effect from April 01, 2023.

### **Amendments to Provisions relating to Charitable Trusts and Institutions**

Several amendments have been proposed for rationalising the provisions relating to charitable trusts and institutions, including amendments to Section 10(23C) and Section 11 to 13 of the IT Act, namely:

- a. In case of corpus fund or loan received on or before March 31, 2021, re-investment/ repayment not allowed as application.
- b. In case of corpus fund or loan received after March 31, 2021, re-investment/ repayment allowed only if made within five years and no violation of specified provisions.
- ii. In case of voluntary donation to other charitable institutions, application is proposed to be restricted to 85%. This is applicable from AY 2024-25 and onwards.

### **Time Limits for Assessment/ Reassessment in Certain Cases**

- i. Time limit for completion of assessment increased from nine to twelve months:
  - a. For regular return: from the end of the relevant AY (AY 2022-23 onwards); and
  - b. For updated return: from the end of the year in which such return is furnished.
- ii. Time limit for assessment proceedings pending as on date of search operations to be increased by twelve months.

## Change to TCS Provisions

The FB 2023 proposes changes to the existing tax collected at source ('TCS') regime under Section 206C(1G) of the IT Act, on certain foreign remittances (other than for the purposes of education or medical treatment) under the Liberalised Remittance Scheme of the Reserve Bank of India and on sale of overseas tour packages, as summarised below:

S. No.	Nature of Remittance	Current Rate	Proposed Rate
(I)	Overseas tour package	5%, without any threshold limit	20%, without any threshold limit
(ii)	Any other case of remittance	5% of the amount or the aggregate of amount in excess of INR 7,00,000.	20%, without any threshold limit

These changes would be effective from July 1, 2023.



## Goods and Services Tax

### Key Legislative Changes to CGST Act: To Take Effect from Date of Enactment of Finance Act, 2023 [Except for Change Discussed in Paragraph (vi)]

- i. Clause (d) of Sub-section (2) and clause (c) of Sub-section (2A) in Section 10 of the Central Goods and Services tax Act, 2017 ('CGST Act') is being amended so as to remove the restriction on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.
- ii. Clause (5) of Section 17 of the CGST Act is being amended to provide that input tax credit will not be available in respect of goods or services or both used or intended to be used for activities relating to corporate social responsibility under Section 135 of the Companies Act, 2013.
- iii. A new Sub-section (1B) is being inserted to Section 122 of the CGST Act so as to extend penal provisions applicable to Electronic Commerce Operators, in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.
- iv. Clause (1) of Section 132 of the CGST Act is being amended to decriminalise the following offences:
  - a. Obstructing or preventing any officer in the discharge of his duties under the Act;
  - b. Tampering with or destroying any material evidence or documents; and
  - c. Failing to supply any information which such person is required to supply or supplying any false information.

The amendment also increases the monetary threshold for launching prosecution for the offences under the CGST Act from INR 1,00,00,000 to INR 2,00,00,000 except for the offences related to issuance of invoices without supply of goods or services or both.

- v. Clause (1) of Section 138 of the CGST Act is being amended so as to exclude persons involved in offences relating to issuance of invoices without supply of goods or services or both, from the option of compounding.
- vi.
  - a. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
  - b. Supply of warehoused goods to any person before clearance for home consumption; and
  - c. Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. Schedule III of the CGST Act is being amended retrospectively, so as to treat the following activities/ transactions as neither supply of goods nor supply of services with effect from July 01, 2017:  
However, the amendment clarifies that where the tax has already been paid in respect of such transactions/ activities during the period July 1, 2017 to January 31, 2019, no refund of such tax shall be available.

### **Legislative Changes to IGST Act: To Take Effect from Date of Enactment of Finance Act, 2023**

- i The definition of 'non-taxable online recipient' under clause (16) of Section 2 of the Integrated Goods and Services tax Act, 2017 ('IGST Act') is being amended so as to provide for taxability of online information and database access or retrieval services ('OIDAR') provided by any person located in a non-taxable territory to an unregistered person receiving the said services (and located in the taxable territory). Further, the amendment also seeks to clarify that the persons registered solely in terms of Clause (vi) of Section 24 of CGST Act will be treated as unregistered person for the purpose of the said clause.<sup>3</sup>

- ii. The definition of 'online information and database access or retrieval services' contained under clause (17) of Section 2 of the IGST Act, is being amended to remove the condition of the said supply being essentially automated and involving minimal human intervention.
- iii. The proviso to clause (8) of Section 12 of the IGST Act is being omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.



## AUDIT TRAIL

- Every business made it mandatory to incorporate the audit trail capability into the accounting software with effect from 1st April, 2023, it utilizes for maintain its books of account.
- The MCA has announced that the above amendments will take w.e.f 01.04.2023, which advisory given on accounting software used by businesses will have to comply with the Accounts Rules beginning in the FY 2023-24.

## MINISTRY OF CORPORATE AFFAIRS NOTIFICATION

New Delhi, the 20th January, 2023

**G.S.R. 37(E).**—In exercise of the powers conferred under section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. (i) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023.  
(ii) They shall come into force with effect from the 23rd day of January, 2023.
2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014
  - (i) sub-rule (6) of rule 12 shall be omitted;
  - (ii) in the Annexure, for Form-PAS-2, Form-PAS-3 and Form-PAS-6 the following Forms shall be substituted, namely

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New Delhi, the 20th January, 2023

G.S.R. 38(E).—In exercise of the powers conferred under second proviso to sub-section(1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section(1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely

**Short title and commencement**

(1) These rules may be called the Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2023.

(2) They shall come into force with effect from the 23rd day of January, 2023.

**In the Companies (Appointment and Qualification of Directors) Rules, 2014**

(a) in rule 14

(i) In sub-rule (1) after the words "disqualification under", the words, brackets and figure "sub-section (1) or" shall be inserted;

(ii) after sub-rule (1), following shall be inserted, namely:- "(1A) Whenever a company receives the information in Form DIR-8, company shall, within thirty days of such receipt, file Form DIR-9 with the Registrar."

(iii) in sub-rule (5), after the words, letters and figure "Form DIR-10", the words "and filed before the Regional Director." shall be inserted;

(b) in Annexure, - for Forms DIR-3, DIR-3C, DIR-5, DIR-6, DIR-8, DIR-9, DIR-10, DIR-11 and DIR-12 the following Forms shall be substituted, namely

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New Delhi, the 19th January, 2023

G.S.R. 42(E).—In exercise of the powers conferred under section 3, section 4, sub-sections (5) and (6) of section 5, section 6, sub-sections (1) and (2) of section 7, sub-sections (1) and (2) of section 8, clauses (a) and (b) of sub-section (1) of section 11, sub-sections (2), (3), (4), (5) and (9) of section 12, sub-sections (3), (4) and proviso to sub-section (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, sub-sections (1) and (2) of section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely

1. Short title and commencement
  - (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2023.
  - (2) They shall come into force with effect from 23rd January 2023.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules) in rule 4
  - (i) for sub-rule (2), the following sub-rule shall be substituted, namely
    - (2) The name of the person nominated under sub-rule
      - (i) shall be mentioned in the memorandum of One Person Company and such nomination details along with consent of such nominee shall be filled in Form No. INC-32 (SPICe+) as a declaration and the said Form along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.



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- (ii) in proviso to sub-rule (3), for the words, letters and figure, "in Form No. INC.3" the words, letters and figure, "which shall be filed in form of a declaration in Form no. INC.4." shall be substituted;
  - (iii) in sub-rule (4), for the words, letters and figure, "in Form No. INC.3", the words, letters and figure, "in form of a declaration in Form No. INC-4" shall be substituted;
  - (iv) in sub-rule (5), for the words, letters and figure, "prior consent of such another person in Form No. INC-3", the words, letters and figure, "consent of such another person and his declaration shall be filed in Form No. INC-4" shall be substituted;
  - (v) in proviso to sub-rule (5), for the words, letters and figure, "written consent of the new nominee in Form No. INC-3" the words, letters and figure, "particulars of consent of new nominee in form of a declaration in Form No. INC-4" shall be substituted;
  - (vi) in sub-rule (6), for the words, letters and figure, "prior written consent of the person so nominated in Form No. INC-3" the words, letters and figure, "particulars of consent of the person so nominated in form of declaration in Form No. INC-4" shall be substituted;
3. In rule 6 of the said rules
- (i) for sub-rule (3), the following sub-rule shall be substituted, namely:- "(3) The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.

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(ii) for sub-rule (4), the following sub-rule shall be substituted, namely:- "(4) On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.";

4. In rule 7 of the said rules

(i) for sub-rule (4), the following sub-rule shall be substituted, namely:- "(4) The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely

(i) altered e-MOA and e-AOA;

(ii) copy of NOC of every creditors with the application for conversion

(iii) affidavit of directors confirming that all the members of the company have given their consent for conversion.

(ii) for sub-rule (5), the following sub-rule shall be substituted, namely:- "(5) On being satisfied that the requirements stated herein have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

5. in rule 19 of the said rules

(i) in sub-rule (3)

(a) in sub-clause (b), the words, letters and figures, "in Form No. INC.14", shall be omitted

(b) in sub-clause (d), the words, letters and figures, "in Form No. INC-15", shall be omitted

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6. in rule 20 of the said rules,-

- (i) for sub-rule (2), the following sub-rule shall be substituted, namely:-“(2) The application under sub-rule (1), shall be accompanied by the following details and documents, namely:-
  - (a) the e-Memorandum of Association and e-Article of Association of the company;
  - (b) the declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 of the Act and rules made thereunder and that all the requirements of the Act and the rules made thereunder or supplemental thereto have been complied with;
  - (c) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
  - (d) the certified copy of the resolution passed in general or board meetings approving registration of the company under section 8 of the Act; and
  - (e) a declaration by each of the persons making the application.”;
- (ii) for sub-rule (5), the following sub-rule shall be substituted, namely:-“(5) The Registrar shall after considering two years financial statements immediately preceding the date of application or when the company has functioned only for one financial year, for such year including Board’s reports and audit reports, relating to the existing companies, and after considering objections, if any received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central Government

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or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.”;

7. in rule 21 of the said rules, for sub-rule (4), the following sub-rule shall be substituted, namely:- “(4) An intimation alongwith copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the Registrar through MCA system.”;
8. in rule 22 of the said rules,-
  - (i) in sub-rule (6), for the words, “attach with the application a certificate” the words, “file the application with a declaration “ shall be substituted;
  - (ii) in sub-rule (10), in clause (ii), for sub-clause (b) the following sub-clause shall be substituted, namely:-“(b) amended e-Memorandum of Association and amended e-Article of Association of the company.”;
9. In rule 28 of the said rules, in sub-rule (1) for the words, “following documents” the words “following details and documents” shall be substituted;
10. In rule 30 of the said rules,-
  - (i) in sub-rule (1), for the words “following documents” the words “following details and documents”, shall be substituted;
  - (ii) in sub-rule (2) for the words “attached to the application”, the words, “particulars of” and for the word “details” the words, “details in the application” shall be substituted.

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(iii) in sub-rule (4),-

(A) the words "Registrar and" shall be omitted;

(B) the following proviso shall be inserted, namely:-

"Provided that the applicant need not to submit separate copy of application with the Registrar and an intimation of filing of application in Form no. INC-23 with the Regional Director shall be shared with the Registrar through MCA system." 11. in rule 33 of the said rules, for sub-rule (2), the following sub-rule shall be substituted, namely.-

11. in rule 33 of the said rules, for sub-rule (2), the following sub-rule shall be substituted, namely.-

"(2) subject to the provisions of sub-rule (1), for effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD-1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director."

12. in rule 37 of the said rules,-

(i) in sub-rule (3),

(a) for the words, "by attaching the following documents", the words "by attaching the following documents and declarations" shall be substituted;

(b) in clause d., for the words "a copy of altered Memorandum of Association as well as Articles of Association", the words, "altered e- Memorandum of Association as well as e-Articles of Association" shall be substituted;

**MINISTRY OF CORPORATE AFFAIRS NOTIFICATION**

New Delhi, the 19th January, 2023

13. in rule 39 of the said rules, in sub-rule (5), for the words “enclosing the altered Memorandum of Association and altered Articles of Association”, the words “along with e- Memorandum of Association and altered e-Articles of Association” shall be substituted;
14. in rule 40 of the said rules, in sub-rule (2), the words, letters and figure “in e-form RD-GNL 5” shall be omitted;
15. in rule 41 of the said rules,-
  - (i) in sub-rule (1), in clause (a), for the words, “a draft copy of the Memorandum of Association and Articles of Association”, the words “e-Memorandum of Association and e-Articles of Association”, shall be substituted;
  - (ii) in sub-rule (6), in clause (b) the words, letters and figure “in e-form RD-GNL-5” shall be omitted;



## Amendments in SEBI (Buyback of Securities) Regulations, 2023

- From 01st April 2025, the companies will not be allowed to buy back their shares from the open market through the stock exchange.
- For FY 2022-23, only 15% of paid-up capital and free reserves of the companies is allowed to be bought back via open market buyback through stock exchanges and the same has been reduced to 10% and 5% for FY 2023-24 and FY 2024-25 respectively. Companies cannot buy back their shares from odd lot holders. The definition of odd lots is now omitted.
- All the filings for buyback have now mandatorily to be made in electronic mode after being digitally signed by such authorized persons. Dispatch of letter of offer through electronic mode and only, if shareholders request, the physical copy can be provided.
- Public announcement for resolution passed on buyback of shares, now has to be submitted to Stock exchanges too, along with SEBI.
- Before authorizing the buyback, companies are now required to obtain prior consent from its lender, if they have breached any covenants with such lenders and the disclosure of the same shall be mentioned in the letter of offer for
- The company shall not purchase more than 25% of the average daily trading volume of its shares or other specified securities in the 10 trading days prior to the day in which such purchases are made.
- Companies may not make bids in the pre-open market, the first thirty minutes, and the final thirty minutes of the normal trading session.
- Businesses should set their purchase order prices within 1% of the most recent trading price.

## Reduction in timelines

- Buyback offer on the stock exchange shall be closed:

within six months, if the buy-back offer is opened on or before March 31, 2023; within 66 working days, if the buy-back offer is opened on or after April 1, 2023, and till March 31, 2024; and within 22 working days, if the buy-back offer is opened on or after April 1, 2024, and till March 31, 2025:

Provided that with effect from April 1, 2025, the option of open market buy-back through the stock exchange shall not be available to any company except in cases where the buy-back offer has opened on or before 31st March 2025.

Timelines for filing a letter of offer with SEBI reduced from 5 to 2 days from the date of public announcement.

A buyback offer must be opened within 4 days from the date of dispatch of the letter of offer.

## **SEBI (LODR) (Amendment) Regulations, 2023 dated January 17, 2023**

- **CG Norms for REIT & InvIT**

Omitted the applicability of CG norms for 'High Value Debt Listed entity' that is Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InvIT)

Governance norms as specified under the SEBI (Real Estate Investment Trust) Regulations, 2014, and SEBI (Infrastructure Investment Trusts) Regulations, 2014 shall be applicable.



- **Shareholders' approval for the appointment of a Director**

The requirement of obtaining shareholders' approval for the appointment of a Director at the next General Meeting or within 3 months, whichever is earlier, is now extended for re-appointment. However, the above criteria of 3 months is NA for public sector companies.

- **Disclosure of Material Subsidiary in CG Report**

Details of material subsidiaries, including the date and place of incorporation and the name and date of appointment of the statutory auditors of such subsidiaries to be disclosed in the CG Report in AR.



## **Insolvency and Bankruptcy Board of India**

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

4th May, 2023

**Subject: Judgment<sup>1</sup> of Hon'ble Supreme Court of India in the matter of Moser Baer Karmachari Union through President Mahesh Chand Sharma Vs, Union of India Writ Petition © No.421 of 2019 and other writ petitions**

### **I. Background:**

Sections 326 and 327 of Companies Act, 2013 ("CA 2013") deal with overriding preferential payments and preferential payments respectively, in the winding up of a company. In terms of the above provision, workmen's dues; and the debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to sub-section (1) of section 325 pari passu with such dues, shall be paid in priority to all other debts. However, clause 19(a) of the Eleventh Schedule to the Insolvency and Bankruptcy Code ("Code") inserted section 327(7) of the CA 2013 which puts a statutory bar on the application of sections 236 and 237 of the CA 2013 to the liquidation proceedings under the Code. In the above regard, Moser Baer Karamchari Union and others have filed writ petition under Article 32 of the Constitution of India and prayed for striking down section 327(7) of the CA 2013 as arbitrary and violative of Article 21 of the Constitution of India; and also to leave the statutory claims of the "workmen's dues" out of the purview of waterfall mechanism under section 53 of the Code; and for settlement of workmen dues should be done as per reasonable principles laid down in section 326 in case of liquidation under the Code.

**II. Issues:**

Whether section 327(7) of the CA 2013 is arbitrary and violation of Article 21 of the Constitution of India and priority to worker's dues is accorded in liquidation of a company under the Code.

**III. Findings & Observations:**

SC held that Parliament/Legislature in its wisdom to keep out of all sums due to any workman/ employee from the liquidation estate assets made the provisions under the Code. The workmen's dues for the period of twenty-four months preceding the liquidation commencement date shall rank equally between the workmen's dues to the said extent and the dues to the secured creditor. Code is a complete Code and is a new insolvency mechanism, which cannot be compared with that of the earlier regime, CA 1956/ 2013.

SC observed that the workmen as a separate class also have a stake and benefit from the revival of the company. While drawing similarities with section 326 of the CA 2013, it observed that

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where the secured creditor opts to proceed under section 52 of the Code, interests of workmen is protected in terms of regulation 21A of the Liquidation Regulations which mandates the secured creditor not relinquishing security interest, to pay as much towards the amount payable under section 53(1)(a),(b)(I) to the liquidator with in the time specified.

Further, it is observed that section 53 of Code begins with a non-obstante clause, is the complete and comprehensive which ensures collection of assets and then provides the manner in which the

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creditors are to be paid. The waterfall mechanism is based on a structured mathematical formula, and the hierarchy under section 236 of CA 2013 is created in terms of payment of debts in order of priority with several qualifications. Any change in the waterfall mechanism would have cascading effects in balancing the interests of secured creditors, Operational Creditors, Central and State Governments. Depending on facts of some cases, waterfall mechanism under the Code may be more beneficial than the hierarchy under section 236 of CA 2013 and vice versa. The unpaid dues of the workmen are adequately and significantly protected in line with the objectives sought to be achieved by the Code in terms of section 53 of the Code. Thus, the interests of workmen are protected whether secured creditor has relinquished his security interest or not. It held that while the secured creditors are taking haircut, workmen are being compensated equitably.

SC, while dismissing the writ petitions, held that section 327(7) of CA 2013 is not arbitrary and not violative of Article 21 of the Constitution of India. By virtue of section 327(7) of the Companies Act, 2013, sections 326 and 327 of the CA 2013 shall not be applicable in the liquidation of a company under the Code. It was further observed that in economic matters, a wider latitude is given to the law-maker and the Court allows for experimentation in such legislations based on practical experiences and other problems seen by the law-makers. Lastly note that some sacrifices have to be always made for the greater good, and unless such sacrifices are prima facie apparent and ex facie harsh and unequitable as to classify as manifestly arbitrary.



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