Price ₹ 300/- per copy

No. MCS/149/2022-24 / R.N.I. No. MAHENG/2012/47041 - Total Pages: 168

A Monthly Journal of
The Chamber of Tax Consultants

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Chamber's CADRE

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XI | No. 10 | July 2023

Non-Banking Financial Services: Tax and Regulatory Issues

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THE CHAMBER'S JOURNAL

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Editorial

Dear Readers,

गुरुर्ब्रह्मा गुरुर्विष्णुः गुरुर्देवो महेश्वरः।
गुरुः साक्षात् परब्रह्म तस्मै श्री गुरवे नमः।।

This shloka refers to the Guru as the none other than Brahma-The Creator, Vishnu-The Sustainer and Shiva-The Destroyer, since the Guru creates, sustains knowledge and destroys ignorance.

Guru Purnima was celebrated on 3rd July, the day on which we pay our obeisance to our gurus and mentors who have moulded us and helped us not only in shaping our professional careers but also showing us the right path.

The Chamber has completed ninety seven years of its existence and has entered the ninety eighth year. The Chamber has reached this milestone and become an institution of repute thanks to the vision of the founders and the leaders who have nurtured this Institution to what it is today. On the auspicious day of Guru Purnima, let us all bow down in reverence to our senior Past Presidents whose immense contribution has made this possible. On this special day how can we forget the Past President Lats Shri B. C. Joshi who gave birth to the idea of the Chamber's Journal in March '75 which now has become one of the most prestigious professional journals? Words are not enough to express our gratitude to him.

1st July 2023 marked the completion of six years of The Goods and Service Tax Act, 2017 (GST). This piece of legislation was brought with an intention to have a streamlined indirect taxation system with its motto, "One nation, One market, One tax,". GST aimed to bring unity and benefits for all the stakeholders, governments, taxpayers, and administrators.

One of the greatest benefits of GST has been the digitisation of processes. Right from obtaining a registration to filing a return or getting a refund, every single process is entirely online. The GST portal also has a dispute resolution system online, thereby eliminating the need for a business person to visit the GST office. Besides this, by subsuming the large number of indirect taxes, it has greatly reduced the compliance burden on trade, industry and service providers, helping our nation advance in the "ease of doing business" index "Seamless credit" is a great goal that GST has achieved. It's success is evident from the buoyant revenue collections, month after month.

Though GST is relatively a new legislation which is brought with a good intention of simplifying the indirect tax regime, it is still an unsettled law as there are many interpretation issues leading to increasing litigation. However, with an active & receptive GST council, many disputed issues do get clarity and finality which ultimately helps businesses. Hopefully the law will settle down in some years down the line.

19th June is celebrated as National Reading Day in India to honour the Keralite teacher, Shri P. N. Panicker. This day serves as a tribute to Shri P. N. Panicker's tireless efforts in transforming society through his literacy movement in India. Thanks to H'ble Prime Minister Shri Narendra Modi, National Reading Day is celebrated since 2017 which was earlier celebrated as Kerala Reading Day. It is indeed thoughtful of the H'ble Prime Minister to take this initiative which is so essential to create awareness about the habit of reading which is gradually receding in the new generation. The Government should think of more initiatives to inculcate the reading habit in new generation and create awareness about benefits of reading. Incidentally 23th April is celebrated as World Reading Day!

July is a busy month for tax professionals for filing of tax returns for entities to whom audit is not applicable. Everyone must have been geared up to file the returns before the due date The Income-tax web site is now stabilised, and the initial hiccups after the launch of the revamped website have been addressed and therefore there should hopefully not be any difficulty in meeting the deadline of 31st July.

Non-Banking Finance Companies (NBFC) play a major role in Indian Financial Sector and account for a reasonable percentage of the total lending in India. The Reserve Bank of India, over a period of time, has brought in a lot of new guidelines for regulating NBFCs and there have been significant changes in the regulatory frame work for NBFCs. There are also quite a few complex tax issues that NBFCs face. Considering the importance of the topic, the Journal Committee has conceptualised the July issue on NBFC covering all the important aspects. I am sure with the tax and audit season round the corner, the readers would find the issue quite useful. I express my sincere gratitude to all the authors for sharing their expert knowledge on the subject and sparing their valuable time.

It is always the endeavour of the Editorial Board and the Journal Committee to bring out issues on topics which are most relevant to the readers. We look forward to your valuable suggestions on the topics for future issues, and for the other regular columns.

Wish you all the very best for a busy tax season ahead!

I would like to end my communication with a beautiful quote on the reading habit, by one of the doyens of English literature:

> ***"To acquire the habit of reading is to construct for yourself a refuge from almost all the miseries of life."***
>
> *William Somerset Maugham*

VIPUL K. CHOKSI
Editor

From the President

Dear Members,

I feel privileged to write to you as the President of this august body . I want to express my heartfelt gratitude to each one of you for deeming me suitable for this position. I accept this responsibility with utmost humility and a sincere commitment to dedicate myself wholeheartedly. I am fully aware of the distinguished individuals who have previously led this chamber, and I will make every effort to carry forward their legacy of exceptional work.

I feel incredibly fortunate that my journey with the managing council of the chamber has been a transformative experience. During my tenure, I have witnessed personal growth in various areas, such as interpersonal skills, problem-solving abilities, efficiency, and continuous learning. I attribute this progress to the invaluable support and guidance I have received from the esteemed past presidents and senior members. I am also deeply grateful to you all for giving me an outstanding team of managing council members who bring youthful energy, enthusiasm, and passion to our shared goals.

The Chamber is the oldest association of tax professionals in the country, entered its 98th year . As we look forward to reaching the important milestone of its 100th year in 2025-26, we appreciate the great achievement it represents for our chamber. It is a privilege and an honour to lead the Chamber in the upcoming year of 2023-24, and I want to thank each one of you for placing your trust in me.

I want to extend my heartfelt appreciation to Parag and the exceptional team for their remarkable contributions and lasting legacy. They have established a remarkable standard of commitment and teamwork, motivating us to pursue excellence in all that we do. Parag, in particular, has been an outstanding role model, and I am truly thankful for his invaluable support and guidance.

Throughout my term, my objective is to strengthen the solid groundwork established by those who came before me and propel the Chamber to unprecedented heights. We will prioritize three essential pillars: fostering knowledge enhancement through education, advocating for our members' interests, and actively engaging with the community.

The world has undergone significant changes due to the COVID-19 pandemic, and I want to emphasize the importance of infrastructure in our Chamber's growth, especially in the post-pandemic era. We are thrilled to announce that our Chamber has secured a new office space, conveniently located next to our current one. This new premises is like a hidden treasure chest, offering endless possibilities for innovation and collaboration. Equipped with cutting-edge technology, it will revolutionize how we connect and engage with our members, promoting knowledge sharing and professional development. While the move will take time, I assure you that it will be worth the wait, as it showcases our dedication to progress and innovation.

In the coming year, our Chamber is committed to enhancing our website to provide a more user-friendly experience. We aim to ensure that our members can easily access valuable resources and seamlessly register for events and participate in interactive learning opportunities. Our dedicated IT Committee will collaborate with our technical partners to further enhance our Learning Management System (LMS) and take it to the next level. We are dedicated to leveraging technology to foster member engagement, promote continuous learning, and facilitate collaboration. With investments in advanced infrastructure and platforms, we will provide our members with convenient access to resources, webinars, and virtual events.

In the upcoming year, one of our key priorities is to expand our reach and engage with professionals across the country. We are committed to broadening our membership base and reaching out to individuals in diverse geographic regions. By doing so, we aim to create a more inclusive and representative community of tax professionals. We will actively seek opportunities to connect with professionals from different cities, towns, and regions, fostering a nationwide network of knowledge-sharing and collaboration.

Representing our members' concerns and influencing tax policies is a crucial role for our Chamber. We will take a proactive approach to shape tax policies from the start, aiming for a fair and efficient system that supports professional growth. Our strong relationship with government agencies ensures that our representations are highly regarded. The dedicated Legal and Representation Committee consistently achieves remarkable results, bridging the gap between taxpayers, professionals, and authorities.

We eagerly anticipate the upcoming centenary year of our Chamber, a remarkable milestone representing a century of our institution's journey. Led by CA Anish Thacker, the Centenary Committee has planned a comprehensive array of activities and festivities to honor our Chamber's rich history and achievements. With dedication and passion, the committee aims to create a memorable and impactful centenary year. We eagerly anticipate a grand and successful celebration, marking this significant milestone in our Chamber's history. Let us come together to celebrate a century of excellence and lay the foundation for an even brighter future.

This month's journal features a special story on “NBFC” - Non-Banking Financial Companies, covering a range of crucial aspects. I thank all the authors for giving their article on the subject and sparing their valuable time for the Chamber

The implementation of GST in India has completed six years, with monthly tax revenues consistently reaching Rs 1.5 trillion. This level of revenue collection has become the "new normal," indicating the stability and maturity of the GST system. While this achievement is commendable, efforts are being made to focus on curbing tax evasion and improving compliance. Measures such as leveraging technology, data analytics, and stricter enforcement are being implemented to detect tax evaders. Simplification of the compliance process and providing clarity on GST regulations will contribute to increased compliance. Overall, the consistent revenue collection reflects the progress made in tax administration, with a continued focus on curbing tax evasion to enhance the effectiveness of the GST system.

I once again thank all of you for considering me fit enough for the post and seek your active participation in all activities of chamber.

With best wishes,

HARESH KENIA
President

CA Bhavesh Vora

Overview of Regulatory Aspects – NBFC

Non-Banking Financial Company ("NBFC"), as we know today, has historically been a cornerstone of the Indian financial ecosystem, acting as a financial intermediary, channeling savings and investments, primarily for the small-scale and retail sectors, as well as underserved and unbanked sectors of the Indian economy thereby promoting financial inclusion. Over a period, NBFC Industry has expanded from being a component of Financial Services sector to an integral and systemically important contributor to the country's GDP.

NBFCs have been welcomed by the society at large for meeting its financial needs, thereby bidding farewell to the concept of previously prevalent shadow banking industry. It has carved an important position in the tightly bundled financial services industry. The ability to innovate and delivering with speed is a distinct but inherent feature NBFCs. These entities have expanded their market share by providing innovative financial products, industry/sector specific financial solutions, and digital offerings, customized to large and unserved niche market segments.

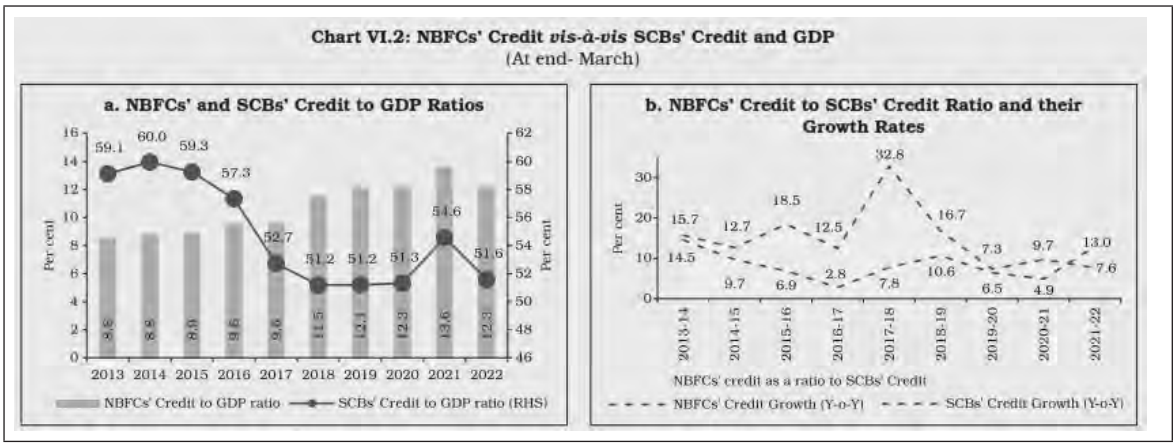
NBFCs are now integral part of the Indian economy in general, and the financial services industry specifically. The specialized and often customized offerings, coupled with a quick turnaround time, enables a greater focus on customer services thereby tapping the needs of unserved and underserved segments. Traditional non-regulated lending market has now transformed to an organized, transparent & regulated market.

NBFCs in India

In the last 20 years, NBFCs have gained a significant position in the Indian economy with an industry asset size of approximately ₹ 39 lakh crores (as per the Financial Stability Report June 2023), which amounts to approximately 20% of overall size of the banking industry of ₹ 216 lakh crores. They have been able to carve out a niche for themselves in meeting the credit needs of both wholesale and retail customers and effectively integrate into the larger financial system of our country, which can be witnessed from the large number of NBFCs. (9,471 NBFCs as per RBI records on 31st March 2023).

Heterogeneous and bespoke services to their clients, its competitive behavior, technology enabled solutions, coupled with better

outreach by the NBFCs is integral to Indian financial system contributing close to 12-13% to the Indian GDP, as depicted by data below:



Source: RBI Annual Publication: Trend and Progress of Banking in India

NBFCs offer a significant flexibility to the businesses and high net worth individuals to deploy their surplus funds. This has led to a significant rise in the size of NBFCs and activities. However, with the rise in number of operating entities, the regulations have also grown stringent; non-compliance of which resulted in cancellation of NBFC licenses. Accordingly, till 31st March 2023 RBI has cancelled licences of 5,555 NBFCs (both on voluntary applications and otherwise). On the other side, RBI has been granting fewer licenses, encouraging only serious players in the market.

Year	*Registrations*	*Cancellations/ Surrenders*
2014-15	28	215
2015-16	46	210
2016-17	105	169
2017-18	125	224
2018-19	166	1,851
2019-20	116	298
2020-21	55	44
2021-22	44	99

A Brief History

Conceptualization Stage - Period between 1960 to 2000

Regulators had in early stages anticipated the risks posed by Non-Banking Financial activities would be insignificant and therefore kept outside the regulatory ambit. The concept of Non-Banking Financial Company took birth in 1964 with the introduction of Chapter III-B in the RBI Act, 1934, which laid down that Non-Banking Financial Institution activity shall be permitted to operate only through

incorporation of the Company regulated under the Companies Act.

Multiple committees were formed between 1970s to 1990s to design the regulatory framework, namely:

1. James S. Raj Study Group (1975)
2. Chakravarthy Committee (1985)
3. Vaghul Committee (1987)
4. Narasimhan Committee (1991)
5. Dr. A.C. Shah Committee (1992)

Based on the recommendations of the various committees, the RBI Act was amended in January 1997. The RBI (Amendment) Act, 1997 effected comprehensive changes in the provisions contained in Chapter III-B and Chapter V of the Act and conferred more powers to the RBI - such as issuance of directions to companies and its auditors, prohibit deposit acceptances and alienation of assets by companies, and initiation of action for winding-up of companies etc. A separate regulatory framework for NBFCs was presented in 1999 by Reserve Bank of India, including introduction of the "Principal Business Criteria" (Commonly known as the 50:50 test or Asset/Income test) for identification of NBFCs. Other salient features of this regulatory overhaul were:

- Compulsory Registration of NBFCs and a minimum Net Owned Fund of INR 25 lakh as entry point norm for existing NBFCs and INR 2 Crore for new NBFCs.;
- Maintenance of liquid assets by NBFCs as a percentage of their deposits in unencumbered approved securities (Government securities/guaranteed bonds);
- Creation of a reserve fund and mandatory transfer of at least 20 per cent of the net profits to aforesaid fund;
- Authorizing Company Law Board (CLB) to direct a defaulting NBFC to repay deposits;
- Vesting the RBI with the powers to:
  - (a) issue directions to NBFCs regarding compliance with prudential norms;
  - (b) issue directions to NBFCs and their Auditors on matters relating to balance sheet and undertake special audit as also to impose penalty on erring auditors;
  - (c) prohibit NBFCs from accepting deposits for violation of the provisions of the RBI Act and direct NBFCs not to alienate their assets;
  - (d) file winding up petition against NBFCs for violations of provision of the Act/directions;
  - (e) impose penalty directly on NBFCs for non-compliance with the provisions of the Act.

Evolution Stage - Period between 2000 to 2012

It seems unlikely that the policy setters estimated the NBFI industry to grow to an extent to compete and complement banks. Therefore, the regulator had to try maintaining a delicate balance of strengthen the regulatory environment to be suitable to (i) the size of the growing industry, along with (ii) promotion

of new products, and (iii) preservation of public interest.

NBFC industry had a sizeable lending business and new measures were introduced in the year 2006 and thereafter such as (i) Classification of NBFCs based on Asset Size (then INR 100 Crore limit), (ii) Focus by regulator on Interconnectedness with Banks, (iii) Capital Adequacy Ratio requirements, (iv) Auditors' Directions, etc. The regulatory arbitrage between Banks and Deposit Accepting NBFCs w.r.t. prudential norms was largely addressed, and Non-Deposit accepting NBFCs were additionally brought under supervision. Prudential guidelines were also introduced for both Deposit & Non-Deposit accepting NBFCs during this period.

The later part of first decade of twenty-first century also witnessed representations from various Business Groups to provide a regulatory framework different from a normal NBFC focusing specifically on the Holding Company structures (on account of such Holding Companies meeting the Principal Business Criteria but not engaging in non-captive lending/investment activities), which led to the creation of a new sub-set of NBFCs called Core Investment Companies (CIC). Separate guidelines were prescribed for CIC governing conduct, capital adequacy, investment restrictions, etc.

Around this time, RBI had constituted the Usha Thorat Committee (2011), which, amongst others, recommended the following:

- Minimum net owned fund for all new NBFCs applying for registration to be retained at the ₹ 2 crores till RBI Act is amended and deregistration of the existing NBFCs that fell below the prescribed limit.
- Any transfer of shareholding, direct or indirect, of 25% and above, change in control, merger or acquisition of any registered NBFC should have prior approval of the RBI.
- Tier-I capital, for capital to risk weighted assets ratio (CRAR) purposes, be specified at 12 per cent and same to be achieved in three years for all registered deposit-taking and non-deposit-taking NBFCs.
- The new prudential provisioning rules to be applicable from 90 days instead of 180 days. Same accounting norms as applicable to banks to be applied to NBFCs also.
- NBFCs may be provided the benefits of SARFAESI Act, 2002.

Development Stage - Period between 2012 to 2016

NBFC industry witnessed remarkable growth during this period. The regulator had, for a brief period in 2014, ceased issuing new NBFC Registrations. It was being speculated that the regulator was considering continuation with the concept of NBFC or mandate such entities to obtain Banking licence. However, the resumption of registrations form late 2014 provided conclusive clarity that the NBFCs were here to stay.

In November 2014, RBI increased the Systemic Importance level of Non-Deposit accepting NBFCs to asset size of ₹ 500 Crore, and introduced various regulatory changes in line with the report of Usha Thorat Committee. The NBFCs that existed before 1999 (which had minimum NOF requirement of ₹ 25 lakhs) were issued a glide path to meet the minimum NOF requirement of ₹ 2 Crore by 31st March 2017.

2016 was also the year when the regulator initiated transition from **Entity based regulations** to **Activity based regulations**, by streamlining all regulatory mandates for a respective activity to be uniform across NBFCs. This was also the year when detailed consolidated Master Directions, with all regulatory requirements together, were issued.

Beyond Compliances - Period between 2016 to 2021

The period from 2016 to 2021 witnessed the transition in the regulator's approach from checklist-based compliance to Risk-based regulations. Supervision had shifted focus from one-size fits all approach to (i) On-Site Inspection of Systemically Important NBFCs, (ii) Off-site inspection of entities assessed requiring additional scrutiny and (iii) Off-site returns capturing basic parameters for Non-Systemically Important NBFCs. This supervision mechanism, coupled with scrutiny being done at the time of applications for prior approvals for change in shareholding/ control, etc. was the approach developed by the regulator to address systemic risks. The on-site inspections in this period also reflected transition to Risk Assessment Reports being issued in line with Banks, and addressing the concerns raised therein by detailed Risk Mitigation Plans. This period saw issuance of over hundred major notifications applicable to NBFCs.

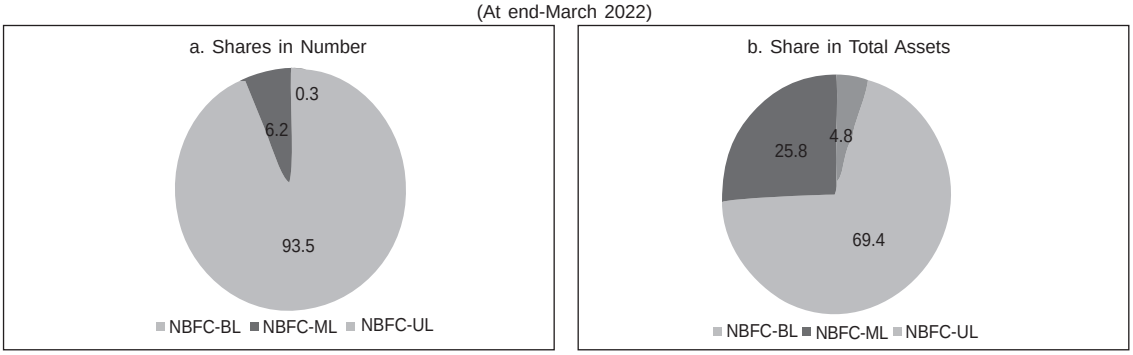
RBI laid down foundation stone for creating a regulatory environment incentivising the digitisation of lending business, right from permitting use of digital documents to tapping the potential of Indiastack. Innovations in newer businesses were therefore brought under regulatory ambit, and concepts such as Account Aggregation, Peer to Peer Lending, TReDS, etc. emerged, in addition to establishing a robust regulatory sandbox.

This was also the period when the regulatory matters for Housing Finance Companies shifted from National Housing Bank to Reserve Bank of India. These regulations were streamlined to be in synchronisation with regulations applicable to other classification of NBFCs such as Investment & Credit Company, Factors, MFI, etc. Additionally, regulation governing declaration of dividends was issued in 2021 bringing in various restrictions and conditions for declaration of dividend.

Transition to Governance - Period post 2021

While the focus on Governance commenced with the incorporation of amendments to Chapter III-B of RBI Act, 1934 by the Finance Act 2019, - in 2021, RBI introduced a novel concept of 'Scale Based Framework', classifying the NBFCs based on three parameters (i) Asset Size, (ii) Activity and (iii) Systemic Risks, depicted by Interconnectedness to the Financial System, - by introduction of a quad-Tier classification namely Base Layer, Middle Layer, Upper Layer and Top Layer. This was essential because a simple two-type classification (Non-SI and SI &D) was fast becoming redundant in achieving the regulator's objective of efficiently addressing systemic risks, - especially on account of multiple large NBFCs having crossed AUMs in excess of many mid-sized commercial banks. NBFC as an industry has crossed total assets of ₹ 39 lakh crores. This essentially means that today, assuming a 10% interest rate offering, the NBFC industry in India are having Gross Income of atleast INR 1,000 Crore per day. The distribution of assets, however, are skewed heavily to a mere 6.5% by number, which hold in excess of 95% of industry's total balance sheet size, as indicated in the chart below.

Chart 1 : NBFC Sector under Scale - based Regulation
(At end-March 2022)



In 2021, Microfinance was also redefined, and various regulations on Information Systems were issued and that the regulatory focus shifted from operational risk management to establishing effective Governance in NBFCs.

Regulations governing Statutory Auditor

Auditors of NBFCs and Companies that are undertaking NBFI activities without Certificate of Registration have to fulfil reporting requirements prescribed by the Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 1998.

These Directions were replaced in 2008 to include additional reporting requirements in line with the regulatory changes effected primarily between 2006 and 2008.

In line with the RBI's approach to issue Master Directions, it had issued the Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016 which is the current Master Direction (as amended upto date), applicable to auditors of Registered NBFCs as well as Companies that are not registered but fulfil the Principal Business Criteria. The reporting requirements include the following, in addition to requirements of Companies Act 2013 and CARO 2020:

1. Auditors Report to Board of Directors of the Company
2. Statutory Auditors Certificate
3. Exception Report to RBI in case of non-compliance (viz. direct reporting to RBI)

Finance Act 2019 had made various amendments to Chapter III-B of the RBI Act, 1934, which had laid down additional powers to RBI to take action against Auditors (Section 45MAA).

In 2021, two major notifications were issued by RBI, covering (i) Risk-Based Internal Audit, which laid down the broad framework for conducting Internal Audit of specified NBFCs and (ii) Conditions for appointment of Statutory Auditors, which had, at length, prescribed (a) eligibility criteria for appointment of Statutory Auditors, (b) Procedure for appointment, (c) additional reporting requirements, (d) rotation every three years, etc.

NBFCs & Foreign Investment

In 2016, government permitted Foreign Direct Investment in regulated NBFCs upto 100% through automatic route under all the activities and abolished the minimum

capitalization norms. As on 31st March 2023, the financial services sector had received FDI of USD 6.8 billion almost reaching pre-covid levels of USD 7.2 billion (*Source: RBI Annual Report 2022-23*).

As far as domestic sourcing of funds is concerned, NBFCs have exposures from bank lending, issue of debentures, money market instruments, inter-industry borrowing. As on end of September 2022, the industry had a total borrowing of INR 25.85 lakh Crores led by debt market instruments (INR 10.10 Lakh Crores, including subscriptions by banks) followed by direct borrowings from bank (INR 9.24 Lakh Crores). (*Source: RBI Annual Publication: Trend and Progress of Banking in India*)

RBI has also permitted NBFCs to raise External Commercial Borrowings (ECB) with Minimum Average Maturity ranging from 7 years to 10 years for on-lending. However, the prohibition on issuance of any form of Guarantee, standby Letter of Credit, Letter of Undertaking, Letter of Comfort, etc. for any ECB issuance/ outstanding continues.

Further, NBFCs are also permitted to undertake Overseas Direct Investment in entities regulated by a Financial Services sector regulator abroad, albeit within certain restrictions. Investment in non-financial sector is prohibited.

Despite availability of multiple sources to raise funds, NBFCs ultimately being set up as financial intermediaries of Banks are majorly dependent on bank finance to fund their businesses. NBFCs are the largest net borrowers of funds from the financial system, with gross payables of INR 13.68 lakh crore end-March 2023 (*Source: RBI Financial Stability Report*).

Proposed regulatory measures as announced by RBI

The Regulator vide Utkarsh 2.0 and its Annual Report has prescribed several regulatory measures which may be effective in the coming years, some of which are:

1. RBI proposes to extend the securitization to non-performing assets as well. RBI has planned not to replace the existing resolution methods including the ARC route, but same shall co-exist as an alternative. At present only the Standard Asset Portfolio can be securitized. This would make it easier for NBFCs to dilute their credit/recovery risk in favour of agents having appetite and shall result in improvement of asset quality.

2. Cyber Security and IT Examination of selected NBFCs is proposed, in order to assess the inherent risks and put in place an effective off-site monitoring mechanism through a scoring model based on Key Risk Indicators rolled out for NBFCs.

3. Adoption of a Risk Based Approach, in order to give a specialised supervisory focus to Know Your Customer (KYC)/ Anti-Money Laundering (AML) risks in the NBFCs and regulated entities and to assess the varying degrees of KYC/ AML risks. The Risk Based Approach for KYC/AML supervision has aided in sensitising the banks on their KYC/AML risks in a more focused manner and to put in place appropriate mitigation/ control measures in addressing such risks.

4. Developments in Utkarsh 2.0

   - Streamlining and strengthening the onsite assessment of SEs related to KYC-AML and Cyber/IT risks

- the Department plans to strengthen the analysis of transmission to lending rates and sectoral credit flows by expanding the coverage to include NBFCs in addition to banks in a phased manner
- Comprehensive review of instructions on statutory and other restrictions in credit management
- Review of miscellaneous non-banking companies (MNBCs) regulations

Future of NBFC Industry

It shall be appropriate to state that NBFCs have validated the business model by high growth, innovation and serving untapped markets. The FinTech wave has increased the reach of NBFCs, combined with easier and affordable access to internet. The lending space has modified the old idiom of "Banks vs. NBFCs" to "Banks & NBFCs". NBFCs have also leveraged technology to support growth stories of large Ed-Tech, InsurTech, e-Commerce, platforms, etc. The processing of a loan-application has reduced from around thirty days in the year 2000 to less than fifteen minutes in the year 2023, and that too for unsecured, tailormade, retail products.

The regulatory shift from Entity-Based Regulations to Activity-Based Regulations is visible. Now with the help of emerging technologies such as Artificial Intelligence incorporated into SupTech, regulatory supervision may evolve further from Activity-Based Regulations to Intent & Impact Based Regulations. This shift is paramount for BigData players who are likely to undertake activities like, targeted cross-selling, automatic disbursements, interconnectedness of various services etc., in the Financial Services space. A risk-assessment for such large entities would also be needed for maintaining systemic resilience.

As a corollary to above, with (i) the Regulatory Arbitrage being now non-existent for large NBFCs, and (ii) with digitisation of Bank's processes taking away the differentiating factor of "penetration" that NBFCs hold, - the way ahead for NBFCs to survive, sustain and grow will necessitate reliance on (i) Underbanked and N2C customers (i.e. targeting Bharat, not India), and (ii) Continuous product innovations through collaborations.

Irrespective of the future that lies ahead, regulatory universe for the ever-expanding NBFCs, shall always underpin the key objectives of (i) preservation of public interest, (ii) providing access to credit, (iii) sustainable & effective Governance & Risk Management framework, and (iv) fuelling economic growth.

■●■

"The whole secret of existence is to have no fear. Never fear what will become of you, depend on no one. Only the moment you reject all help are you free."

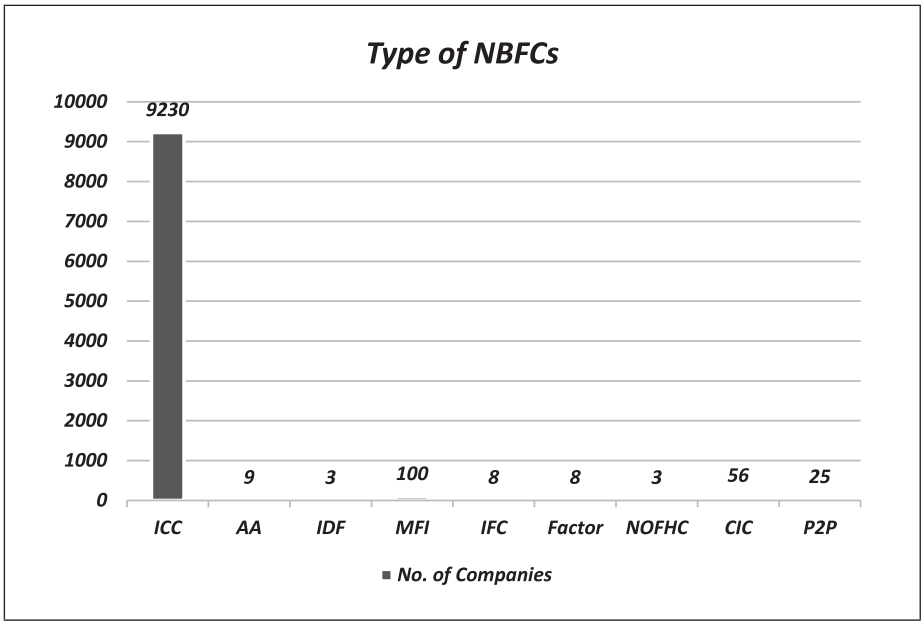
— *Swami Vivekananda*

CA Rajen Gada

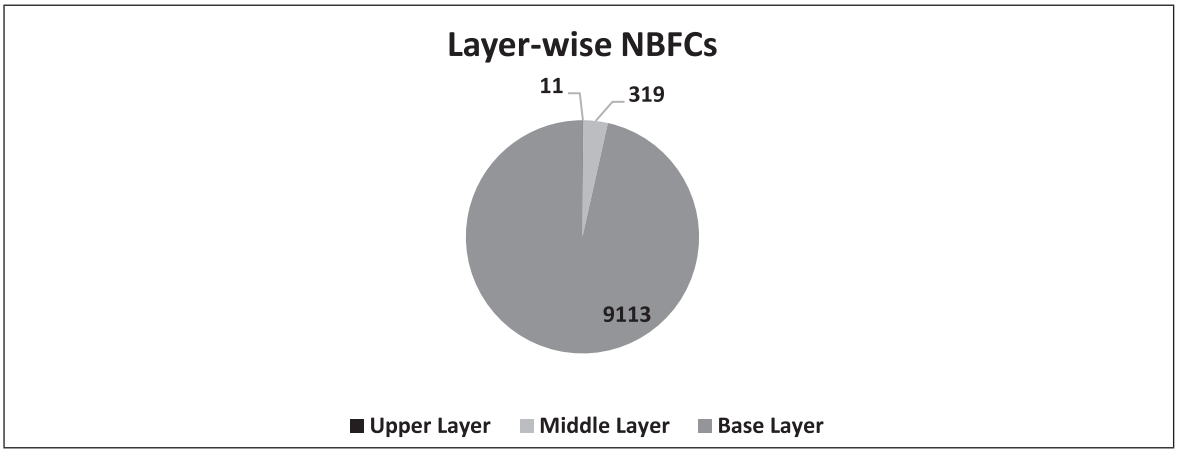
Types of NBFCs

As per the March 31, 2023 data release by RBI, there are 9443 Non-Banking Financial Companies ('NBFCs') registered with the Reserve Bank of India. Of these 39 are Deposit Accepting NBFCs. There remaining 9404 are Non-Deposit Accepting NBFCs. Of these 9404 NBFCs, 413 are Systematically important NBFCs, 25 are Peer to Peer Lending NBFCs and balance.

There are 9230 Investment and Credit Company (NBFC-ICC), 8 Infrastructure Finance Companies, 9 Account Aggregators (NBFC-AA), 3 Infrastructure Development Funds, 8 Factoring Companies (NBFC-Factor), 100 Micro Finance Institutions, 3 Non-Operative Financial Holding Companies (NOFHC), 56 Systematically Important Core Investment Companies (NBFC-CIC), and 25 Peer to Peer Lending Companies (NBFC-P2P).



Further, considering the scale based layering, 11 companies fall in Upper Layer, 319 companies fall in Middle Layer and remaining 9113 companies fall in Base Layer.



So, before we ponder into what each type of NBFC means or represents, there are certain key terms which need to be understood:

(1) Deposit – This term has been defined under Reserve Bank of India Act, 1934. As per sub-section (bb) of section 45I under Chapter III-B relating "Provisions Relating To Non-Banking Institutions Receiving Deposits And Financial Institutions" the term deposit includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form. There are certain exclusion to the definition which are as follows:

(i) amounts raised toward share capital or contributions towards partner's capital in a partnership firm;

(ii) amounts received from a scheduled bank or a co-operative bank or any other banking company which falls within the ambit of the Banking Regulation Act, 1949;

(iii) amounts received from a State Financial Corporation or any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964, or any other institution that may be specified by the Bank in this behalf;

(iv) any security deposit, dealership deposit, earnest money or advances against orders for goods, properties or services received in the ordinary course of business;

(v) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vi) any amount received by way of subscriptions in respect of a chit as defined under clause (b) of section 2 of the Chit Funds Act, 1982.

(2) Public Deposit – As per paragraph 3(xiii) of Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, the term public deposit means a deposit as defined under section 45-I(bb) of the Reserve Bank of India Act, 1934.

However, it excludes the following:

(a) any amount received from Central or State Government, Local Authority or from any other source and whose repayment is guaranteed by the Central or a State Government or amount received foreign government, foreign citizen, authority or person;

(b) any amount received from Institutions established under an Act of the Parliament such as LIC, IDBI, GIC, SIDBI, etc. or a company incorporated under the Companies Act, 1956 (Act 1 of 1956); or a cooperative society registered under the Cooperative Societies Act of any State and any other institution that may be specified by the Bank in this behalf;

(c) Receipts by a company from any other company;

(d) any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013, towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, to such extent and for such period as permissible under the Companies (Acceptance of Deposit) Rules, 2014 and as amended from time to time;

(e) any amount received from a person who at the time of receipt of the amount was a director of the company or any amount received from its shareholders by a private company or by a private company which has become a public company under section 43A of the Companies Act, 1956 and continues to include in its Articles of Association provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 of the Companies Act, 1956 (Act 1 of 1956):

Provided that the director or shareholder, as the case may be, from whom the money is received furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others;

Provided further, that in the case of joint shareholders of a private company, monies received from or in the name of the joint shareholders except the first named shareholder shall not be eligible to be treated as the receipt of money from the shareholder of the company;

(f) any amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the company; or by any other asset or which would be compulsorily convertible into equity in the company provided that in the case of such bonds or debentures secured by the mortgage of any immovable property or

secured by other assets, the amount of such bonds or debentures shall not exceed the market value of such immovable property/other assets;

(g) any amount raised by issuance of non-convertible debentures with a maturity more than one year and having the minimum subscription per investor at Rs.1 crore and above, provided that such debentures have been issued in accordance with the guidelines issued by the Bank as in force from time to time in respect of such non-convertible debentures.

(h) any amount brought in by the promoters by way of unsecured loan in pursuance of stipulations of lending institutions subject to the fulfilment of the following conditions, namely:-

- the loan is brought in pursuance of the stipulation imposed by the lending public financial institution in fulfilment of the obligation of the promoters to contribute such finance,
- the loan is provided by the promoters themselves and/ or by their relatives, and not from their friends and business associates, and
- the exemption under this sub-clause shall be available only till the loan of financial institution is repaid and not thereafter;

(i) any amount received from a Mutual Fund which is governed by the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

(j) any amount received as hybrid debt or subordinated debt the minimum maturity period of which is not less than sixty months provided there is no option for recall by the issuer within the period;

(k) any amount received from a relative of a director of the NBFC.

Note: The deposit shall be accepted only on an application made by the depositor containing therein that as on the date of deposit, he is related to the specific director in the capacity of a relative as defined under Companies Act, 1956 (1 of 1956);

(l) any amount received by issuance of commercial paper, in accordance with the guidelines issued by the Bank, vide Circular No. IECD.3/08.15.01/2000-2001 dated October 10, 2000;

(m) any amount received by a Systemically important non-deposit taking non-banking financial company by issuance of 'perpetual debt instruments' in accordance with guidelines issued in this regard by the Bank and as amended from time to time;

(n) any amount raised by the issue of infrastructure bonds by an Infrastructure Finance Company, as specified in the notification issued from time to time by the Central Government under section 80CCF of the Income Tax Act, 1961.

Now it would be easier for the reader to understand the various types of NBFCs permitted by RBI:

A. Deposit Accepting vs Non-Deposit Accepting

1. Deposit accepting NBFC (NBFC-D)
The title itself is very clear. It means these NBFCs accept public deposits.

2. NBFCs not accepting deposits (NBFC-ND)
These are NBFCs not accepting public deposits. These NBFCs have more relaxations in compliances.

B. Type of NBFC by Activity (in alphabetical order)

1. Account Aggregator (NBFC-AA)
NBFC-AA is a NBFC which undertakes the business of Account Aggregator and has been notified with the previous approval of the Central Government by notification in the Official Gazette.

The business of account aggregator is that of providing under a contract, the service of, retrieving or collecting such financial information pertaining to its customer, as may be specified by a bank from time to time; and consolidating, organizing and presenting such information to the customer or any other financial information user as may be specified by such Bank.

The ownership of the financial information so gathered does not lie with the NBFC-AA. It also cannot be used in any other manner except for providing to the bank.

2. Factoring Companies (NBFC-Factor)
Factoring in simple term means a transaction whereby an entity buys receivables of another company at a discount thereby providing such other company liquidity of funds. Thus, factoring business means acquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment.

NBFC-Factor is a corporate entity engaged in factoring business. Such entity includes:

(i) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which has been granted a certificate of registration under sub-section (1) of section 3 of the Factoring Regulations Act, 2011 as amended from time to time; or

(ii) anybody corporate established under an Act of Parliament or any State Legislature; or

(iii) any Bank; or

(iv) any company registered under the Companies Act, 1956 (1 of 1956).

Thus, a NBFC, which acquires receivables of others for the purpose of collection or for financing is an NBFC-Factor.

NBFC Factor does not include the following:

(i) banks or NBFCs providing credit facilities against security of receivables in its ordinary course of their business;

(ii) any activity as commission agent or otherwise for sale of agricultural

produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.

3. **Housing Finance Companies (HFCs)**
"Housing finance company" means a company incorporated under the Companies Act, 2013 that fulfils the following conditions:

a. It is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60% of its total assets (netted off by intangible assets).

b. Out of the total assets (netted off by intangible assets), not less than 50% should be by way of housing finance for individuals as stated at clauses (a) to (e) of Paragraph 4.1.16.

"Housing Finance" means financing, for purchase/ construction/ reconstruction/ renovation/ repairs of residential dwelling units, which includes:

a. Loans to individuals or group of individuals including co-operative societies for construction/ purchase of new dwelling units.

b. Loans to individuals or group of individuals for purchase of old dwelling units.

c. Loans to individuals or group of individuals for purchasing old/ new dwelling units by mortgaging existing dwelling units.

d. Loans to individuals for purchase of plots for construction of residential dwelling units provided a declaration is obtained from the borrower that he intends to construct a house on the plot within a period of three years from the date of availing of the loan.

e. Loans to individuals or group of individuals for renovation/ reconstruction of existing dwelling units.

f. Lending to public agencies including state housing boards for construction of residential dwelling units.

g. Loans to corporates/ Government agencies for employee housing.

h. Loans for construction of educational, health, social, cultural or other institutions/ centres, which are part of housing projects and which are necessary for the development of settlements or townships (see note below).

i. Loans for construction meant for improving the conditions in slum areas, for which credit may be extended directly to the slum-dwellers on the guarantee of the Central Government, or indirectly to them through the State Governments.

j. Loans given for slum improvement schemes to be implemented by Slum Clearance Boards and other public agencies.

k. Lending to builders for construction of residential dwelling units.

All other loans including those given for furnishing dwelling units, loans

given against mortgage of property for any purpose other than buying/ construction of a new dwelling unit/s or renovation of the existing dwelling unit/s as mentioned above, will be treated as non-housing loans and will not be falling under the definition of "Housing Finance".

4. Infrastructure Development Funds (NBFC-IDF)

Infrastructure Debt Funds gained prominence since the year 2011 when the then Finance Minister announced the setting up of IDF for funding long-term debt for infrastructure projects. An IDF set up in the form of a company would ideally be an NBFC.

Thus, as per the criteria laid down, a non-deposit taking NBFC-IDF is an NBFC that:

(i) Has net owned fund of ₹ 300 crore or more; and

(ii) which invests only in Public Private Partnerships (PPP); and

(iii) The post commencement operations date (COD) infrastructure projects which have completed at least one year of satisfactory commercial operation; and

(iv) Becomes a party to a Tripartite Agreement.

5. Infrastructure Finance Companies (NBFC-IFC)

Around the years 2009 and 2010, there was an impetus on infrastructure development. Many NBFCs were lending towards Infrastructure Projects. As a measure to give more encouragement to such NBFCs, a new category was carved for such infrastructure financing companies.

Thus, an Infrastructure Finance Company means a non-deposit taking NBFC that fulfils the following criteria:

(a) a minimum of 75 per cent of its total assets deployed in "infrastructure loans";

(b) Net owned funds of ₹ 300 crore or above;

(c) minimum credit rating of 'A' issued by any of the SEBI-registered Credit Rating Agencies;

(d) CRAR of 15 per cent (with a minimum Tier I capital of 10 per cent).

6. Investment and Credit Company (NBFC-ICC)

NBFC-ICC means any company which is a financial institution carrying on as its principal business- asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and is not any other category of NBFC as defined by the Bank in any of its Master Directions

7. Micro Finance Institutions

Thanks to initiatives of Reserve Bank of India in 1991, the micro finance lending bloomed into a serious business. RBI through NABARD has formed small self help groups and promoted micro lending as a pilot project. This gained more prominence in 1999 after the Government of India show interest and made announcements in its regard.

(a) A microfinance loan is defined as a collateral-free loan given

to a household having annual household income up to ₹ 3,00,000. Here a household means an individual family unit, i.e., husband, wife and their unmarried children.

This a NBFC-MFI is non-deposit taking NBFC fulfilling the following criteria:

(b) Minimum Net Owned Funds of ₹ 5 crore. (For NBFC-MFIs registered in the North Eastern Region of the country, the minimum NOF requirement shall stand at ₹ 2 crore);

(c) Not less than 75 per cent of its total assets are in the nature of "microfinance loans"

8. Non-Operative Financial Holding Companies (NOFHC)

Over the years, RBI's regulatory approach has shifted from directive mode to more and more governance based. Thus, there has always been a need to strengthen the governance base of the companies in the banking system. Further, more and more private sector corporates were eager to gain licences with an aim to undertake banking activity.

RBI, after sorting committee reports and opinion of various stakeholders, framed the 'Guidelines for Licensing of New Banks in the Private Sector' dated February 22, 2013 which was issued by Department of Banking Operations and Development (DBOD), vide RBI Press Release 2012-2013/1421 of the same date. Vide this guideline a new corporate structure was sought to be created for granting banking licence.

As per the guideline new banking licences would be issued Promoters/ Promoter Groups with an existing non-banking financial company (NBFC) subject to the Promoter/ Promoter Group meeting the 'fit and proper criteria' laid down in this regard and fulfilment of other prescribed conditions.

Thus a "Non-Operative Financial Holding Company (NOFHC)" has been defined to means a non-deposit taking NBFC referred to in the "Guidelines for Licensing of New Banks in the Private Sector", issued by the Bank, which holds the shares of a banking company and the shares of all other financial services companies in its group, whether regulated by Bank or by any other financial regulator, to the extent permissible under the applicable regulatory prescriptions

9. Peer to Peer Lending Companies (NBFC-P2P)

The initial need for regulation of peer to peer lending activity has a mention in RBI reports in the year 2014. SEBI had, in the same year, issues a "Consultation Paper on Crowd funding in India'. In its paper SEBI examined and suggested the possible routes that could be explored as a Security Based Crowd funding. These were:

- Equity based Crowd Funding (EbC) – raising equity through a crowd funding platform.
- Debt based Crowd Funding (DbC) – raising of funds by issuing debentures or debt securities through a crowd funding platform
- Fund based Crowd Funding (FbC) – raising of funds for pooling under

an Alternative Investment Fund (AIF) through a crowd funding platform.

Peer to Peer lending is form of crowd funding. RBI has defined "Non-banking financial company - Peer to Peer Lending Platform" (NBFC-P2P) to mean a non-banking institution which carries on the business of a Peer to Peer Lending Platform.

"Peer to Peer Lending Platform" means an intermediary providing the services of loan facilitation via online medium or otherwise, to the participants who has entered into an arrangement with an NBFCP2P to lend on it or to avail of loan facilitation services provided by it.

10. Residuary Non-Banking Company (RNBC)

RNBC is a non-banking institution, being a company, which receives any deposit under any scheme or arrangement, in one lump sum payment or in the form of instalments by way of contributions or subscriptions or by sale of units or certificates or other instruments, or in any other manner. Further, it is not -

(i) an equipment leasing company; or

(ii) a hire purchase finance company; or

(iii) an investment and credit company; or

(iv) a housing finance company; or

(v) an insurance company; or

(vi) a factor; or

(vii) a mutual benefit financial company; or

(viii) a miscellaneous non-banking company; or

(ix) a mutual benefit company.

11. Systematically Important Core Investment Companies (NBFC-CIC)

The RBI Act, 1934 was amended in the year 1997 to vest more power in the hand of RBI to regulated the Non-banking financial companies sector. Pursuant to this New NBFC Policy was proposed which stratified NBFC sector into deposit accepting NBFC, non-deposit accepting NBFC and Core Investment Companies (CICs).

A CIC was company which hold at least 90 per cent of their assets as investments in the securities of their group/holding/subsidiary companies. Over the years, the CIC strata evolved there by needing for changes in RBI regulatory regime.

The 2010 'Regulatory Framework for Core Investment Companies (CICs)' required only those CICs which had an asset size of Rs. 100 crores or more to undertake registration with RBI as Systematically Important Core Investment Company (NBFC-CIC-SI).

The current definition of "Core Investment Company (CIC)" as it stands means a core investment company having total assets of not less than ₹ 100 crore either individually or in aggregate along with other CICs in the Group and which raises or holds public funds.

C. Type of NBFCs

The Non-Deposit Accepting NBFCs are further categorised as follows:

1. **Systematically Important Non-Deposit Taking NBFC – (NBFC-ND-SI):**
This is one of the categories Non-Deposit taking NBFC. An NBFC-ND-SI has an asset size of more than ₹ 500 crores. Such Companies have more governance compliances.

However, Core investment Companies (CICs) having asset size of more than Rs. 100 crores and above have been treated as Systematically Important and need to register with RBI as such i.e. NBFC-CIC. CICs having asset size less than Rs. 100 crores are exempt from registering with RBI as NBFC - CIC.

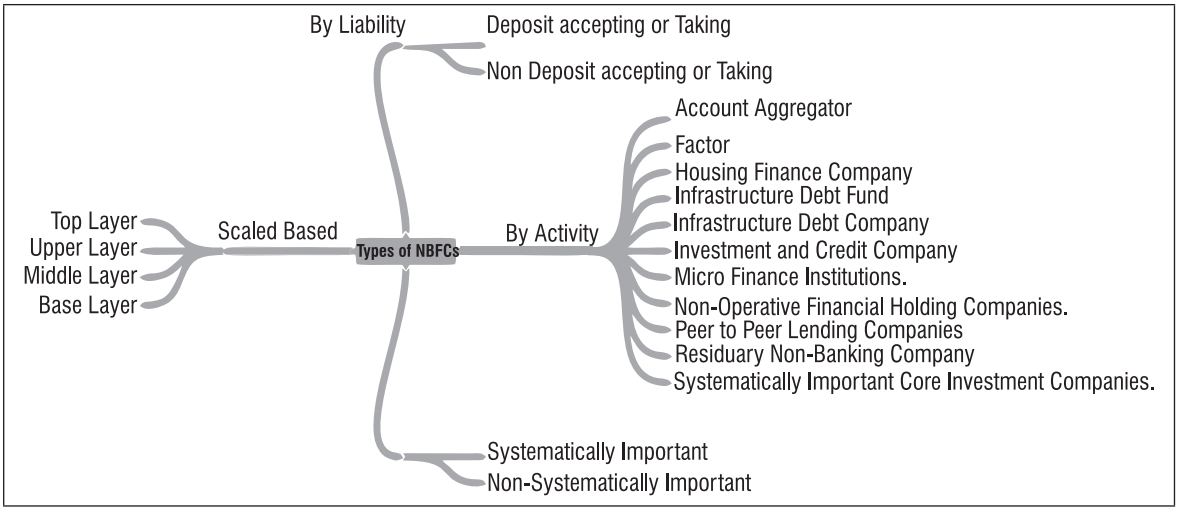
2. **Non-Systemically Important Non Deposit taking NBFC – (NBFC-ND):**
These are NBFCs which have an asset size below ₹ 500 crores. These NBFCs need to undertake lesser number of compliances.

On account of issuance of Scale-based regulations, the above classifications have been reconstituted to be as under:

Top Layer	This Layer will ideally to remain empty as per the framework suggested.
Upper Layer	NBFCs which are specifically identified by the Reserve Bank as warranting enhanced regulatory requirement based on a set of parameters and scoring methodology. (a) Quantitative Parameters (70%): (i) Size & Leverage; (ii) Interconnectedness (iii) Complexity (b) Qualitative Parameter/ Supervisory inputs (30%): (i) Nature and type of liability (ii) Group Structure (iii) Segment penetration The top ten eligible NBFCs in terms of their asset size shall always reside in the upper layer, irrespective of any other factor.
Medium Layer	(a) all deposit taking NBFCs (NBFC-Ds), irrespective of asset size, (b) Non-deposit taking NBFCs with asset size of ₹ 1000 crore and above and (c) NBFCs undertaking the following activities, irrespective of asset size (i) Standalone Primary Dealers (SPDs), (ii) Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFCs),

	(iii) Core Investment Companies (CICs), (iv) Housing Finance Companies (HFCs) and (v) Infrastructure Finance Companies (NBFC-IFCs).
Base Layer	(a) Non-deposit taking NBFCs below the asset size of ₹ 1000 crore and (b) NBFCs undertaking the following activities, irrespective of asset size- (i) NBFC-Peer to Peer Lending Platform (NBFC-P2P), (ii) NBFC-Account Aggregator (NBFC-AA), (iii) Non-Operative Financial Holding Company (NOFHC) and (iv) NBFCs not availing public funds and not having any customer interface

In conclusion, the whole discussion on types of NBFC can be summarised with the following mind map:



CA Tushar Kurani

Scale Based Regulations — Operational aspects: Capital, Borrowing and Prudential Norms

Overview

As the Scale based Regulation (SBR) framework encompasses different facets of regulation of Non-Banking Finance Companies (NBFCs) covering capital requirements, governance standards, prudential regulation, etc., it has been decided by the Reserve Bank of India (RBI) to first issue an integrated regulatory framework for NBFCs under SBR providing a holistic view of the SBR structure, set of fresh regulations being introduced and respective timelines.

These guidelines shall be effective from October 01, 2022. All references to NBFC-ND shall mean NBFC-BL and all references to NBFC-D and NBFC-NDSI shall mean NBFC-ML or NBFC-UL, as the case may be.

Regulatory Structures for NBFCs

Regulatory structure for NBFCs shall comprise of four layers based on their size, activity, and perceived riskiness.

a) NBFCs in the lowest layer shall be known as NBFC - Base Layer (NBFC-BL).

b) NBFCs in middle layer and upper layer shall be known as NBFC - Middle Layer (NBFC-ML) and NBFC - Upper Layer (NBFC-UL) respectively.

c) The Top Layer is ideally expected to be empty and will be known as NBFC - Top Layer (NBFC-TL).

Progressive application of regulations

Regulatory revisions applicable to lower layers of NBFCs will automatically be applicable to NBFCs residing in higher layers, unless stated otherwise.

A. Regulatory revisions applicable only to NBFC-Upper Layer (NBFC-UL)

i) Revisions to Capital guidelines

Common Equity Tier (CET) 1 Capital:	CET 1 of at least 9% of risk weighted assets
Leverage:	Leverage requirement will be applicable. A suitable ceiling for leverage will be prescribed by RBI
Differential Standard Asset Provisioning norms	Differential standard asset provisioning applicable, similar to provisions applicable to Banks

SS-X-20

ii) Revision to Prudential guidelines

Board approved Internal exposure limits	Board approved internal exposure limits to be set for important sectors to which credit is extended. This is in addition to Sensitive Sector Exposure (SSE) limits which is applicable to NBFCs in both middle layer and upper layer

iii) Revisions to governance guidelines

Board members -Qualification	Composition of Board to include a mix of educational qualification and experience
To get Listed	NBFC -UL to get listed within three years of identification as NBFC-UL. Unlisted NBFC-ULs to draw up Board approved road map for compliance with disclosure requirements of listed companies
Resignation of Independent Directors	NBFC -UL are required to report to RBI in case any Independent Director is removed/resigns before the completion of his/her normal tenure. Earlier NBFCs were not required to report on such removal/ resignation.

B. Regulatory Revisions applicable to NBFC-Middle Layer (NBFC -ML) and NBFC-Upper Layer (NBFC -UL)

i. Revision to Capital guidelines

	NBFC-UL	***NBFC-ML***
Internal Capital Adequacy Assessment Process (ICAAP) for NBFCs	NBFC-ML and NBFC-UL are required to make a thorough internal assessment of the need for capital, commensurate with the risks in their business, on similar lines as ICAAP for commercial banks	

ii. Revision to Prudential guidelines

	NBFC-UL	***NBFC-ML***
Concentration of credit/ investment	The separate lending and investment exposure limits have now been merged into a single exposure limit. Limit will now be computed as a percentage of Tier 1 capital (instead of being computed as a percentage of owned/fund)	NBFC-UL are required to follow the Large Exposure Framework (LEF)
Sensitive Sector Exposure (SSE)	• Board approved internal limits to be fixed for SSE, separately for capital market and commercial real estate exposures. • No change in norms for Housing Finance Companies (HFCs), which will continue to follow current regulations	

	NBFC-UL	***NBFC-ML***
Regulatory restrictions on Loans	Regulatory restrictions applicable on loans to Directors, senior officers and on appraising loan proposals involving real estate	

iii. Revision to Governance guidelines

	NBFC-UL	***NBFC-ML***
Key Managerial Personnel (KMP), Independent Director (ID), Chief compliance officer	• Restrictions on KMPs from holding any office (including directorships) in any other NBFC-ML or NBFC-UL • Independent Directors are restricted from being on the Boards of more than three NBFCs at the same time • NBFC-ML and NBFC-UL are required to have an independent compliance function and appoint a Chief Compliance Officer (CCO)	
Disclosures in annual financial statements	Effective 31st March 2023, NBFCs are required to make these additional disclosures in their annual financial statements: • Corporate governance report • Disclosure on modified opinion • Exceptional income or expenses • Breaches in terms of covenants or defaults • Divergence in asset classification and provisioning	
Compensation guidelines	NBFCs to put in place a Board approved compensation policy for KMP and senior management, which includes: • Constitution of a Remuneration Committee • Principles for fixed/variable pay structures • Malus/claw back provisions	
Additional governance matters Additional governance matters to be complied with include:	• Delineate the role of various committees • Formulate a whistle blower mechanism • Ensure good corporate governance practices in subsidiaries	
Introduction of core financial services Solution	Mandatory for NBFCs with 10 or more branches	

C. Regulatory Revisions applicable to all NBFCs

i) Revisions to Capital guidelines

	NBFC-BL	*NBFC-ML*	*NBFC-UL*
Raising minimum Net Owned Fund (NOF) for certain NBFCs	Raised minimum NOF requirement for NBFC-Investment and Credit Companies (NBFC-ICC), NBFC-Micro Finance Institution (NBFC-MFI) and NBFC-Factors and Mortgage Guarantee Companies (NBFC-MGC) to Rs. 10 crores. A glide path to achieve this requirement has been provided.		
Harmonising Non-Performing Assets (NPA) classification norms	NBFC-ND are now required to classify assets with an overdue period of more than 90 days as NPA. A glide period for complying with this norm has been provided.	No impact, since NBFCs classified under these layers are already required to follow the 90-day NPA norm	
Experience of the board	At least one of the directors in the Board should have relevant experience of having worked in a Bank/NBFC. This is a new requirement for all NBFCs.		
Ceiling on Initial Public Offer (IPO) funding	A limit of Rs.1 crores per borrower has been set for financing subscription to IPOs (currently, NBFCs have no ceiling on an IPO funding). Ceiling on an IPO funding has been made applicable effective from 1 April 2022.		

ii) Revisions to governance guidelines

	NBFC-BL	*NBFC-ML*	*NBFC-UL*
Risk Management Committee (RMC)	Could be at board or executive level, as per discretion of Board	Board-level RMC	Board-level RMC
Disclosures	Disclosure requirements for NBFCs have been expanded, to include related party transactions, loans to directors/senior officers and customer complaints		
Loans to directors, senior officers and relatives of directors	NBFCs to have a board approved policy on these matters	Not applicable	Not applicable

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CA Rahul Joglekar

Scale-based framework – the revised regulatory framework for NBFCs

A. Background

Non-banking financial companies are a special category of companies which are required to be registered under Sec, 45-IA of the Reserve Bank of India Act. Therefore, these companies are regulated by RBI and are in the business of financing in some form or the other and which are not Banks. The provisions of Banking Regulation Act, 1949 do not apply to these companies. These companies could be both deposits accepting or otherwise. Over the last 2 decades, the growth and scale of such companies has increased by leaps and bounds. Historically, the regulatory oversight over these companies was significantly less as compared to Banks and therefore these companies enjoyed regulatory arbitrage over Banks. The last 5-6 years witnessed big ticket NBFC failures and downfall of the sector per-se which prompted RBI to come into action and a move towards eliminating the regulatory arbitrage was initiated.

B. Scale Based Regulation – legislative history

On December 04, 2020, RBI in its Statement on Developmental and Regulatory Policies mentioned – *"The contribution of NBFCs as a supplemental channel of credit intermediation alongside banks is well recognised. Regulatory regime governing the NBFC sector is built on the principle of proportionality such that adequate operational flexibility is available to the sector through calibrated regulatory measures. However, there are rapid developments in the last few years, which have led to significant increase in size and interconnectedness of the NBFC sector. There is, therefore, a need to review the regulatory framework in line with the changing risk profile of NBFCs. It is felt that a scale-based regulatory approach linked to the systemic risk contribution of NBFCs could be the way forward."*

Pursuant to this announcement, a Discussion Paper on Revised Regulatory Framework for NBFCs- A Scale-Based Approach was placed for public comments on January 22, 2021. Based on the inputs received, RBI released the framework – "Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs" on October 22, 2021. This framework is based on size, activity, and perceived riskiness other regulatory guidance received thereafter from time to time which are discussed further in this paper.

C. Scale Based Regulation – The SBR Framework

With effect from October 01, 2022, NBFCs have been categorized into 4 categories

vide RBI circular no. DOR.CRE.REC. No.60/03.10.001/2021-22. All the requirements are applicable from October 01, 2022 unless a different applicability date is specified by RBI.

a. NBFCs in the lowest layer known as NBFC - Base Layer (NBFC-BL).

b. NBFCs in middle layer known as NBFC - Middle Layer (NBFC-ML).

c. NBFCs in upper layer known as NBFC - Upper Layer (NBFC-UL).

d. The Top Layer is ideally expected to be empty and will be known as NBFC - Top Layer (NBFC-TL).

The criteria for classification in these 4 layers as stipulated by RBI are as follows:

Base Layer	***Middle Layer***	***Upper Layer***
a. non-deposit taking NBFCs (NBFC-ND) below the asset size of Rs.1000 crore b. NBFCs undertaking the following activities- i. NBFC-Peer to Peer Lending Platform (NBFC-P2P), ii. NBFC-Account Aggregator (NBFC-AA) iii. Non-Operative Financial Holding Company (NOFHC) iv. NBFCs not availing public funds and not having any customer interface.	a. all deposit taking NBFCs (NBFC-Ds), irrespective of asset size b. non-deposit taking NBFCs with asset size of Rs.1000 crore and above. c. Standalone Primary Dealers (SPDs) d. Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFCs), e. Core Investment Companies (CICs). f. Housing Finance Companies (HFCs) g. Infrastructure Finance Companies (NBFC-IFCs).	This category will contain those NBFCs which are specifically identified by RBI as warranting enhanced regulatory requirement and will be populated based on set of parameters and scoring methodology prescribed by RBI. This assessment will be done every year on the basis of the audited position of these NBFCs as of March 31.
Existing references to NBFC-ND means NBFC-BL	All existing references to NBFC-D and NBFC-ND-SI mean NBFC-ML or NBFC-UL, as the case may be	
NBFC-BL are subject to regulations as currently applicable to NBFC-ND with changes/ enhancements stipulated by RBI as detailed in this article below. NBFC-P2P, NBFC-AA, and NOFHC are subject to extant regulations governing them.	NBFC-ML will follow regulations currently applicable for NBFC-ND-SIs, NBFC-Ds, CICs, SPDs and HFCs, as the case may be, with changes/enhancements stipulated by RBI as detailed in this article below.	NBFC-UL will have to adhere to regulations applicable to NBFC-ML with changes/enhancements stipulated by RBI as detailed in this article below.

Base Layer	*Middle Layer*	*Upper Layer*
As of March 31, 2023 RBI has notified a list of 9113 registered NBFCs in the Base Layer.	As of March 31, 2023 RBI has notified a list of 319 registered NBFCs in the Middle Layer.	As of date RBI has notified a list of 16 NBFCs which are identified as ones in the Upper Layer.

As hitherto stated, the Top Layer is expected to remain empty at all times. This layer can get populated if the RBI is of the opinion that there is a substantial increase in the potential systemic risk from specific NBFCs in the Upper Layer. Such NBFCs shall move to the Top Layer from the Upper Layer. Such NBFCs will be subjected to higher capital charge. Such higher requirements shall be specifically communicated to the NBFC at the time of its classification in the Top Layer. There will be enhanced and intensive supervisory engagement with these NBFCs.

The following further granularisation is applicable to these 4 layers –

a. NBFC-P2P, NBFC-AA, NOFHC and NBFCs without public funds and customer interface will always remain in the Base Layer of the regulatory structure. They will never get reclassified into Middle/Upper Layers

b. NBFC-D, CIC, IFC and HFC could be included in Middle Layer or the Upper Layer. These will never move into the Base layer. Similarly, SPDs and IDF-NBFC will always remain in the Middle Layer and never move to the Base or Upper Layer.

c. Government owned NBFCs will be placed in the Base Layer or Middle Layer. They will not be placed in the Upper Layer till further notice.

d. Residual NBFCs viz - Investment and Credit Companies (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factors and Mortgage Guarantee Companies (NBFC-MGC) could be placed in any of the layers of the regulatory structure depending on the parameters of the scale based regulatory framework.

In case of Multiple NBFCs in a Group (Companies in a Group will be as per the definition in the Master Direction – Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016), the total assets of all the NBFCs in that Group will be consolidated to determine the threshold for their classification in the Middle Layer. If the consolidated asset size of the Group is Rs.1000 crore and above, then each NBFC-ICC, NBFC-MFI, NBFC-Factor and NBFC-MGC lying in the Group will be classified as an NBFC in the Middle Layer irrespective of their asset size on a standalone basis and consequently, regulations applicable to the NBFC-ML will be applicable.

D. Regulatory changes under SBR – Common changes across all layers

1. Enhancement of minimum Net Owned Fund (NOF) requirement

Under the revised framework, the minimum NOF for NBFC-ICC, NBFC-MFI and NBFC-Factors has been increased to Rs.10 crore over a phased manner uptil 2027. For NBFC-P2P, NBFC-AA, and NBFCs with no public funds and no customer interface, the NOF will be Rs.2 crore throughout. In case of NBFCs - IDF, IFC, MGCs, HFC, and SPD, no changes to the regulatory minimum NOF has been stipulated. The following table provides the manner of staggered achievement of this NOF.

Type of NBFC	*Present NOF*	*To be achieved by March 2025*	*To be achieved by March 2027*
NBFC-ICC	Rs. 2 crores		
NBFC-MFI	Rs. 5 crores (Rs. 2 crores in North East Region)	Rs. 7 crores (Rs. 5 crores in North East Region)	Rs. 10 crores
NBFC-Factors	Rs. 5 crores	Rs. 7 crores	Rs. 10 crores
NBFC-P2P	Rs. 2 crores	Rs. 2 crores	Rs. 2 crores
NBFC-AA	Rs. 2 crores	Rs. 2 crores	Rs. 2 crores
NBFCs with no public funds and no customer interface	Rs. 2 crores	Rs. 2 crores	Rs. 2 crores

2. Harmonisation of NPA classification period across all NBFCs

Hitherto, the NPA norms were varied with overdue period ranging from 90 days to 180 days. The revised framework has prescribed changed asset classification norms to the overdue period of more than 90 days for all categories of NBFCs. This is to be achieved in a phased manner over the next 3 years upto March 2026 in the following manner.

NPA Norms	*Timeline*
> 150 days overdue	By March 31, 2024
> 120 days overdue	By March 31, 2025
> 90 days overdue	By March 31, 2026

3. Experience of the Board

Considering the need for professional experience and expertise in managing the affairs of NBFCs, at least one of the directors will be required to have relevant experience of having worked in a bank/NBFC.

4. Ceiling on IPO funding

With effect from April 01, 2022, the new framework prescribes a ceiling of Rs.1 crore per borrower for financing subscription to Initial Public Offer (IPO). NBFCs have been allowed to fix more conservative limits.

E. Other regulatory changes under SBR for various layers of NBFCs.

The following other regulatory changes are prescribed for various layers of NBFCs as below

Requirement	*Applicable to*
Internal Capital Adequacy Assessment Process (ICAAP) NBFCs are required to make a thorough internal assessment of the need for capital, commensurate with the risks in their business. This internal assessment shall be on similar lines as ICAAP prescribed for commercial banks under Pillar 2. The methodology for internal assessment of capital shall be proportionate to the scale and complexity of operations as per their Board approved policy. First such assessment will be based on the audited financial statements for the year ended March 31, 2023.	NBFC-UL NBFC-ML

Requirement	*Applicable to*
Common Equity Tier 1 Capital In order to enhance the quality of regulatory capital, Common Equity Tier 1 capital of at least 9% of Risk Weighted Assets to be maintained. Common equity tier 1 (CET 1) ratio = common equity tier 1 capital/total risk-weighted assets. Detailed guidelines have been issued by RBI on this topic vide its circular no. DOR.CAP.REC.No.21/21.06.201/2022-23 dated April 19, 2022.	NBFC-UL
Leverage Leverage requirement will be stipulated to ensure that growth is supported by adequate capital, among other factors. A suitable ceiling for leverage will be prescribed subsequently for these entities as and when necessary. As of date no such specific leverage requirements have been prescribed.	NBFC-UL
Differential standard asset provisioning The following differential standard asset provisioning has been made applicable w.e.f October 01, 2022 vide RBI circular no. DOR.STR.REC.40/21.04.048/2022-23 dated June 06, 2022.	NBFC-UL

Nature of asset	*Provisioning*
Individual housing loans and loans to Small and Micro Enterprises (SMEs)	0.25%
Housing loans extended at teaser rates	2.00%, which will decrease to 0.40 % after 1 year from the date on which the rates are reset at higher rates (if the accounts remain 'standard')
Advances to Commercial Real Estate – Residential Housing (CRE - RH) Sector	0.75%
Advances to Commercial Real Estate (CRE) Sector (other than CRE-RH)	1.00%
Restructured advances	As per extant norms on restructuring.
All other loans including Medium enterprises.	0.40%
Current credit exposures arising on account of the permitted derivative transactions	As applicable to loans under Standard category to such counterparties

Requirement	*Applicable to*
NBFCs applying Ind AS will account for the provisions as per Ind AS 109 but use the above provision rates for calculation of IRACP provisions for determination of Impairment Reserve.	
Concentration of credit/investment The extant credit concentration limits prescribed for NBFCs separately for lending and investments are merged into a single exposure limit of 25% for single borrower/party and 40% for single group of borrowers/parties with reference to NBFC's Tier 1 capital instead of their Owned Fund.	NBFC-ML
Concentration of credit/investment Vide circular no. DOR.CRE.REC.24/21.01.003/2022-23 dated April 19, 2022, Large Exposures Framework has been made applicable for NBFC-UL and these guidelines aim at addressing credit risk concentration in such NBFCs. These instructions set out to identify large exposures, refine the criteria for grouping of connected counterparties and put in place reporting norms for large exposures.	NBFC-UL
Sensitive Sector Exposure (SSE) Sensitive sectors would include capital market and commercial real estate (CRE) exposures. Board approved internal exposure limits are to be set for lending to these sectors. A sub-limit within the CRE exposure ceiling are to be fixed for financing land acquisition and ceiling on IPO funding as described earlier. HFCs will follow the extant exposure norms already applicable to them.	NBFC-UL NBFC-ML
Regulatory restrictions on loans Detailed guidelines have been issued by RBI vide its circular no. DOR. CRE.REC.No.25/03.10.001/2022-23 dated April 19, 2022 and effective from October 01, 2022 in regard to granting loans and advances to directors, their relatives and to entities where directors or their relatives have major shareholding, senior officers of the NBFC and loan proposals involving real estate.	NBFC-UL NBFC-ML NBFC-BL
Constitution of Risk Management Committee Constitution of Risk Management Committee (RMC) of the Board or of executives has been made mandatory. The RMC will be responsible for evaluating the overall risks faced by the NBFC including liquidity risk and will report to the Board.	NBFC-BL
Key Managerial Personnel (restriction on holding office) Key managerial personnel have been prohibited from holding any office (including directorship) in any other NBFC-ML and NBFC-UL. They are allowed to be directors in a subsidiary and also of other NBFC-BL. This compliance is required to be achieved by September 30, 2024.	NBFC-UL NBFC-ML

Requirement	*Applicable to*
Independent Directors Independent Directors are restricted from being on the Boards of more than three NBFCs at the same time. This compliance is required to be achieved by September 30, 2024.	NBFC-UL NBFC-ML
Enhanced disclosures on Corporate Governance in financial statements With effect from March 31, 2023, NBFCs are required to make the following additional disclosures in their annual financial statements: a. Corporate governance report b. Disclosure on modified opinion c. Exceptional income or expenses d. Breaches in terms of covenants or defaults e. Divergence in asset classification and provisioning assessed by RBI/ NHB	NBFC-UL NBFC-ML
Other disclosures in financial statements Vide circular no. DOR.ACC.REC.No.20/21.04.018/2022-23 dated April 19, 2022, RBI has significantly enhanced the annual disclosure requirements for all NBFCs including the detailed formats of such disclosures. It is also clarified that these disclosures are in addition to and not in substitution of the disclosure requirements specified under other laws, regulations, or accounting and financial reporting standards.	NBFC-UL NBFC-ML NBFC-BL
Compliance Function and Role of Chief Compliance Officer Mandatory requirement has been stipulated of having a Chief Compliance Officer (CCO), who should be sufficiently senior in the organization hierarchy. A Board approved policy laying down the role and responsibilities of the CCO with the objective of promoting better compliance culture in the organization is also to be adopted. Detailed guidelines in this regard have been issued vide circular no. DoS.CO.PPG./ SEC.01/11.01.005/2022-23 dated April 11, 2022. The Compliance policy is to be put in place by April 01, 2023 and appointment of CCO should be made latest by October 31, 2023.	NBFC-UL NBFC-ML
Compensation guidelines It has been made mandatory for NBFCs to put in place a Board approved compensation policy. This policy will address issues arising out of excessive risk taking caused by misaligned compensation packages. Constitution of a Remuneration Committee also has been made mandatory. Detailed guidelines in this regard have been issued vide	NBFC-UL NBFC-ML

Requirement	*Applicable to*
circular no. DOR.GOV.REC.No.29/18.10.002/2022-23 dated April 29, 2022 and will be effective from April 01, 2023. NBFC-BL and Government owned NBFCs have been kept outside the ambit of these guidelines.	
Other Governance matters a. Formalisation of the role of various committees (Audit Committee, Nomination and Remuneration Committee, Risk Management Committee or any other Committee) and lay down a calendar of reviews.	NBFC-UL NBFC-ML
b. Formulation of a whistle blower mechanism for directors and employees to report genuine concerns. c. Ensuring good corporate governance practices in the subsidiaries of the NBFC.	
Implementation of 'Core Financial Services Solution' (CFSS) RBI has mandated NBFC with 10 and more 'Fixed point service delivery units' as on October 1, 2022 to implement CFSS similar to CBS implemented in Banks. This requirement is not mandatory for NBFC-BL and NBFC-UL or NBFC-ML with less than 10 'Fixed point service delivery units'. A glide path of 3 years upto September 30, 2025 has been provided for compliance with this requirement with a mandate that NBFC-UL shall ensure that the CFSS is implemented at least in 70 per cent of 'Fixed point service delivery units' on or before September 30, 2024. Quarterly progress report on implementation of CFSS is also required to be submitted to the RBI SSM starting from quarter ending March 31, 2023.	NBFC-UL NBFC-ML
Qualification of Board Members RBI has directed that Board should have directors who are competent to manage the affairs of the NBFC. The composition of the Board should ensure mix of educational qualification and experience within the Board. Specific expertise of Board members will be a prerequisite depending on the type of business pursued by the NBFC.	NBFC-UL
Listing & Disclosures NBFCs in the upper layer are now required to get listed within three years of identification as NBFC-UL. Unlisted NBFCs are required to draw up a Board approved roadmap for compliance with disclosure requirements of listed companies. Disclosure requirements are to be put in place on the same lines as applicable to a listed company even before the actual listing, as per Board approved policy of the NBFC.	NBFC-UL

Requirement	*Applicable to*
Removal/resignation of Independent Directors In case of resignation or removal of independent directors, suitable communication to the supervisors is henceforth mandatory.	NBFC-UL

F. Transitionary provisions

a. Plan for transition to NBFC-UL

Once an NBFC is identified for inclusion as NBFC-UL by the RBI, it shall be advised about its classification by the Department of Regulation and it will be placed under regulation applicable to the Upper Layer. Within 3 months of such intimation, the NBFC will have to formulate a Board approved policy for adoption of the enhanced regulatory framework and chart out an implementation plan for adhering to the new set of regulations. This plan will also be submitted to RBI for its review. Further, the maximum time allowed for complete compliance with the regulatory framework for NBFC-UL will be 24 months from the date of advice by RBI.

b. Applicability of regulations to NBFC-UL

After being categorised as NBFC-UL, the NBFC will be subject to enhanced regulatory requirement, at least for a period of five years from its classification as NBFC-UL, even if it does not meet the parametric criteria in the subsequent years. However, an exit from the enhanced regulatory framework before the period of five years could be permissible if it is on account of voluntary strategic move to readjust operations as per a Board approved policy. This stipulation will not apply if the scaling down of operations is on account of adverse situations specific to the NBFC and its deteriorating financial conditions in which case the enhanced framework will continue to apply.

c. Relaxations to Government owned NBFCs

Government owned NBFCs will not be classified as NBFC-UL as per the present regulatory framework. A decision on including eligible Government NBFCs meeting the specified criteria into the Upper Layer will be taken at a later stage and till that time the guidelines as applicable for the NBFC-ML will be applicable to them.

d. NBFCs not availing public funds and not having customer interface

NBFCs not availing public funds and not having customer interface bear a different risk profile and hence deserve a differential regulatory treatment. RBI has decided that it will stipulate separate regulations for such NBFCs in due course. Till such time, the extant regulations as applicable to them will continue to apply.

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"Put the good before them, see how eagerly they take it, see how the divine that never dies, that is always living in the human..."

— *Swami Vivekananda*

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CA Megha Garodia

Taxation of NBFCs - Key Issues

Non-Banking Financial Companies (NBFCs) play a vital role in the Indian financial system by providing various financial services such as loans, credit facilities, investment advice, and asset management. While NBFCs contribute significantly to the economy, they often encounter several tax-related challenges that impact their operations. This article explores some of the key tax issues faced by NBFCs in India and their implications:-

A) Taxability of interest on Non-performing assets (NPA)

Generally, all NBFCs follow the mercantile system of accounting, where Interest income on its Lending Activities is recognized on an accrual basis in their books of account and accordingly, offer income to tax. Further, the Income Computation and Disclosure Standards (ICDS) prescribed under the Income-tax Act, 1961 (Act), also provide for interest income to accrue on time basis determined by the amount outstanding and the rate applicable.

As per the guidelines issued by the Reserve Bank of India (RBI), NBFCs are required to classify their assets as performing or non-performing based on certain criteria. When an asset is classified as an NPA, it implies that the borrower has failed to make timely payments of principal or interest for a specified period. Under the IGAAP, NBFCs were accounting for the interest on bad or doubtful debts/ non-performing assets (NPAs) only at the time of actual receipt, basis the prudential norms prescribed by the RBI. However, with the advent of Ind-AS accounting of Income, NBFC's are required to categorize loan assets into three stages, based on the overdue period of receivables (Stage 3 loans are akin to NPAs as per the extant RBI guidelines), and make a provision for bad and doubtful debts following the Expected Credit Loss model. Under Ind-AS, the interest income is to be recognized basis reasonable certainty of ultimate collection, which even leads to the crediting of interest income in respect of Stage 3 loans in P&L to the extent of the part of loan secured from the borrower.

Taxation

1. Section 43D of the Act, inter-alia, provides for the taxability of

the interest income in relation to the prescribed bad and doubtful debts/NPA's received by certain class of NBFC. Interest income in relation to certain categories of bad or doubtful debts received by such institution, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account or actually received, whichever is earlier. Further, Rule 6EA and 6EB of the Income-tax Rules, 1962 (Rules) has been prescribed, to give specific guidelines as to on which categories of bad and doubtful debts/ NPAs, Interest can be recognized on actual realisation.

2. Section 43D of the Act further prescribed the guidelines for the categorization of bad and doubtful debts "having regard to the guidelines issued by the RBI in relation to such debts" and framed the Rule 6EA and 6EB. When the Rule 6EA was framed in the past, the norms for six months was provided for classification of a Loan as NPA, as during such time under RBI guidelines also the norms for categorizing NPA were more than 6 months. Thereafter, the norms as per RBI guidelines have been further reduced to ninety-days. However, Rules 6EA and 6EB of the Rules have not kept pace with the evolving RBI guidelines on NPAs specifically related to guidelines on the period for classification of Loan as NPA and therefore, this has resulted in litigation on notional interest addition on account of strict interpretation of Rule 6EA read with sec 43D. Several Courts* have held that held that it becomes necessary to read down such rules so that it is in consonance with the RBI regulation or prudential norms for recognizing income. Such difference of opinion in regard to classification of Loan as NPA for availing the deduction under sec 43D resulted into dispute between tax payers and tax authorities.

3. Further, with the advent of IND-AS, as the interest on NPA for Stage-3 loans is credited to P&L (as required under Ind-AS), such recognised interest becomes taxable in the year of such recognition, which results in outflow of cash at an early stage of accrual and cash trap for NBFCs.

4. Therefore for NBFCs, who are proposed to be covered by section 43D of the Act, this procedural aspect needs utmost consideration to avoid the litigation and the said controversy may get addressed if the Central Board of Direct Taxes harmonises Rule 6EA and 6EB of the Rules with RBI guidelines while extending it to NBFCs.

   - Mumbai Tribunal in case of ICICI Bank/Hon'ble Apex Court in the case of *UCO Bank Ltd. vs. CIT*.

B) Section 269ST of the Act

Section 269T states that no person is allowed to receive an amount of Rs. 2 lakh or more in cash in regard to

a. In a single transaction, or

b. In relation to transactions conducted during one day, or

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c. In relation to transactions related to a single event or occasion from a person.

In this regard, the CBDT has clarified vide circular no. 22 of 2017 that each instalment of loan repayment will be considered as "single transaction" and, accordingly, the threshold of INR 2,00,000 is to be considered w.r.t. each instalment of loan repayment and not aggregate receipt of all instalments. Section 269ST of the Act does not apply to banking companies amongst other persons specified in the section. However, such exclusion has not been provided to NBFC's, which having regard to its core activity of financing, impacts the business operations especially while transaction with those un-banked populations such agriculture and micro segment from rural areas. Additionally, NBFCs has to comply with the provision of Section 269SS and 269T of the Income Tax Act. Which will lead to have following implications:-

1. Due to this new threshold limit, NBFCs will not be able to make part disbursements or accept part repayments in cash and cheque. In order to keep their businesses alive, NBFCs have to guide farmers/ rural customers with opening a bank account to allow smooth disbursement of loans.

2. NBFCs had set up procedures and strengthen them to speed up the process of disbursing loans to small marginal borrowers as these small borrowers are often in immediate need of cash to meet their liabilities.

3. NBFCs are required to maintain proper records of transactions, including the mode of payment, to comply with various regulatory and reporting requirements. Section 269ST/269SS/269T adds an additional layer of scrutiny to cash receipts, and NBFCs must ensure accurate and detailed record-keeping to demonstrate compliance with the provisions. Failure to maintain adequate records may lead to Penalty Proceedings during audits and investigations.

Similar to Banks, NBFCs should be excluded from the above provisions which will facilitate business operations to a large extent and provide a level playing fields to NBFC in line with Banks.

C) Deduction for provision of bad and doubtful debts – section 36(1) (viia) of the Act Quantum of deduction

Section 36(1)(viia) of the Income Tax Act provides for deduction in respect of any provision for bad and doubtful debts for Banks and NBFC.

In the section, Indian banks (including certain categories of co-operative banks) are allowed a deduction in respect of provision for bad and doubtful debts of an amount not exceeding 8.5% of the total income (to be computed before certain specified deductions) and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such banks computed in the prescribed manner.

However, the quantum of deduction is restricted to 5% of the total income (to be computed before certain specified

deductions) of a NBFC compared to the deduction available to banks. There is no specific deduction available for Housing Finance Companies (HFCs), which is in the similar lines of business.

Computation of deduction

1. As per section 36(1)(viia) of the Act, deduction is available only in regard to the provision created for "Bad and doubtful debts". As per the RBI guidelines, an asset is classified into the following buckets and provision on the same is created • Standard assets; • Sub-standard assets; • Doubtful assets; and • Loss assets.

2. Based on various judicial precedents, only provision towards Doubtful & Loss Asset can be considered for deduction under section 36(1)(viia) of the Act.

3. However, with the advent of Ind-AS, Loan Provisions are classified & bucketed into Stage 1, Stage 2 and Stage 3 based on days past due and other qualitative criteria and no longer bucketed into standard/ substandard/doubtful or loss categories as prescribed under the RBI norms.

4. Since the term "Bad and doubtful debts" has not been defined under the Act, an ambiguity exists as to provision made for which asset classification would fall under the meaning of bad and doubtful debts.

However, in absence of any specific guidance, litigation for NBFCs cannot be ruled out on this aspect

D) Taxability of Excess Interest Spread (EIS) earned on securitization of loans/ Assignment of loan

1. Under assignment of loan transactions, NBFC (as an assignor) transfer the underlying principle component to the Assignee on with/without recourse basis, for which the Excess Interest spread shall be received by the Assignor on the interest accrual dates. Under the erstwhile Indian GAAP, accounting for such assignment of loan was undertaken as per the extant RBI guidelines whereby the EIS was accounted for as on accrual basis.

   However, Under the Ind-AS, since the loan book has been de-recognized, the EIS is recognized upfront, at the present value of future EIS cash flows.

2. However, in light of various court judgment** and well accepted principles of law, it may be held that the present value of cumulative EIS cannot be said to accrue or arise in the hands of the company in the year in which loans are assigned and thus, should not be taxable upfront in such year. Accrual of EIS takes place as and when the company establishes a right to receive the Interest Income as per the loan agreement and should, accordingly, be taxable over the tenure of loan.

3. In absence of any specific clarification in this regard in the Act or ICDS in regard to Taxability of such EIS income, whether to be

offered to tax on an amortization basis as the actual cash receipt is over the tenure of loan (i.e. only when the interest payment becomes due to be payable by the borrower on time basis), litigation for NBFCs cannot be ruled out on this aspect.

* Supreme Court in the case of State Bank of Travancore v. Commissioner of Income-tax [1986] 24 Taxman 337

E) Applicability of exemption of tax deducted at source (TDS) under section 194A of the Act

1. As per section 194A of the Income Tax Act, TDS at the rate of 10% is required to be deducted on the interest portion of the instalment paid to NBFCs. However, the Act provides a specific exemption from the TDS deductibility on interest portion paid to banking companies and public financial institution.

2. Owing to the above, persons who avail loans/deposits from NBFCs may be required to comply with the withholding tax obligations i.e. filing of quarterly statements of tax deducted at source, issue of certificates evidencing deduction of tax at source etc. if they are covered within the ambit of persons supposed to deduct tax at source under this Section. Given that such administrative compliances involve extensive paper work, increased costs, unnecessary blockage of funds (as excess tax is paid) it results in significant inconvenience to the persons who are at an advantage while availing a loan from Indian Bank branches. Accordingly, it puts the Banks as a more preferred lender as compared to the NBFCs. Further, it create severe cash flow constraints since NBFCs operate on a thin spread/margin on interest which at times is even lesser than the TDS on the gross interest, putting NBFCs at a disadvantage over banks.

3. NBFCs are required to keep adequate records and reconciliation for identifying tax credit in corresponding to its income offered to tax.

4. Further, there are discrepancies in regard to TDS deductibility based on the Borrower's method of accounting in its books i.e. Accrual or Cash Basis. NBFC are required to maintain a detailed reconciliation of the same.

5. Additionally, given the large volume of borrowers which spread across various geographies and sectors including unorganized sectors who would be deducting TDS, it possess an administrative challenge for NBFC to follow up with all the borrowers ensuring deposition of such TDS Credit on timely basis. Further, in case where the Borrowers does not file the TDS Return on time, which leads to non-reflection of TDS Credit on the income-tax portal, leading to rejection of claim for TDS for such amounts in the return filed by the NBFCs and leads to cash loss in the hands of NBFCs.

G) Monies received on mortgage of immovable property – Section 194-IA of the Act

Section 194IA of the Act was introduced vide Finance Act, 2013 with a view to improved reporting of transactions and taxation of capital gains. It was believed that transactions of immovable properties are usually undervalued and under-reported with the transacting parties refrained from reporting their PAN while entering into such transactions.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act 2002) allows bank and other financial institutions including HFC and NBFCs to recover their loans by taking possession/auction of assets which were kept as security by the defaulting borrowers. Under the SARFAESI Act, there is a Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) to register security interest created by banks and financial institutions covered under the SARFAESI Act. Thus, the SARFAESI Act is, in essence, a mechanism wherein the lender company can recover its dues from the defaulting borrower and pass on clear title of the secured property to the new buyer.

As per the Act, TDS @ 1% is to be deducted from the sale consideration (where the consideration is INR 50,00,000 or more) and deposit in the name of the seller. However, for the sale transaction executed under such SARFAESI Act, the credit of the same is passed on the borrower and the lender company receives less consideration which may eventually become irrecoverable resulting into loss. Further, many times, the buyers deduct taxes and report the same in the name of the lender company. Even in these cases, the credit for TDS is not available to the lender company as it is not the transferor of the property and the actual capital gain is assessed in the hands of the defaulting borrower. This results into loss for the lender company. Lender should be allowed to claim such tax credit, even though the income will be taxed in the hands of the borrower. This will result into recovery of loan to the extent of TDS credit.

Tax on receipt of pledged shares under section 56(2)(x) of the Act

Similarly, when Loans were given against securities and the borrowers default in repayment of the loan, NBFCs recover their loans by invocation of pledge of shares prevalent against the concerned loan. Such Invocation of pledge of share would be treated as Sale of Securities by the borrower to the NBFCs. However, during such invocation of pledge, there could be a gap between the book value price of the securities and the loan amount outstanding.

Thereby, the income tax authorities sought to bring to the difference between the book value of the shares (computed as per the prescribed methodology) and the amount of loan outstanding (including interest) in the hands of the NBFCs as Income and levy tax on the same, at the time of invocation of pledge of shares prevalent against the concerned loan.

While the intent of the provisions of section 56(2)(x) of the Act is to curb

the mischief of artificial transfers, a literal interpretation may result in an additional income-tax burden in the hands of NBFCs. Further, such pledges are genuine and invoked only in case of bad loans. Thus, such a provision can lead to undue hardships to the NBFCs.

GST ISSUES FACED BY NBFCs

The Goods and Services Tax (GST) was implemented in 2017. It is hailed as the most important indirect tax reform since independence, the GST Act has been framed with the intention to streamline taxes and introduce a comprehensive and uniform system of taxation for goods and services across India. The implementation of GST has impacted all industries and services and naturally the NBFC sector is not untouched by it. This article will explore some of the key GST related tax issues faced by NBFCs in India and their implications:-

1. **Classification of financial products and GST applicability on it**

   The classification of financial products for Goods and Services Tax (GST) purposes in India can be complex and varies based on the nature of the product or service. Here are some common classifications of financial products under GST:

   - Interest-bearing products: Financial products such as Loans and Over-Draft Facility are generally considered as interest-bearing products. This financial service does not attract GST, as the interest charged on such product is exempted from the GST. Further CBDT vide its FAQ has clarified that the penal interest for delayed payment of EMI and Bill Discounting is not subject to GST. However, if any fees or charges like processing fees etc., swap Charges , foreclosure charges are associated with such products, GST may be applicable on those charges.
   - Non-interest-bearing products: NBFC being wide-spread leveraged their branches and cross -sell certain financial products and earns referral fees, marketing income, which attracts GST as there is explicit consideration for the supply of services.
   - Leasing and hire purchase: Leasing and hire purchase transactions are treated as the supply of goods under GST. The applicable tax rate depends on the classification of the goods being leased or hired, as per the GST rate schedule. The GST liability arises on the periodic lease/hire charges.

   Wrong Classification of Financial Services could lead to Non-payment of GST and litigation.

2. **Multiple GST registrations**

   Prior to GST, NBFCs were required to file two centralized Service Tax return in a year but with the implementation of GST, it became mandatory for NBFCs to obtain separate GST registration in India for each state in which it will operate. Further, NBFCs by its nature of business has multi-state presence and multiple location within each state. This possess administrative challenge for NBFCs to determine the jurisdictional officer for each location and also it creates a burden on the NBFCs to ensure that their registration

details are updated in GST Portal at any point of time. As NBFCs operates on a large scale, processes hundreds of loan applications every day and this can be a daunting task for them.

Due to multiple registration, Assessment and Adjudication would happen on each state and that poses great difficulty due to the jurisdiction of more than one GST Authority over the NBFC, if it is involved in multi-state operations, and thus, varied authorities may hold different opinions in the matter, leading to confusion.

3. **Place of supply rules**

GST laws determine the place of supply for various services based on specific criteria. For every transaction, the place of supply has to be determined, it become specifically difficult for NBFCs as each branch conduct so many activities, both within and outside state, like leasing, hire purchase, marketing can be challenging, particularly when the services are provided across multiple branches and managed and controlled from Central Office.

4. **GST on Factoring Charges**

NBFCs are into the space of Factoring Business. Factoring is a kind of Financial Service in which a business organization sells its Account Receivables to another person, called a Factor, at a discount in order to raise money. Once the receivables are sold, the factoring company carried out all the activities that the seller should have done.

As Receivables which are being sold are actionable claims, so the question arises whether GST is applicable on sale of such actionable claims? Factoring Charges are normally computed on periodic basis towards providing advance finance to the seller. These charges are similar in nature of interest levied by bank on cash credit facilities. The factoring company remits advance against receivables to the extent of 75% to 80% to seller and rest of payment is made after realization from customer. This act of factoring company will be treated as supplies of services because of activities in relation to use of money. Applicability of GST on such financials services depends on whether the consideration for the service of Loan Advancement and Servicing & Collection charges is separately defined in the contract. In cases, where such factoring arrangement may not contain separate charges for collection and servicing of receivables but adjusted with the discounting rate and therefore, the discounting rate has two components attached to it, first, compensation towards the credit risk and next towards the servicing and collection, while the former one is exempted from GST and the latter one is subject to GST, therefore, making the transaction a mixed supply. In a mixed supply, GST is charged on the transaction at rate at which the supply carrying the highest rate is charged. Therefore, in the present case, the discount charged by the factoring company shall be chargeable to GST at the rate which is applicable to the supply of collection services. This aspect needs utmost consideration to avoid the litigation.

5. **GST on Re-possessed Goods**

In the business of lending, hypothecation of goods and security of assets play vital role in the event of

default in repayment of the loan by the borrower. In such cases, the goods/assets would be repossessed or attached as a part of recovery of the outstanding loan amount. To recover its loss, the NBFCs sell off the repossessed goods by way of sale or auction.

1. Whether the same of such asset would be treated as supply of the NBFCs, as NBFCs only act as an agent to sell the goods? Under the regime of VAT, there was no specific provision, however, under GST a specific provision wherein the NBFCs if sale/auction the re-possessed goods to recover its dues are required to discharge the GST Liability, if any of sale of such goods.

2. Further, mostly NBFCs, do not account such auction of re-possessed goods in its books as Sale Value of the product (unless the said repossessed assets has been transferred to its own Books), as the consideration received from such auction is mostly debited to the Defaulting Borrower's Account. This does not provide certainty, as there is no mechanisms to cross-verify the transaction , therefore , could lead to litigation in future.

3. Further, in case of sale of repossessed goods, the value of supply would be determined based on the defaulting borrower's registration status. In case the defaulter is an unregistered person, then the purchase price would be based on the proviso given under Rule 32(5) and in case where the defaulter is registered & he has availed the Input, the purchase value can be adopted based on the rationale of effective cost to the lender, which can always be disputed & litigated. Further, the rate of GST to be adopted for sale of repossessed goods (other than motor vehicles) would depend on the rate as applicable to said financial service, this could further lead to dispute as regard the classification of the goods/services.

4. This has casted another administrative burden on NBFCs to determine the value on which GST would be applicable on sale of such repossessed goods and comply with the relevant GST provisions, including issuance of tax invoice, filing of GST returns, and payment of GST liability.

NBFCs face several tax-related challenges that impact their operations and profitability. The issues discussed above, includes deductibility of bad debts, treatment of interest income, transfer pricing, and GST, require careful consideration by NBFCs and tax professionals. It is crucial for NBFCs to stay abreast of the evolving tax regulations, engage in proactive tax planning, and maintain proper documentation to navigate these tax issues effectively. Additionally, collaboration between industry stakeholders and the government can help address these challenges and create a conducive tax environment for the NBFC sector in India.

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CA Gautam Shah CA Devang Doshi

Specific Accounting implications (special provision under IND AS) and Auditing issues for NBFCs

Specific Accounting implications (special provision under IND AS) and Auditing issues for NBFCs

NBFC is a company registered under the Companies Act and is engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by the Government or other securities of like marketable nature, leasing, hire-purchase, insurance business, chit business.

NBFC sector in India has undergone a significant transformation over the past few years. It has come to be recognised as one of the systemically important components of the financial system. They play an important role in nation building and financial inclusion by complementing the banking sector in reaching out credit to the unbanked segments of society, particularly to the micro, small and medium enterprises, which form the cradle of entrepreneurship. NBFCs play a critical role in the core development of infrastructure, transport, employment generation, wealth creation opportunities, and financial support for economically weaker sections.

1. INDAS application on NBFC

1.1. NBFC have adopted Indian Accounting Standard (Ind AS) from 1 April 2018. Ind AS has brought about a significant change in the financial statements of NBFC and finance companies.

1.2. The Companies (Indian Accounting Standards) Rules, 2015 laid down a roadmap for implementation of Ind AS and Non-Banking Financial Companies (NBFCs) came in the third and last phase of implementation.

Phase	*Financial/Accounting Year commencing*	*Category of Companies required to implement Ind AS*
Phase III	01.04.2018	NBFCs having net worth of Rs. 500 crore or more.
		Holding, subsidiary, joint venture or associate NBFCs of NBFCs covered above.
	01.04.2019	NBFCs whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than Rs.500 Crore.

Phase	*Financial/Accounting Year commencing*	*Category of Companies required to implement Ind AS*
		Unlisted NBFCs having net worth of Rs. 250 crore or more but less than Rs. 500 crore; and
		Holding, subsidiary, joint venture or associate NBFCs of NBFCs covered above.

2. RBI and Ind AS

2.1. The Reserve Bank of India (RBI), on March 13, 2020, issued a notification RBI/2019-20/170 DOR (NBFC). CC.PD.No.109/22.10.106/2019-20 "Implementation of Indian Accounting Standards" providing guidance on implementation of Ind AS by NBFC. The RBI has framed regulatory guidance on Ind AS in order to promote a high quality and consistent implementation as well as facilitate comparison and better supervision.

2.2. In FY 2021-22, in order to ensure uniformity in the implementation of IRACP norms across all lending institutions, certain aspects of the extant regulatory guidelines were clarified and/or harmonised vide RBI circular dated November 12, 2021. The circular elucidated the following:

- Specification of due date/repayment date;
- Operational aspect of classification of an account as special mention account (SMA) and NPA;
- Definition of 'out of order';
- Aligning 90 days delinquency norm for NPA classification in case of interest payments;
- Upgradation of accounts classified as NPAs; and
- Income recognition policy for loans with moratorium on payment of interest.

Subsequently, vide circular dated February 15, 2022, NBFCs were allowed time up to September 30, 2022 to put in place the necessary systems to implement the provision relating to upgrade of NPA accounts. Also, clarifications on certain queries received from various stakeholders regarding applicability of 'out of order' definition to overdraft (OD) accounts given for non-business purposes, upgradation of NPAs in case of borrowers having multiple credit facilities from a lending institution, impact of November 12, 2021 circular on reporting of credit information to Central Repository of Information on Large Credits (CRILC) and on the implementation of Ind AS by NBFCs, have also been provided therein- (*RBI Annual report for FY 2021-22*)

2.3. RBI, in its annual report for FY 2022-23 (published in May 2023), has stated that during the year, various analytical studies were conducted by the Department to study the compliance by NBFCs to the Reserve Bank's guidelines. Furthermore, an analysis was done to compare the Expected Credit Loss (ECL) required under Ind-AS with provisions under Income Recognition, Asset Classification and Provisioning

pertaining to advances (IRACP). Also, a Working Group comprising of officials from the Reserve Bank, select large NBFCs and audit firms reviewed and designed new returns' formats as per the supervisory framework for NBFCs in alignment with Ind-AS. These returns will be taken up for implementation. Further, it has set review of the supervisory framework and the returns formats for NBFCs under Ind-AS based on the regulatory guidance in the matter, as a goal for supervision of NBFC in FY 2022-23.

3. Areas of Ind AS Impact

3.1. Based on the audit analysis undertaken by Comptroller and Auditor General of India (CAG) on implementation of Ind AS of selected NBFC and subsequent audit report published in year 2021, it concluded that the impact due to adoption of Ind AS was noticed across the financial statements of all the selected NBFCs. Major changes carried out pertained to fair valuation of financial instruments, accounting of deferred tax, application of Expected Credit Loss method and accounting of employee benefits through valuation of liabilities towards postemployment benefits. Adoption of Ind AS also impacted key operating and financial ratios which provide insight into a company's liquidity, operational efficiency and profitability. {*Report No. 12 of 2021-Union Government (Commercial) General Purpose Financial Reports of Central Public Sector Enterprises (Compliance Audit)*}

3.2. Some of the key accounting implications of Ind AS on NBFC are as follows:

- 'Expected Credit Loss' model (ECL);
- Application of 'Effective Interest Rate' (EIR);
- Fair valuation of financial instruments;
- Securitization;
- Consolidation, etc.

4. Expected Credit Loss model

4.1. Non-performing assets are provisioned based on the Reserve Bank of India's (RBI's) directives - a rule-based system - driven by the number of days for which the assets are overdue. In contrast, Ind AS perceives a look-ahead system, determining expected losses through statistical analysis and management judgement about the quantum and timing of future cash flows. Additionally, the expected credit loss (ECL) model substantially impacts Balance Sheet, Profit and quality. In terms of human and IT efforts, the process is resource intensive.

4.2. Erstwhile, the provisioning norms were governed by RBI master circular – Non-Banking Financial Company (NBFC) – Systemically important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016. HFC's followed the prudential guidelines under the Housing Finance Companies (NHB) Directions, 2010 for recognizing loan provisions.

4.3. On implementation of Ind AS, NBFCs transitioned from 'Incurred Loss' model to an 'Expected Credit Loss' model which measures the provision using any of the three approaches i.e. General approach, Simplified approach and Purchase or Originated Credit Impaired approach.

4.4. Under General approach, advances are classified under Stage 1, 2 and 3 on evaluation of the following criteria:

- Stage 1: Advances with low credit risk and where there is no significant increase in credit risk.
- Stage 2: Advances with significant increase in credit risk.
- Stage 3: Credit impaired advances.

4.5. NBFC applies ECL model for recognising impairment loss on financial asset/ loans. The ECL allowance is based on the credit losses expected to arise from all possible default events over the expected life of the financial asset/ loans ('lifetime ECL'), unless there has been no significant increase in credit risk since origination, in which case, the allowance is based on the 12-month ECL. The 12-month ECL is a portion of the lifetime ECL which results from default events that are possible within 12 months after the reporting date.

4.6. The ECL is a product of exposure at default ('EAD'), probability of default ('PD') and loss given default ('LGD'). The PD is an estimate of the likelihood of default over a given time horizon. PD estimation process is done based on historical data available with the NBFC. While arriving at the PD, the NBFC shall also ensures that the factors that affect the macro-economic trends are considered to a reasonable extent, wherever necessary. NBFC calculates the 12 month PD by taking into account the past historical trends of the portfolio and its credit performance. In case of assets where there is a significant increase in credit risk, lifetime PD has been applied which is computed based on survival analysis. For credit impaired/ Stage 3 assets, a PD of 100% has been applied.

4.7. The LGD is an estimate of the loss arising in the case where a default occurs at a given time. It is based on the difference between the contractual cash flows due and those that the NBFC would expect to receive, including from the realisation of any collateral. LGD is an estimate of the loss arising in case where a default occurs. It is based on the difference between the contractual cash flows due and those that the NBFC would expect to receive, including from the realization of any security.

4.8. Generally, the financial assets are segmented into three stages based on the risk profiles. The three stages reflect the general pattern of credit deterioration of a financial asset. NBFC categorises financial assets at the reporting date into stages based on the days past due ('DPD') status as under:

Staging	***Days Past due***	***Characteristics***
Stage 1	0 to 30 days	Exposures where there has not been a significant increase in credit risk since initial recognition or that has low credit risk at the reporting date and that are not credit impaired upon origination are classified under this stage
Stage 2	31 to 90 days past due	Exposures where there has been a significant increase in credit risk since initial recognition but is not credit impaired.

Staging	*Days Past due*	*Characteristics*
		Lot of qualitative as well as quantitative factors such as change in ratings, change in the risk of a default, change in payment pattern, and operating results of the borrower that needs to be considered by NBFCs for assessing whether there is a significant increase in credit risk. For such assessment of significant increase in credit risk, if information at borrower level can be made available without undue cost or effort then the assessment is done at an individual level.
Stage 3/ Credit impaired	more than 90 days past due	Exposures assessed as credit impaired when one or more events that have a detrimental impact on the estimated future cash flows of that asset have occurred. Following factors may be additionally considered for stage 3 (illustrative): √ The Borrower requesting emergency funding. √ Material decrease in the underlying collateral value where the recovery of the loan is expected from the sale of the collateral. √ Covenant breach not waived by the Company. √ Filing for bankruptcy application/protection. √ Existing or suspected fraud by borrowers. Generally, if one facility of a borrower is treated as Stage 3, then all the facilities of that borrower (including co-borrower) may be treated as Stage 3 assets. For exposures that have become credit impaired, a lifetime ECL is recognised and interest revenue is calculated by applying the effective interest rate to the Net carrying amount (i.e. net of provision).

4.9. **Prudential Floor for ECL**

- NBFCs should simultaneously maintain asset classification and compute provisions as per extant prudential norms on Income Recognition, Asset Classification and Provisioning (IRACP) issued by RBI, including borrower/beneficiary wise classification, provisioning for standard and restructured assets and NPA ageing.
- Where impairment allowance under Ind AS 109 is lower than the provisions required as per IRACP, the difference should be

appropriated from net profit or loss after tax to a separate 'impairment reserve'. It shall not be considered as Regulatory capital.

- The requirement for 'impairment reserve' shall be reviewed. A comparison, as per the prescribed format between provisions required under IRACP and impairment allowances made under Ind AS 109 should be disclosed by NBFCs in the notes to their financial statements.

4.10. As per Reserve Bank of India Master Circular on Prudential norms on IRACP dated November 12, 2021, borrower accounts shall be flagged as overdue as part of the day-end processes for the due date, irrespective of the time of running such processes. Similarly, classification of borrower accounts as Stage 3 assets shall be carried out as part of day-end process for the relevant date i.e. more than 90 days overdue and Stage 3 assets classification date shall be the calendar date for which the day end process is run. In other words, the date of Stage 3 assets shall reflect the asset classification status of an account at the day-end of that calendar date.

4.11. **Key concerns**

Particulars	***Concerns***
Evaluation of Portfolio and framework of ECL	Significant judgement is required to be applied for the pooling of the loan portfolio taking into consideration internal and external characteristics such as sector, product category, geography etc. Further, design of ECL computation framework including Ind AS 109 conforming risk parameters involves considerable efforts.
Assessment of significant increase in credit risk	Availability of external data, such as ratings, CCF factors for off balance sheet items, etc. is also a challenge in some cases specifically for individual borrowers.
Management judgements in estimation of cash flows, write off policy etc.	Management judgement is required for estimation of expected cash flow vs. contractual cash flow. Also, write off of financial assets policy requires significant judgement on reasonable expectations of recovery from those assets.
Forward looking Macro-economic factors for computation of ECL	GDP, unemployment rate, inflation and interest rates are the most common macro-economic factors that are considered while evaluating the impact on ECL computation. While NBFC's have analyzed various macro-economic factors that could have an impact on the ECL, it may not be necessary that all the macro-economic factors would have a direct co-relation with the ECL.
Computation of LGD	Acquiring relevant data for valuing the collateral to compute LGD
New NBFC	Absence of historical data for computation of PD and LGD in case of new NBFC

Particulars	*Concerns*
Interest on Stage 3 assets	Interest has to be recognised on the Net carrying amount of Stage 3 assets as per Ind AS 109. Revenue to that extent is on higher side.
Upgradation of accounts classified as Stage 3/Non-performing assets (NPA) as per 12 Nov 2021 notification	NBFC shall upgrade loan accounts classified as Stage 3/NPA to 'standard' asset category only if the entire dues i.e. Principle and interest are paid by the borrower.
Credit risk for restructured pool	NBFC to ensure adequate ECL is maintained on the restructured pool to address the higher credit risk
Rebuttable presumption	The Audit committee should approve the classification of accounts that are beyond 90 days past due but not treated as impaired, with the rationale for the same to be clearly documented. In circumstances where NBFCs do rebut the 30 Days past due presumption, it should be done only with clear documentation of the justification for doing so and to be placed before the audit committee.

5. Effective Interest Rate Method

5.1. Under Ind AS, direct loan origination fees (net of direct loan origination costs) is to be amortized over the life of the loan using the "Effective Interest Rate" method.

5.2. When calculating the effective interest rate, an entity should estimate the expected cash flow by considering all the contractual terms of the financial instrument. Fees that are an integral part of the effective interest rate of a financial instrument are treated as an adjustment to the EIR.

5.3. **Key concerns**

Particulars	*Concerns*
Directly attributable costs	Judgements are involved in the assessment of costs, external and internal, that can be considered directly attributable for computing the EIR.
Data challenge	Extracting/capturing data of processing fees for the existing arrangements at loan/borrower level and giving suitable impact in books of account is a challenge faced by NBFC due to its enormity.
Reporting of Net interest Margin	Change in the reporting of Net interest margin due to amortisation of interests over the life of the financial instruments.

6. Fair Value Measurement

Ind AS 109 has prescribed three classification models for financial assets:

6.1. ***Amortised cost***: The asset is measured at the amount recognized at initial recognition minus principal repayments, plus or minus the cumulative amortization of any difference between that initial amount and the maturity amount, and any loss allowance. Interest income is calculated using the EIR method and is recognized in P&L.

6.2. ***FVTPL***: The asset is measured at fair value. Changes in fair value are recognized in P&L as and when they arise.

6.3. ***FVOCI***: Changes in fair value are recognized initially in Other Comprehensive Income (OCI). When the asset is derecognized or reclassified, changes in fair value previously recognized in OCI and accumulated in equity are reclassified to P&L on a basis that always results in an asset measured at FVOCI having the same effect on profit and loss as if it were measured at Amortised Cost. However, in case of equity instruments irrevocably designated at FVOCI, dividends are recognized in profit and loss. Changes in fair value are recognized in OCI and are never recycled to profit and loss, even if the asset is sold or impaired.

6.4. The scope of impairment requirements of Ind AS covers debt instruments measured at Amortised cost or FVOCI, a lease receivable, contract asset, a loan commitment or financial guarantee contracts. NBFCs provide for expected credit losses on such exposures on the basis of the credit assessment of the underlying borrower.

6.5. **Key concerns**

Particulars	***Concerns***
Unquoted instruments	Fair value of unquoted securities requires significant judgements and estimates
New process	Disclosure requirements as per Ind AS 109 requires need to collect necessary data
Fair Value	Fair valuation might lead to volatility in P&L

7. Securitisation

7.1. Securitisation is the conversion of an asset, especially a loan, into marketable securities, typically for the purpose of raising cash by selling them to other lenders. Generally, banks give loans to NBFCs. Since banks do not have a direct reach to rural customers or customers beyond large cities, they buy such securitized loans from NBFCs.

7.2. An NBFC regularly borrows money from a bank. As per RBI rules, the bank has to meet its priority sector lending targets. Therefore, the bank will ask the NBFC to securitise a part of its eligible portfolio and acquire the same. The bank will now hold the securitised assets in its balance sheet and bear the credit risk on it.

7.3. It provides liquidity to the NBFC by freeing up resources locked up in assets and also offers a lucrative price for such assets.

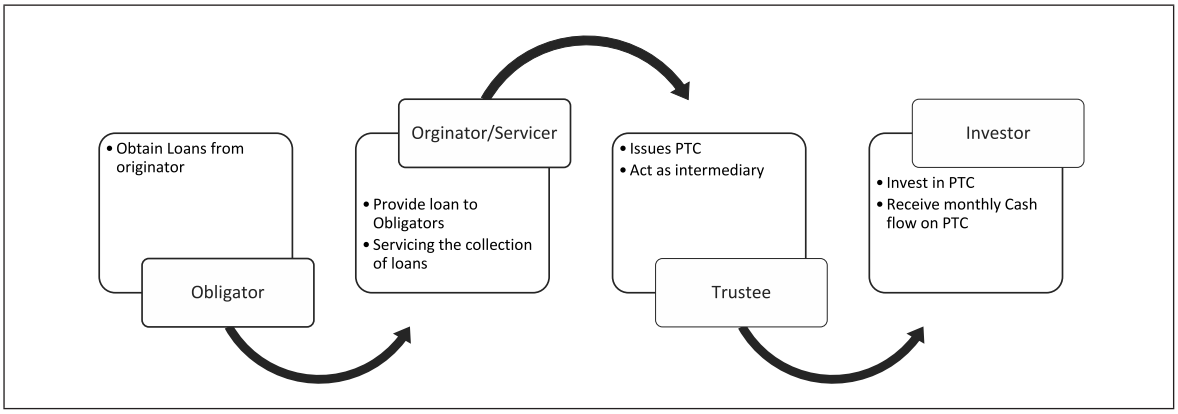
7.4. Banks mostly find it difficult to reach deeper geographies to serve the priority sectors. Manpower and expertise in acquiring and managing such business is also often lacking. NBFCs typically are well versed with local realities in the regions they operate and have a deeper reach within them. Hence, it makes a lot of sense for a bank to acquire loans from an NBFC to meet its priority sector lending targets. (*Source: CNBCTV 18: RBI revises securitisation norms: Meaning, implementation and implications dated 17 Dec 2022*)

7.5. Securitisation volume jumped 42% on-year and past the Rs 1.15 lakh crore mark in the first nine months of this fiscal as market activity in the quarter ended December 2022 continued the momentum witnessed in the April to September period. The number of originators crossed 120 compared with about 100 in the preceding fiscal year. Among new originators in the securitised market were small finance banks that have increased their securitised issuances in recent quarters and added this mechanism as one of their routes to access incremental liquidity. Growth in the non-mortgage space was led by commercial vehicle (31%) and microfinance (14%) loans. Unsecured loans, including personal and business loans, also continued to draw investor attention, comprising 7% of the securitised assets compared with 3% in fiscal 2022. The share of property-backed loans, though, declined to ~38% from ~43%. Direct assignment (DA) transactions accounted for 60% of the nine-month transaction quantum, with this route being utilised for sell-down of most mortgage and gold loan pools. Correspondingly, the share of pass-through certificates (PTCs) was at 40%, down marginally from 41% a year ago. (*Source: Securitisation growth exceeds 40% in nine months this fiscal -dated 16 Jan 2023 by CRISIL Ratings Ltd.*)

7.6. Securitization, as the name suggests, involves the transformation of loans, which are a kind of illiquid assets, into liquid assets. The underlying assets are secured loans such as home loans, automobile loans and unsecured loans like personal loans, etc. In securitisation the investments are made through Pass Through Certificate (PTC) issued by Trustee.

7.7. As per Ind AS 109, a financial asset is derecognized when and only when either the contractual rights to the asset's cash flows expire, or the asset is transferred, and the transfer qualifies for derecognition. This decision of whether a transferred asset qualifies for derecognition is undertaken by applying a combination of risk and rewards and controls tests. The transfer must happen in substance which is evaluated by using a risk and rewards and a control model. As a result, the NBFCs would need to recognize securitized assets in their books and record them as collateralized borrowings. On assignment transactions, the excess interest spread retained by the NBFCs would be recorded as upfront gain.

7.8. **Structure of securitization**



Parties	***Characteristics***
Seller (Originator)	Seller is the person who provide loans to Obligors and have loans receivable in their financials
Trustee	Trustee function as intermediary between seller and Investor. Trustee is responsible for reviewing the information and ensure adequate cash flows generated from the underlaying assets. Trustees create a trust (SPV) for each securitisation agreement. Trustee issues passthrough certificates.
Servicer	Trustee appoints Servicer to collect receivables including prepayments and deposit to collection and pay out account. Seller appointed as servicer in practical cases as they hold all information and collection procedures for the loans.
Investors	Investors are the Pass-Through Certificate Holders Issued by the Trustee
Obligors	Obligors are the original borrowers of loan from seller
Margin Money	The fixed deposit in banks held by obligators as credit enhancement. It is held as first loss facility" and "second loss facility" means the first level and second level of financial support provided by the originator or a third party to improve the creditworthiness of the securitisation notes issued respectively.

7.9. As per Ind AS 109, Financial Asset (Loans provided by originator to Obligators) is derecognized if the securitization transactions fulfil 'true sale' criteria. Further, para 3.2.6 of Ind AS 109 asks questions to determine derecognition of financial assets that whether the originator have retained control over the assets or has transferred substantial risks and rewards of ownership of the financial asset. Generally, in securitization transactions the risk and rewards are not transferred as the originator is still holding the risk of non-payment from obligators and retain control over the assets. Therefore predominantly, securitisation is accounted as financial liability as per Ind AS 32 para 11, in the books of NBFC as it creates a contractual obligation to pay cash to another entity.

7.10. **Key concerns**

Particulars	*Concerns*
'True Sale' and Derecognition criteria	Securitization transaction for loans which met the true sale criteria as per RBI guidelines did not meet the derecognition criteria as per Ind AS since risks and rewards relating to such loans were not transferred. Hence, in most cases, NBFCs were required to reinstate such loans in the books and recognize a corresponding liability for the amounts received from the investors. Significant judgement is involved in assessing whether the derecognition criteria have been met or not.
Grossing of Assets and Liabilities	If the derecognition criteria is not met, it results in creation of Financial asset as well as Financial Liability in the books of NBFC

7.11. **Consolidation**

Ind AS 110 determines a control model for all entities including SPV, structured entities and variable interest entities. Significant judgment is required to determine which entities are controlled and therefore are required to be consolidated. Proportionate consolidation can be used only in limited cases. Joint ventures have to be consolidated using the equity method.

Securitization transactions through a trust/special purpose vehicle (SPV) are common in case of NBFCs. The loans/receivables are transferred to a trust generally sponsored by the NBFC. Significant judgement was required to be exercised to assess whether the NBFC controls such trust/SPV considering the design and purpose of the SPV, investment in securities issued by the trust, activities of the SPV which significantly affects the returns, credit enhancements and hence is required to consolidate the trust.

8. Audit of critical areas- Suggested measures

Audit areas	*Audit points*	*Remarks*
Expected Credit loss Model	Model Development	Assess the development process of the ECL model, including model design, implementation, and validation. Review the model development procedures, change management controls, and version control processes.
	ECL policy	Evaluate the ECL policy adopted by NBFC. Assess whether the policy covers grouping of portfolios, staging of loans as per Ind AS 109, mechanics of ECL i.e. PD, LGD etc., Forward looking information, significant accounting judgements, estimates and assumptions, governance framework for ECL etc.

Audit areas	*Audit points*	*Remarks*
	Model Documentation	Review the documentation of the ECL model, including model purpose, scope, methodology, and assumptions. Assess whether it is adequately documented and accessible to key stakeholders.
	Data Integrity	Evaluate the quality and integrity of the data used in the ECL model. Assess the data sources, data governance processes, data validation and data reconciliation procedures to ensure accuracy and reliability.
	Scenario Analysis	Review the incorporation of scenario analysis in the ECL model. Assess whether a range of relevant scenarios has been considered, including economic, industry-specific, and borrower-specific factors. Verify the sensitivity analysis performed on the model outputs.
	Model Output and Reports	Verify the accuracy and completeness of the ECL model outputs and reports. Assess whether the reports provide relevant information to stakeholders, including the management, board of directors, auditors, and regulatory authorities.
	Compliance with Standards	Ensure that the ECL model complies with relevant accounting standards i.e. Ind AS 109 and regulatory requirements. Review the documentation and calculations to confirm adherence to these standards.
	Disclosures	Ensure that the financial statements of NBFC cover disclosures on ECL as stated in Ind AS as well as those prescribed by RBI
Application of Effective Interest Rate	Obtain Documentation	Obtain documentation related to processing fees, including agreements, fee schedules, and accounting policies. Review to understand fee nature and recognition conditions.
	Identify Financial Instruments	Identify financial instruments or transactions for which processing fees are charged and incurred, such as loans, advances, leases, etc.
	Evaluate Fee Amortization Method	Assess the method used by the NBFC to amortize processing fees over the instrument's term. Confirm consistency with Ind AS and the NBFC's accounting policies.
	Test Controls and Review Documentation	Perform tests of controls to ensure accurate recording and disclosure of processing fees. Review supporting documentation, entries, reconciliations, and reports.

Audit areas	*Audit points*	*Remarks*
	Disclosures	Assess the adequacy and accuracy of disclosures related to processing fees in the NBFC's financial statements. Verify compliance with Ind AS requirements and provision of sufficient information.
Fair value measurement of financial instrument	Identify Financial Instruments	Identify the financial instruments subject to fair value measurement, such as investments, derivatives, or other financial assets and liabilities.
	Review Valuation Methodology	Evaluate the valuation methodology for fair value measurement. Review the methods and techniques used, such as market approach, income approach, or cost approach. Assess if they are appropriate and consistent with the applicable standards.
	Assess Valuation Inputs	Evaluate the inputs used in the valuation process, such as market prices, interest rate or other observable or unobservable inputs. Assess their relevance, reliability, and consistency with the applicable standards.
	Valuation Techniques	Verify that the valuation techniques employed are appropriate and applied correctly. Review assumptions, models, and calculations used in the valuation process.
	Evaluate Valuation Models	Assess the reliability and accuracy of the valuation models used. Verify if they are suitable for the specific financial instruments being measured and if they are implemented appropriately.
	Disclosures	Evaluate if the NBFC's financial statements provide appropriate disclosures related to fair value measurements. Ensure compliance with the applicable standards, including disclosure of significant assumptions, valuation techniques, and sensitivity analysis.
Securitisation	Obtain Documentation	Obtain documentation related to securitization transactions, including securitization agreements, transaction structures, etc. Review to understand the nature of the transactions and the NBFC's accounting practices.
	Assess Transaction Structure	Evaluate the structure of the securitization transactions, including the identification of assets, transfer of risks and rewards, and the involvement of special purpose vehicles (SPVs). Ensure compliance with the relevant accounting standards and circulars issued by RBI on Minimum Holding period and Minimum Retention Ratio requirements.

Audit areas	*Audit points*	*Remarks*
	Evaluate Derecognition Criteria	Assess whether the NBFC has met the derecognition criteria for the transferred financial assets in accordance with Ind AS 109. Verify that control and substantially all risks and rewards have been transferred, and the NBFC does not retain effective control over the transferred assets.
	Assess Derecognition Accounting	Evaluate the NBFC's accounting treatment for derecognized financial assets, including the recognition of gains or losses on derecognition and any resulting impact on the NBFC's Profit & loss and Balance Sheet. Ensure compliance with Ind AS 109 requirements.
	Review SPV Accounting	Assess the accounting treatment applied to the SPVs involved in securitization transactions. Review the consolidation or equity method of accounting, depending on the control or significant influence over the SPVs.
	Test Controls and Review Documentation	Perform tests of controls to ensure the existence of adequate controls over securitization transactions, including documentation of transaction terms, transfer of assets, valuation procedures, and accounting entries. Review supporting documentation, including board minutes, legal agreements, and internal controls related to securitization.
	Disclosure Requirements	Evaluate if the NBFC's financial statements provide sufficient and appropriate disclosures related to securitization transactions. Ensure compliance with the applicable standards, including disclosure of significant accounting policies, risks, and impacts on the NBFC's financial position and performance.

9. To Conclude

9.1. NBFCs faced significant implementation challenges for transition to Ind AS specifically in relation to data availability and systems and processes.

9.2. Major challenges during implementing Ind AS are summarised below

- Significant amount of time is devolved at the time of transition. The CFO's/Finance controllers have to work together with the operations team, IT team and even the external stakeholders like Banks to avail information necessary for implementing/preparing Ind AS compliant Financial statements;
- System upgradation is of priority due to complexity involved in making management judgements and estimates considering the volume of transactions;

- Upskilling of Finance team to understand implication of Ind AS at the time of implementation and also subsequent periods.

In conclusion, the implementation of special provisions within Ind AS requires NBFCs to carefully consider the impact on their financial statements and disclosure requirements.

Auditing NBFCs, under Ind AS, involves thorough scrutiny of the ECL model, ensuring the adequacy of documentation, validation procedures, and compliance with accounting standards. Auditors need to assess the application of the effective interest rate on processing fees, reviewing policies, calculations, and controls. Fair value measurement of financial instruments requires evaluating valuation methodologies, inputs, and compliance with disclosure requirements. Securitization transactions demand a comprehensive assessment of transaction structures, derecognition criteria, SPV accounting, and compliance with applicable accounting standards.

To successfully address these accounting implications and auditing issues, auditors must have a deep understanding of Ind AS and relevant regulatory requirements. They should conduct a comprehensive review of documentation, perform tests of controls, and ensure the accuracy and completeness of disclosures. Clear communication with management is crucial to address any uncertainties or complex accounting treatments. By addressing these specific accounting implications and auditing issues, NBFCs can enhance their financial reporting transparency and provide stakeholders with reliable and informative financial information.

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"Although a man has not studied a single system of philosophy, although he does not believe in any God, and never has believed, although he has not prayed even once in his whole life, if the simple power of good actions has brought him to that state where he is ready to give up his life and all else for others, he has arrived at the same point to which the religious man will come through his prayers and the philosopher through his knowledge; and so you may find that the philosopher, the worker, and the devotee, all meet at one point, that one point being self-abnegation."

— *Swami Vivekananda*

"Earth provides enough to satisfy every man's needs, but not every man's greed."

— *Mahatma Gandhi*


CA Apeksha Kukreja CA Deepali Talreja

Valuation of NBFCs

Background

Non-banking financial companies ('NBFCs') are increasingly becoming important in the Indian financial ecosystem by providing credit to individuals and small and medium businesses which are underserved by banks, especially in rural and semi-urban areas. NBFCs are engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature.

By providing credit to companies or its customers in consumer goods, transportation, housing and infrastructure NBFCs have been pivotal in expanding the financial inclusion and growth of these sectors. NBFCs supported by Fintech have been successful in reaching out to the unbanked corners of the country, making credit available to people who do not have access to banks, thus boosting their progress.

NBFCs have demonstrated resilience over the last decade which includes adapting efficiently during the COVID-19 pandemic. The asset under management of NBFCs has grown from ~INR 3.6 lakh crores in March 2008 to ~INR 27 lakh crores in March 2022. It is expected that by March 2024, the AUM of NBFCs shall increase to ~INR 35 lakh crores[1].

As of 31 March 2022, India had ~9,500 NBFCs registered with the Reserve Bank of India[2]. Some categories of NBFCs are listed below:

- asset finance companies;
- mortgage guarantee companies;
- infrastructure finance companies;
- housing finance companies;
- microfinance companies;
- investment companies, etc.

Critical factors in valuation of NBFCs

As NBFCs become increasingly critical to the India growth story, they present interesting investment opportunities for both private

1. https://www.ibef.org/research/case-study/nbfcs-building-the-future-of-india
2. https://www.statista.com/statistics/1243950/number-of-nbfcs-india/

equity players and public investors.

Valuation of NBFCs is not straight forward and is challenging in the steadiest of times, more so amidst global uncertainty and turbulent macroeconomic times.

As per PwC-ASSOCHAM India's 2017 publication, "*Fuelling NBFCs through private capital*", investors may be keen to invest in NBFCs which have achieved a ***certain scale and demonstrate growth in loan book, together with managing the quality of the lending portfolio. Hence, the loan book size and non-performing assets proportion*** ('NPAs') play a crucial role in the valuation of the NBFC[3].

- ***Loan Book size*** - The loan book size and market presence of a NBFC has a direct bearing on its competitive position. Not only should the NBFC reach a sizeable scale, it's growth of loan book should outpace the growing credit demand in the market.

  The asset under management ('AUM')/ loan book size of Top 29 NBFCs in India have grown at an average annual growth ~16% over the past decade 2013-23, hitting the highest credit growth over last 5 years at ~17.3% in FY23[4]. It is expected that the NBFC loan book (AUM of NBFCs) shall grow by 13-14% in FY24[5].

  In the highly competitive environment of today, smaller NBFCs adopt niche strategies and unique business models against the scale advantages of larger players/banks to drive growth in their book size. Growth momentum in loan portfolio and % of market share in their respective segment are most critical aspects to be considered in the valuation of NBFCs.

- ***NPAs % of loan book*** – The NBFC should be able to maintain the growth momentum along with low levels of NPA. The NPA as a percentage of loan book demonstrates the ability of the company to maintain the quality of its book and robustness of its risk management policies.

  The NBFCs in India witnessed gross NPAs in the range of 2.4% - 2.9% over FY19-FY23[6], with majority players reporting improved asset quality. Improving asset quality (either by adopting robust risk management policies or imbibing advanced new age technologies for loan profiling, default prediction, etc.), provides boost to investor's confidence in the NBFC management's ability to drive future growth and scale up profitability.

  Other financial and non-financial parameters considered by investors in the valuation of NBFCs are:

3. https://www.pwc.in/assets/pdfs/publications/2017/fuelling-nbfcs-through-private-capital.pdf
4. https://web-assets.bcg.com/b4/26/e5c0876045d1ac0e51920b77deb4/nbfc-sector-update-fy23-vf.pdf
5. https://www.crisil.com/content/dam/crisil/mailers/rating-newsletter/2022/december/nbfcs-gearing-up-for-growth.pdf
6. https://web-assets.bcg.com/b4/26/e5c0876045d1ac0e51920b77deb4/nbfc-sector-update-fy23-vf.pdf

- ***Return on assets ('RoA')*** is the net profit/average total assets. It is an indicator of NBFC's profit-making abilities. The RoA of a NBFC depends on its product portfolio, NPAs and net interest margin ('NIM').

  The NIM is the average net interest income (net of borrowing costs) generated from the outstanding loan portfolio.

  NBFCs operate in an extremely dynamic and competitive environment. The income earned by NBFCs (whether in form of interest or fee income) from their customers are a function of market dynamics, prevailing macro-economic sentiment, mix of product profiles, varying business models and fee structures.

  Bank funding is the one of the main sources of NBFC financing and has grown rapidly to INR ~13.1 lakh crore in February 2023 from ~INR 3.9 lakh crore in FY17, at a CAGR of 22% (double the overall bank credit growth as per an India Rating report)[7]. Bank loans have increasingly become expensive over past year due to rising interest rates, which have gone up by 250 bps since May 2022. Funding is likely to become more expensive and restricted as banks realign pricing and funds allocation.

  Given the competitive environment in which NBFCs operate and with borrowing costs becoming expensive for NBFCs, there are increasing pressures on NIM and consequently the RoA. These are important considerations in the valuation of NBFCs.

- ***Capital adequacy*** – NBFCs are prescribed to have at least 15% capital adequacy across asset classes. CAR, or the capital adequacy ratio, is a comparison of the available capital that a bank has on hand to its risk-weighted assets. The ratio provides a quick idea of whether a bank has enough funds to cover losses and remain solvent under difficult financial circumstances. Higher capital adequacy of NBFC make them resilient in the event of financial turmoil.

- ***Quality of management*** – The NBFC's management plays an important in enabling the company to adapt to dynamic market environments and evolving trends to their advantage.

  The credentials of the CEO, composition of the board of directors, and the organizational structure are all key factors which influence a NBFC's strategic objectives and capital allocation initiatives. The ability to recognize opportunities and deliver positive financial performance during recessionary economic phase, indicate managerial competence.

  Factors such as digital transformation and adoption of new age technology,

7. https://economictimes.indiatimes.com/industry/banking/finance/banking/funding-constraints-may-hamper-nbfcs-loan-growth-this-fiscal-report/articleshow/99497534.cms

capabilities of senior management, personnel policies, etc. should be evaluated while assessing the management strength of NBFCs.

- ***Governance*** – The NBFC's ownership structure and the track record of the promoters & group companies have a bearing on how it is governed. Transparency in governance coupled with a robust risk management policy are critical to a NBFC's operations.

- ***Growth potential*** – The growth potential of the market in which the NBFC operates has a direct relation to long term sustainability and viability of the business. NBFCs operating in high growth or dynamic market, tends to have higher valuations than the ones operating on traditional/non-agile business models.

Typical methods adopted to value NBFCs and associated challenges

The most commonly adopted methods for the valuation of NBFCs are Income Approach and the Market Approach, though these are not free of challenges.

Let's evaluate the challenges in applying traditional valuation methods to value NBFCs.

Income Approach – discounted cash flows method

NBFCs are regulated by the Reserve Bank of India. They are required to maintain a minimum capital adequacy level based on risk weighted assets. This entails increase in net-worth of the business as the loan book size grows. More often than not NBFCs in growth stage need to raise capital along with reinvestment of their earnings. Resultantly, such companies do not have a free cashflow to equity holders in the foreseeable future. Some of the key aspects that one needs to focus on are[8]:

- ***Treatment of debt in balance sheet*** - A company can be financed either by debt or equity. In non-financial services industries, the debt can be easily identified by looking at the financial statement position as at a measuring date. It is much more difficult to do so for a financial services company like a NBFC, which use debt (i.e. money they have borrowed from either the bond market/financial institutions, and in some cases taken as deposits from customers) to lend and earn a spread. Consequently, for financial firms, such borrowings are more in nature of operating working capital or raw material and the payments made to lenders (i.e. interest on borrowings/ deposits and repayments) are part of operating expenses rather than interest payment, which are subtracted from earnings before interest and tax in case of non-financial companies to calculate "free cash flows" to shareholders in financial companies.

- ***Reinvestment needs*** - Continuous reinvestment of available funds is the

8. https://marcellus.in/newsletter/kings-of-capital/a-simple-approach-to-valuing-financial-services-companies/

driving force for future growth for any business. In case of non-financial services businesses, such reinvestment comprises of capex (in physical assets such as plant, plant & equipment) and increase in working capital. For financial services companies like NBFCs, measuring investment in each of these parameters is an issue.

Other than continued investment in technology to enhance customer experience and risk management abilities, NBFCs also invest in intangible assets such as brands, distribution and channel network and human capital. As a result, their financial statement don't show significant capital expenditure. However, as their loan portfolio grows, such regulated businesses need to continuously reinvest and infuse equity or deploy profits earned back into business to meet regulatory capital requirements.

Traditionally, net working capital is calculated considering financial assets and liabilities like accounts receivable, inventories and accounts payable. Using the traditional accounting definition for working capital of "current assets - current liabilities", will not work for NBFCs as a significant proportion of their balance sheet can be classified into one or the other of these categories and changes in these balances (amounts) can be both significant and volatile, with no co-relationship to reinvestment needs for potential future growth.

Consequently, neither the free cashflows nor the reinvestment rate can be used for valuing financial services firms like NBFCs. Positive free cashflows would be generated by NBFC only once it reaches stable growth stage and maintains only the minimum level of capital adequacy, releasing the surplus cash to equity holders. This may entail projecting cashflows for longer duration, may be more than 10 years. This itself poses business performance modelling challenges.

Given the above challenges, ***Residual Income or Excess Return method*** may be adopted for valuation of NBFCs. The value of a NBFC's equity is the sum of the equity invested in the NBFC's current investments and the expected excess returns to equity investors from these and future investments. Hence:

Intrinsic (Fair) Value of Equity = Equity capital invested currently (i.e. current book value) + Present value of Expected excess returns to Equity investors (i.e. ROE – COE)[9].

A NBFC that is expected to earn returns higher than its cost of equity would ideally have a fair value higher than the equity capital currently invested (i.e. its book value).

The period for which such "excess returns" can be earned in the future is dependent not only on the current competitive market position and share of the NBFC in its segment, but the steps taken by the NBFC management to strengthen its business model, including diversifying into newer service offerings or solutions adding to the revenue stream,

9. https://marcellus.in/newsletter/kings-of-capital/a-simple-approach-to-valuing-financial-services-companies/

adoption of new age technology to improve customer profiling, prediction of defaults, customer experience and cost optimization. Like mentioned earlier, aspects like corporate governance as well as management/board quality also play a key role.

The longer the period over which "excess returns" prevail, the higher will be valuation of the NBFC.

Market Approach

Multiples used to determine enterprise value like EBITDA multiple or EBIT multiple cannot be easily adapted to value financial service firms such as NBFCs, because neither enterprise value nor operating income can be easily estimated for NBFC companies. Hence, equity multiples like P/E or P/B are used to value NBFC's.

Price Earnings Multiple

The price earnings ('PE') multiple is computed as under:

Price Earnings Multiple = Price per share/ Earnings per share

The P/E multiple is dependent on the following variables[10]:

– the expected growth rate in earnings;

– the payout ratio; and

– the cost of equity.

The PE multiple will be higher for financial service firms with higher earnings growth, higher dividend payout ratios and low costs of equity.

Valuer's need to consider subjective assessments for difference in NPA provisioning policies which will result into different levels of profit after tax ('PAT') for NBFCs with similar scale of operations.

Price to Book Value Multiple

The price to book ('P/B') value multiple is determined as under:

Price to Book multiple = Price per share/Book value of equity per share

Higher earning potential, higher payout ratios, low costs of equity and a higher ROE, may result in higher P/B multiple.

Another consideration to bear in mind is the diversity in business models and service offerings of NBFCs. Selection of appropriate peer companies to benchmark performance with and adopt multiples of, to value subject NBFC is very critical. Each business model of NBFCs have different risks, growth and return characteristics and hence, it is very difficult to find "exactly" comparable companies. Different categories of NBFCs command different earning/book market multiples.

For example, as at 31 May 2023, the P/B of most diversified NBFCs (such as Bajaj Finance, Chola, Capri Global, Sundaram Fin, etc.) command higher premium to book value versus housing finance companies (such as HDFC, Can Fin Homes, PNB HF, etc.)[11].

10. https://pages.stern.nyu.edu/~adamodar/pdfiles/valn2ed/ch21.pdf
11. https://web-assets.bcg.com/b4/26/e5c0876045d1ac0e51920b77deb4/nbfc-sector-update-fy23-vf.pdf

Conclusion

The basic principles of valuation apply to NBFCs as well. There are a few aspects relating to NBFCs that affect how they are valued.

As mentioned earlier, debt is difficult to define and measure, making it difficult to estimate enterprise value/firm value. Hence, it is by far easier to directly value equity. Capital expenditures and working capital, inputs required to estimate cash flows, are not easily measurable. In fact, much of the reinvestment in NBFCs is categorized under operating expenses. Therefore, to estimate cashflows to equity, we either have to use dividends or project cashflows till the time the NBFC reaches mature stage.

Even while considering the Market Approach the difficulties associated with defining debt make equity multiples such as price earnings or price to book value more acceptable. In undertaking these relative valuations, one has adjust for differences in

fundamentals namely risk, growth, cash flows, loan quality, which is more often than not a subjective assessment requiring valuer's professional judgement.

Considering the above, we can say that in valuing NBFCs, a valuer typically adopts the traditional valuation approaches and makes adjustments or assessments considering NBFC's nature of business, stage of operations, presence of comparable listed peer companies and other facts/circumstances/information on hand. Whichever method the valuer eventually adopts and the judgement calls made in the valuation process, needless to mention, should be backed with sufficient analysis, data and professional and prudent rationale.

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"No knowledge comes from outside; it is all inside. What we say a man "knows", should, in strict psychological language, be what he "discovers" or "unveils"; what a man "learns" is really what he "discovers", by taking the cover off his own soul, which is a mine of infinite knowledge."

— *Swami Vivekananda*

"Man often becomes what he believes himself to be. If I keep on saying to myself that I cannot do a certain thing, it is possible that I may end by really becoming incapable of doing it. On the contrary, if I have the belief that I can do it, I shall surely acquire the capacity to do it even if I may not have it at the beginning."

— *Mahatma Gandhi*

Mr. Mohindar Kumar

Striking the Balance: Indian NBFC Regulations and Fintech Companies

Non-Banking Financial Companies (NBFCs) have emerged as a key driving force behind India's economic growth, overcoming numerous challenges along the way. By bridging gaps in the credit ecosystem, NBFCs have extended their reach to regions and segments - un-served and underserved by traditional banks. Their inclusive approach and local operations have complimented and supplemented the efforts of banks in playing a crucial role in facilitating credit provision to individuals, small and medium enterprises (SMEs), and micro-enterprises thus fueling entrepreneurship, job creation, and financial inclusion. NBFCs surmounted challenges by prompting the adoption of enhanced risk management practices and improved governance, which helped them in demonstrating resilience and adaptability thus establishing themselves as vital players in India's credit landscape.

By ensuring their place as an integral part of the Indian Financial system, the next era was the need for digitization of the processes for credit delivery and the private sector NBFCs lapped up the opportunity. In order to maximise their impact, NBFCs embraced partnerships with fintech companies, capitalising on technology and innovation. Fintech companies have reshaped India's financial landscape, offering innovative solutions and expanding access to financial services for millions of people and at an incredible pace.

Initially viewed as disruptive, fintechs have gained positive attention from regulators and are seen as potential contributors to the goal of financial inclusion. Traditionally, banks and fintechs perceived each other as competitors. However, fintechs, with their agility, quickly embraced new technologies and introduced accessible, efficient, and cost-effective products and services, challenging the status quo of traditional banking. While banks and NBFCs operate within almost uniform regulatory frameworks, most fintechs currently lack the licenses required for loan underwriting. Consequently, the fintech industry has formed partnerships with regulated entities, relying on frameworks such as the Fintech-Led Digital Lending Guidelines (FLDG) to facilitate loan transactions and have been recognized by the regulators, as loan service providers (LSPs).

Evolution of regulatory landscape

The convergence of NBFCs and Financial Technology (FinTech) has brought forth a transformative wave of financial services

in India. This intersection has not only revolutionised credit access but has also opened avenues for consumer protection and inclusive economic growth. The Reserve Bank of India (RBI) has played a crucial role in driving this development, striking a balance between innovation and regulatory oversight to safeguard consumer interests and promote responsible lending practices.

In today's digital era, where technology-enabled financial services are becoming increasingly prevalent like the revolution in payment systems, the RBI recognises the need to adapt regulations to ensure consumer protection and promote access to credit. The regulatory framework surrounding NBFCs and FinTechs is evolving rapidly, keeping pace with the dynamic nature of the digital sphere. The RBI has taken proactive measures to create an enabling environment that fosters innovation while maintaining necessary safeguards.

- ***Safeguarding Consumer Interests***
  The RBI has introduced guidelines to safeguard consumers from unscrupulous practices, including setting limits on interest rates, establishing mechanisms for grievance redressal, and promoting responsible lending, by ensuring fair practices more particularly in regard to Annualised Percentage Rate (APR), transparency, and addressing potential risks associated with digital lending platforms.

- ***Enhancing Credit Access***
  The RBI's regulatory framework also aims at enhancing credit access, particularly for underserved segments of society by leveraging technology and alternative data sources, The RBI has actively encouraged the adoption of technology-driven solutions, such as digital lending platforms, to improve credit assessment and expand access to affordable credit.

- ***Proactive Regulatory Adaptation***
  Recognising the rapidly changing landscape of digital finance, the RBI has been proactive in adapting its regulatory framework. It has issued guidelines on various aspects, including digital lending platforms, peer-to-peer lending, and online aggregators, to promote responsible practices and protect consumers. These regulations encompass fair interest rate practices, transparent disclosure of APR and other terms and conditions, and data privacy and security.

RBI adopts an iterative approach to regulation in the digital sphere, with a strong focus on balancing innovation and consumer protection. In an era of rapid technological advancements and evolving business models, the RBI continuously refines its regulations to address emerging risks and ensure a fair and transparent playing field for all stakeholders. Within the journey of NBFCs and FinTechs, maintaining a long-term focus and effective risk management practices are vital for sustainable growth and success.

The RBI remains vigilant in updating its regulatory framework to keep pace with the evolving industry as new technologies and innovative financial solutions emerge. RBI also emphasises the significance of robust risk management frameworks. Entities operating in the NBFC and FinTech sectors must proactively identify and mitigate risks associated with digital lending practices. Cyber threats, data breaches, and credit risks are among the key challenges that need to be addressed. By implementing effective risk management strategies, entities can safeguard

customer data, protect against cyber threats, and ensure responsible lending practices. By demonstrating a commitment to robust risk management practices, companies can foster trust and confidence among consumers, investors, and regulatory authorities. This trust is essential for long-term sustainability and growth in the digital lending sector.

Relevant RBI Regulation for Fintechs

The regulatory environment for fintech companies in India, overseen by the RBI, has experienced significant evolution in recent years. These regulatory changes reflect the RBI's commitment to adapt to the rapidly changing fintech industry while maintaining stability and safeguarding consumer interests. Within this landscape, non-banking financial companies (NBFCs) have emerged as key players in the fintech ecosystem, prompting the need for a comprehensive regulatory framework. Some notable regulations include the Master Directions on Peer-to-Peer Lending Platforms, Fair Practices Code for Digital Lending Platforms, and Guidelines on Regulation of Payment Aggregators and Payment Gateways. These regulations provide a clear framework for operations, promote transparency, and protect the interests of consumers.

- ***Regulatory Sandbox***: In 2019, the RBI introduced the regulatory sandbox framework, offering fintech companies, including NBFCs, a controlled environment to test innovative products and services. This initiative encourages experimentation with new technologies and business models, with the RBI closely monitoring associated risks. The regulatory sandbox fosters collaboration between regulators and fintech companies, allowing regulations to be refined based on real-world insights.
- ***Digital Payments***: The RBI has implemented various measures to regulate the rapidly growing digital payments sector. The introduction of the Unified Payments Interface (UPI) and the Payment and Settlement Systems (PSS) Act has revolutionized the digital payments landscape, promoting interoperability and enhancing security. NBFCs have played a pivotal role in driving digital payment innovations, utilising technologies like mobile wallets, peer-to-peer lending, and microfinance platforms.
- ***Peer-to-Peer Lending***: Peer-to-peer (P2P) lending platforms have emerged as alternative channels for lending, connecting borrowers directly with individual lenders. Recognising the potential of P2P lending in expanding credit access, the RBI issued guidelines in 2017 to regulate this sector. NBFCs often operate as intermediaries on these platforms, facilitating connections between lenders and borrowers. The guidelines aim to ensure fairness, transparency, and effective risk management while protecting the interests of all stakeholders.
- ***Open Banking and API Framework***: Open banking, facilitated through application programming interfaces (APIs), has gained prominence in the fintech space. It enables secure sharing of customer data between financial institutions and authorised third-party providers. The RBI actively encourages open banking initiatives, allowing fintech companies, including NBFCs, to develop innovative financial products and services by accessing customer data with their consent. This framework promotes competition, collaboration,

and customer-centricity in the financial ecosystem.

- ***Flexible Regulatory Framework***: While NBFC regulations play a crucial role in consumer protection and financial stability, a rigid framework can impede fintech innovation. It is essential for authorities to strike a delicate balance by providing a regulatory environment that fosters responsible innovation without stifling the growth of fintech companies. This entails offering regulatory flexibility, accommodating new technologies, and adapting to evolving business models.
- ***Enhanced Data Privacy and Security***: With the rapid digitisation of financial services, data privacy and security have become paramount concerns. Fintech companies handle sensitive customer information, necessitating robust data protection measures. NBFC regulations focus on establishing stringent data privacy standards, encouraging the use of encryption, and promoting secure storage and transmission practices.
- ***Risk Mitigation and Consumer Protection***: As fintech companies expand their services, addressing potential risks associated with their operations is crucial. NBFC regulations have established mechanisms to monitor and mitigate risks, including implementing strong risk management frameworks, conducting periodic audits, and enforcing adequate capital adequacy requirements. Additionally, the regulatory framework will incorporate customer protection measures such as transparent disclosure of terms and conditions, fair pricing, and efficient grievance redressal mechanisms
- ***Collaboration and Dialogue:*** Navigating the complexities of NBFC regulations and fostering fintech innovation require collaboration between regulators, industry stakeholders, and policymakers. Open channels of communication that exist foster understanding, enable efficient regulation, and facilitate timely updates to regulations as the fintech landscape evolves. Regular consultations and engagement forums bridge the gap between regulators and fintech companies, creating an ecosystem that balances growth, innovation, and consumer protection.

Evolution of Digital Lending in India: Navigating RBI Regulations

Fueled by the demand for accessible credit and enabled by technological advancements, digital lending platforms have experienced remarkable growth. However, as this industry evolves, it becomes crucial to strike a balance between fostering innovation and safeguarding consumer interests. RBI has played a pivotal role in regulating this space, adapting its policies to address the emerging challenges and opportunities presented by digital lending.

Digital lending platforms have democratised access to credit, offering convenient and efficient loan disbursal processes. They have reduced reliance on not only money lenders but also traditional banking channels and filled critical credit gaps in the Indian economy.

As digital lending gained momentum, concerns regarding consumer protection, data privacy, and fair practices took center stage. Unregulated lenders engaged in predatory practices, charging exorbitant interest rates and employing aggressive recovery methods. Recognising the need to protect

borrowers and maintain financial stability, the RBI took proactive measures to address these concerns. The RBI has implemented progressive regulations to govern the digital lending industry, ensuring responsible lending practices. The regulatory landscape has evolved significantly in recent years:

- ***Fair Practices Code***: In 2019, the RBI issued guidelines mandating that digital lenders adhere to a Fair Practices Code, which includes transparency in interest rates, charges, and loan terms. This promotes ethical lending practices and safeguards borrowers from unfair treatment.
- ***Grievance Redressal Mechanism***: The RBI emphasised the establishment of robust grievance redressal mechanisms for digital lenders. Ensuring that borrowers have avenues to voice their concerns and seek resolutions is crucial for maintaining trust and accountability within the digital lending ecosystem.
- ***Data Privacy and Security***: Recognizing the sensitivity of customer data, the RBI has stressed the importance of data privacy and security. Lending platforms are mandated to adhere to data protection standards, ensuring that customer information is handled securely and with explicit consent.
- ***Outsourcing Guidelines***: The RBI has issued guidelines to regulate the outsourcing of digital lending activities, as well as critical IT Infrastructure & processes, by banks and non-banking financial companies (NBFCs). These guidelines ensure that lenders maintain effective oversight of outsourced functions and safeguard customer interests.
- ***Risk-Based Supervision***: The RBI has adopted a risk-based supervisory framework for digital lending platforms. This approach allows for focused supervision based on the size, complexity, and risk profile of the lending platforms, ensuring effective oversight while minimising the regulatory burden on smaller players.

Clarifications and Compliance for Digital Lending Guidelines

In November 2021, the RBI released its Report of the Working Group on Digital Lending, which recommended guidelines for lending through online platforms and mobile apps. Recently, the RBI provided further clarifications to address industry queries regarding the Digital Lending Industry Guidelines.

- ***Payment Aggregators and Loan Disbursals***: Payment aggregators that only offer payment aggregating services are not covered by the guidelines. However, if a payment aggregator also acts as a lending service provider (LSP), it falls under the guidelines. The RBI emphasised that LSPs should not handle funds between lenders and borrowers.
- ***Sharing Recovery Agent Details***: Lenders are required to share recovery agency details during loan sanctioning. To address concerns about assigning recovery agents only when loans turn delinquent, the RBI clarified that borrowers can be informed of the authorised recovery agents in case of default. The particulars of the recovery agent must be communicated to the borrower before any contact is made.
- ***Definition of Digital Lending***: The entire loan process doesn't have to be conducted digitally for it to be classified as digital lending. Even if certain aspects are done physically, as long as the loan is largely facilitated using

seamless digital technologies, it falls under the definition of digital lending.

- A***pplicability to Corporate Loans***: The guidelines apply to all transactions that meet the definition of digital lending, including corporate loans, including MSME loans.
- ***Appointment of Grievance Redressal Officers:*** Only lending service providers (LSPs) with direct interfaces with borrowers need to appoint a nodal grievance redressal officer. Regulated entities (REs) remain responsible for resolving complaints arising from actions of all engaged LSPs.
- ***Coverage of Credit Card EMIs***: Credit card EMIs are not covered by the digital lending guidelines as they fall under the Master Direction on Credit Card and Debit Card. However, other loan products offered on credit cards that aren't regulated by these directions are subject to the digital lending guidelines. Loans offered on debit cards, including EMI programs, also fall under the guidelines.
- ***Disclosure of APR for Floating Rate Loans***: For floating rate loans, where the interest rate changes over time, the Annual Percentage Rate (APR) may be disclosed based on the prevailing rate at origination. When the rate changes, the revised APR should be communicated to the customer each time it becomes applicable.
- ***Cash Repayments by Recovery Agents***: Recovery agents can collect cash repayments for delinquent loans if necessary. Such transactions are exempted from direct repayment to the lender's bank account. However, cash recovery should be duly reflected in the borrower's account, and any fees payable to LSPs must be paid directly by the recovery agents.
- ***Repayment by Corporate Employer***: In cases where repayment is made by the corporate employer deducting EMIs from the salary, it is not necessary for the repayment to come directly from the borrower's bank account. However, regulated entities should ensure that LSPs have no control over the flow of funds and that repayment is made directly from the employer's bank account to the RE.
- ***Definition of Lending Service Providers***: Not all service providers associated with regulated entities for credit intermediation activities are considered Lending Service Providers (LSPs). The LSP definition covers service providers engaged in digital lending transactions.

NBFCs dealing with FinTechs should ensure compliance with these clarifications to adhere to the digital lending guidelines. A gist of the all the applicable regulations is provided in the Annexure.

DLG guidelines

Default Loss Guarantee (DLG / FLDG) is an industry practice that involves third-party guarantees for loan portfolios of Regulated Entities (REs). It serves as a mechanism to safeguard lenders' interests and determines the coverage magnitude based on the risk appetite of regulated entities such as banks and NBFCs. DLG also acts as an indicator of the fintech company's competence in customer sourcing and servicing, showcasing their commitment to the lending process. These guidelines are expected to encourage small start-up fintech players to enter the lending business, fostering sector growth and creating opportunities for other small players to participate.

FLDG guidelines introduced in the digital lending industry by putting a cap of 5%, have evoked mixed reactions from stakeholders. Previously, regulated entities in the digital lending space transferred up to 100% of default risk to fintech partners, creating an uneven risk-sharing dynamic, though a significant portion of the market maintained default guarantee percentages ranging from 15-40%, depending on the comfort level of the regulated principal entity. This results in needing to shift gears from an Asset-light model to Asset-heavy model for FinTechs, since cap lower than industry averages would need additional investments to transform existing business models.

These guidelines have the potential to transform the digital lending ecosystem in multiple ways. They are anticipated to facilitate increased credit deployment, particularly in segments like MSMEs, healthcare finance, education, and personal loans, with faster turnaround times. This will cater to evolving customer needs and promote responsible lending practices. The guidelines will also foster innovation at both the principal and agent levels, as regulated entities are incentivised to design and deliver innovative and customised financial products tailored to end customers' requirements. Additionally, the guidelines will enhance transparency by mandating regulated entities to publicly disclose details, including on their web-site, about their partnerships with lending service providers (LSPs) and the portfolios covered by guarantees.

Advantage Consumers - The partnership between NBFCs and FinTechs

Efficient Loan Processing: NBFCs can streamline credit assessment, reduce turnaround time, and enhance operational efficiency by leveraging advanced analytics, machine learning, and AI-powered algorithms. Collaborating with FinTechs provides access to cutting-edge technology, enabling NBFCs to make data-driven decisions and expand their customer base.

Improved Customer Experience: NBFCs can use FinTech platforms to offer personalised financial products and services tailored to individual borrower needs. Digital lending solutions, mobile applications, and online portals enable convenient loan application processes, reducing paperwork and bureaucracy. This enhances the overall customer experience and increases satisfaction.

Risk Mitigation and Fraud Prevention: Collaboration with FinTechs specialising in risk assessment and fraud detection strengthens NBFCs' credit underwriting processes. By utilising alternative data sources, social media analytics, and real-time monitoring, NBFCs can better assess creditworthiness, mitigate risks, and combat fraudulent activities.

Journey ahead

While the RBI's regulatory efforts have been commendable, the evolving nature of digital lending demands ongoing adaptability. Striking a delicate balance between encouraging innovation and safeguarding consumer interests remains a priority. Regular consultations and collaborations between regulators, industry stakeholders, and consumer advocacy groups can facilitate the development of comprehensive regulations that address emerging challenges effectively. Additionally, promoting financial literacy and awareness among borrowers is crucial. Empowering borrowers with knowledge about digital lending practices, terms, and their rights will help them make informed decisions and protect themselves from unscrupulous lenders.

The growth of digital lending in India has transformed the lending landscape, expanding access to credit and fostering financial inclusion. By adapting policies, emphasising fair practices, protecting data privacy, and implementing risk-based supervision, the RBI has navigated the challenges of digital lending effectively. As the industry continues to evolve, a collaborative approach between regulators, lenders, and borrowers will be essential to ensure that digital lending remains a scalable and safe value addition to the market. To enhance their impact, NBFCs must embrace technological advancements and collaborate with FinTech companies.

The RBI and the Indian government's approach to NBFC regulations concerning fintech companies plays a pivotal role in shaping the future of the financial sector. Striking the right balance between fostering innovation, ensuring consumer protection, and maintaining financial stability is essential. By providing a flexible regulatory framework, emphasising data privacy and security, mitigating risks, and promoting collaboration, India can create an ecosystem where fintech companies can thrive while safeguarding the interests of consumers and the broader economy. A harmonious regulatory environment will unleash the full potential of fintech, propelling India towards a digitally empowered and inclusive financial future.

Annexure

Loan disbursal, servicing and repayment

Loan disbursement is always made into the bank account of the borrower in all cases expect Loan disbursals for REs for co-lending transactions and disbursals for specific end use, provided the loan is disbursed directly into the bank account of the end-beneficiary

All Repayments and other servicing is executed by the borrower directly in the RE's bank account without any pass-through account/pool account of any third party

In no case, disbursal is made to a third-party account, including the accounts of LSPs and their DLAs.

Collection of fees, charges, etc.

Any fees, charges, etc., payable to LSPs are paid directly by REs and are not charged by LSP to the borrower directly.

The penal interest/charges levied, if any, on the borrowers is based on the outstanding amount of the loan.

Rate of such penal charges is disclosed upfront on an annualized basis to the borrower in the Key Fact Statement (KFS).

Disclosures to borrowers

The borrower gets a KFS from RE before the execution of the contract in a standardized format (Annex II of DLG) for all digital lending products

The KFS to borrower contains the details of APR, the recovery mechanism, details of the grievance redressal officer designated specifically to deal with the digital lending matter and the cooling-off/look-up period. APR as an all-inclusive cost of digital loans for the borrower is disclosed upfront by REs and also is a part of the KFS

Any fees, charges, etc., which are not mentioned in the KFS is not charged by the REs to the borrower at any stage during the term of the loan

Digitally signed documents: KFS, summary of loan product, sanction letter, terms and conditions, account statements, privacy

policies of the LSPs/DLAs with respect to borrowers data, etc.(on the letter head of the RE) automatically flows to the borrowers on their registered and verified email/SMS upon execution of the loan contract/transactions.

The list of DLAs (of RE or of LSPs) and list of LSPs with the details of the activities for which LSPs have been engaged, are prominently published on the website of the REs.

Product information: DLAs belonging to REs or LSP at the on-boarding/sign-up stage, prominently display information relating to the product features, loan limit and cost, etc., so as to make the borrowers aware of these aspects

Details of recovery agent: Borrower gets a communication from RE about the LSP acting as recovery agent who is authorised to approach the borrower for recovery, at the time of sanctioning of the loan and also at the time of passing on the recovery responsibilities to an LSP or change in the LSP.

Link to website: DLAs belonging to RE or LSPs have links to REs' website where further/ detailed information about the loan products, the lender, the LSP, particulars of customer care, link to Sachet Portal, privacy policies, etc. can be accessed by the borrowers. Also confirms that all such details are available at a prominent single place on the website for ease of accessibility.

Grievance Redressal

REs and LSPs have a suitable nodal grievance redressal officer to deal with digital lending related complaints/issues raised by the borrowers.

Contact details of grievance redressal officers is prominently displayed on the websites of the RE, its LSPs, on DLAs and also in the KFS provided to the borrower.

Facility of lodging complaint is available on the DLA and on the website of REs and LSPs.

Assessing the borrower's creditworthines

REs and LSPs capture the economic profile of the borrowers covering (age, occupation, income, etc.), before extending any loan over DLAs, with a view to assessing the borrower's creditworthiness in an auditable way.

There is no automatic increase in credit limit unless explicit consent of borrower is taken on record for each such increase.

Cooling off/look-up period is explicitly offered to the borrower to exit the digital loan by paying the principal and the proportionate APR without any penalty during this period.

The Board of the RE determines the cooling-off period, offered to the customer.

Cooling off/look-up period offered is not less than three days for loans having tenor of seven days or more and one day for loans having tenor of less than seven days.

Due diligence and other requirements with respect to LSPs

REs have conducted due diligence before entering into a partnership with a LSP for digital lending, taking into account its technical abilities, data privacy policies and storage systems, fairness in conduct with borrowers and ability to comply with regulations and statutes

REs confirms to carry out periodic review of the conduct of the LSPs engaged by them.

REs confirms to impart necessary guidance to LSPs acting as recovery agents to discharge their duties responsibly and comply with Circular DOR.ORG.REC.65/21.04.158/2022-23

Collection, usage and sharing of data with third parties

Any collection of data by DLAs (belonging to RE or LSP) is need-based and with prior and explicit consent of the borrower having audit trail.

DLAs (belonging to RE or LSP) desist from accessing mobile phone resources like file and media, contact list, call logs, telephony functions,etc.

DLAs (belonging to RE or LSP)s only take one-time access for camera, microphone, location or any other facility necessary for the purpose of on-boarding/KYC requirements only, with the explicit consent of the borrower.

The borrower is provided with an option to give/deny consent for use of specific data, restrict disclosure to third parties, data retention, revoke consent already granted to collect personal data and if required, make the app delete/forget the data

The purpose of obtaining borrowers' consent is disclosed at each stage of interface with the borrowers.

Explicit consent of the borrower is taken before sharing personal information with any third party, except for cases where such sharing is required as per statutory or regulatory requirement

Storage of data

LSPs/DLAs engaged by RE do not store personal information of borrowers except some basic minimal data (viz., name, address, contact details of the customer, etc.) that may be required to carry out their operations.

Clear policy guidelines by RE regarding the storage of customer data including the type of data that can be stored, the length of time for which data can be stored, restrictions on the use of data, data destruction protocol, standards for handling security breach, etc., are put in place and displayed prominently on DLAs/Website of REs and LSPs at all times

No biometric data is stored/collected in the systems associated with the DLA of REs/their LSPs, unless allowed under extant statutory guidelines

All data is stored only in servers located within India, while ensuring compliance with statutory obligations/regulatory instructions.

Comprehensive privacy policy

DLAs and LSPs engaged by RE have a comprehensive privacy policy compliant with applicable laws, associated regulations and RBI guidelines.

For access and collection of personal information of borrowers, DLAs of REs/LSPs comprehensive privacy policy is available publicly

Details of third parties (where applicable) allowed to collect personal information through the DLA is disclosed in the privacy policy.

REs and LSPs engaged by REs comply with various technology standards/requirements on cybersecurity stipulated by RBI and other agencies, or as may be specified from time to time, for undertaking digital lending.

Reporting to Credit Information Companies (CICs)

Any lending done through RE's DLAs and/or DLAs of LSPs is reported to CICs irrespective of its nature/tenor including extension of structured digital lending products over a merchant platform

Source: Fintech Association for Consumer Empowerment (FACE)

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THE DASTUR ESSAY COMPETITION 2023

Winners

Rank	*Name*	*Topic*	*Name of the Institution*
1	Linda Biju John	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	GBCA & Associate LLP
2	Vaishali Jitendra Lund	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	N.K.Kalra & Associates , Chartered Accountants
3	Neha Maria Antony	Do Indian Labour Laws require to be reformed and, if so, how?	The National University of Advanced Legal Studies
4	Hetvi Shah	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	K C Mehta & Co LLP
5	Dhruv Jayesh Haria	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	GBCA & Associate LLP
6	Nishtha Gada	Do Indian Labour Laws require to be reformed and, if so, how?	Government Law College, Mumbai
7	Thomson Jacob Perinjelil	Do Indian Labour Laws require to be reformed and, if so, how?	Vora and Associates
8	Kevin Savla	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	H.R. College, Mumbai
9	Khushal Parihar	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	GBCA & Associate LLP
10	Kuldip Narendrabhai Majithiya	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	Hiregange & Associates LLP

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Linda Biju John

THE DASTUR ESSAY COMPETITION 2023

To have smarter and success-oriented students should our school/college syllabi be changed and if so in what manner?

Introduction

Education can have a range of impacts, as far as our lives are concerned. From providing us with a steady income to assisting us in improving our quality of life by contributing to society, the significance of education cannot be overstated. It can help us develop as an individual. Not only that, but this can also help us satisfy our desire to do something novel and different. With the right education, we can have our principles, and our interests, and can spread our learning any place we need. The school/college syllabi fill in as the foundation of this journey. If a school's current curriculum is out of date, does not employ recent technology, or uses methods that are no longer relevant, it requires revision. While the worlds of technology, science, and history change at a fast speed, shifts to adjust learning materials and training techniques ought to likewise progress to oblige these changes. These adjustments may need to be made from year to year, at times. In this essay, I will argue that changes need to be made in the school/college syllabus to ensure that students are better equipped to face the challenges of the future. By integrating new teaching methods and frameworks the syllabus can be redefined to cultivate a culture of knowledge, creativity, and innovation.

Background Information

To comprehend the potential advantages and disadvantages of modifying school or college syllabi towards a smarter and success-oriented approach, it is essential to take into consideration the background information. The traditional curriculum is typically the teacher-centered delivery of guidance on specific subjects to a classroom of students. Success is frequently measured by memorization proficiency and extensive comprehension tests of knowledge and skills. The long- standing, in-person classroom method of instruction that is utilized in the majority of schools exemplifies the traditional curriculum. Its essential strategies are oral guidance, reading, and reciting facts. It is a passive method of education that can be done individually or in groups and involves listening, reading, taking notes, and studying. This has resulted in generalized education which makes it difficult for all the students to learn about subjects they are interested in. This general education

does not address the diverse talents and interests of the students. Students will put in more effort and time studying subjects they are not good at, which will not help them in their careers in the future.

Consequently, the school/college syllabus should be revised by adopting a modern curriculum. The pragmatic approach to the modern curriculum places an emphasis on the learner. Consequently, it centers around the subject or content, yet additionally, it gives priority to the students. The child is at the center of everything that happens. One of the primary goals of this curriculum is the creation of skilled human resources. The curriculum has a significant impact on how students learn about careers and develop their skills. It gives students as many opportunities as possible, removing them from the traditional learning framework. It emphasizes extracurricular activities, which provide students with opportunities to improve their skills. It plans to make students dynamic individuals instead of passive beings. Thus, it is built so that it works with the students to turn into friendly and independent individuals and be smarter and success-oriented. For students, harmonious development is very important. Physical, mental, moral, aesthetic, spiritual, and social development are all equally significant. As a result, the goal of modern education is for students to grow up in harmony. Learning is a cycle and the current educational program stresses giving a favorable learning climate to students. The modern curriculum is constructed in such a way that it provides students with opportunities to cultivate their creativity in areas of their particular interest. The teachers nourish and nurture the potential of the students. The students get a chance to show off their skills in the classroom and elsewhere. When designing the curriculum, the curriculum framers consider the psychology of individual differences. It prioritizes meeting the needs and requirements of all learners and places importance on all types of learners. The modern curriculum apart from subject or content- knowledge gives importance to providing practical experiences and knowledge to learners. It accepts that training ought to be as per the life example of the youngster. It aims not only at individual but also social well-being.

The need for change in the syllabi

A student that starts elementary school today will move on from college during the 2030s and their profession will endure through 2060 or past. Although we are unable to precisely predict the requirements of our workforce in the middle of the century, we are aware that these requirements are evolving and will continue to evolve in tandem with technological advancement. Automation, artificial intelligence, and robots are no longer things of science fiction. The shift in what the workforce needs is already underway and will continue to grow significantly in the future, according to overwhelming evidence. Leaders from business and government debate the future of work and the changes brought about by automation and technology all over the world. As indicated by the analysis of 750 occupations by the McKinsey Global Institute, 51% of job activities are highly susceptible to automation – and that's through adapting currently demonstrated technology alone. It's also important to remember that these activities apply to jobs in all industries and pay scales. Every year, there is a growing demand for skills in problem-solving, creative thinking, digital communication, and teamwork that are not taught in our schools. Even when schools teach digital skills, they focus on how to use technology – how to create a document or a presentation – rather than how to create technology. As a result, students' education and proficiency in a variety of fields can greatly benefit

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from including practical, industry-oriented coursework in syllabi.

A] The changing job market and its demands

When deciding whether school and college syllabi should be changed the changing job market and its demands are of significant consideration. The nature of job markets has been dramatically altered in recent years by technological advancements and globalization resulting in an increased demand for new skills and abilities. For instance, fields such as data analytics, cybersecurity, and renewable energy are evolving rapidly and skills in these areas will turn out to be progressively more important in the coming years. To keep up with these changes and demands, schools and universities should adjust their educational programs accordingly. Soft skills like critical thinking, problem-solving, working in a team, and communication are also becoming more and more important in the job market. Accordingly, consolidating such skills in school and college syllabi will better prepare students for the ever-evolving job market. In addition, students must be encouraged to participate in internships and training programs that are relevant to their industry throughout their academic careers to gain practical work experience and exposure to prevailing technologies and trends.

B] The Limitations of the present syllabi

Despite the efforts of schools and colleges in designing effective syllabi, some limitations hinder their potential to bring out the best in students. One limitation of present-day syllabi is that they are often structured around a fixed curriculum, ruling out adaptability and personalization. Students are forced to follow a predetermined path rather than being allowed to discover their interests and acquire the skills necessary to achieve their career objectives. The fact that many syllabi tend to emphasize theoretical knowledge rather than practical skills is another limitation. Not only does this strategy fail to prepare students for the real world but it also fails to instill a passion for learning.

Additionally, syllabi frequently hinder creative thinking and critical thinking. Students' intellectual development is stifled as they are taught to memorize and regurgitate information over questioning and analysis. Lastly, the requirements of a rapidly evolving job market are not adequately addressed in today's syllabi. Syllabi run the risk of making students obsolete even before they enter the workforce by ignoring skills like communication, teamwork, and adaptability. Therefore, for students to realize their full potential it is crucial that syllabi be revised to address these limitations.

C] The need for smarter and success-oriented students

Students who are best ready for the future are change agents. They can influence the future, understand the intentions, actions, and feelings of others, and anticipate the short- and long-term consequences of what they do. They can also have a positive effect on their surroundings. The idea of competency encompasses more than just the acquisition of skills and knowledge; It entails using one's knowledge, abilities, attitudes, and values to meet difficult requirements. Students who are prepared for the future will require both general and specialized knowledge. Knowledge of the disciplines, or epistemic knowledge, such as how to think like a mathematician, historian, or scientist, will also be important, allowing students to expand their knowledge of the disciplines.

Understanding how something is made or made—the sequence of steps or actions taken to achieve a goal—is the first step in developing procedural knowledge. Students

will have to put their knowledge to use in new and changing situations. For this, they will require a wide scope of abilities, including cognitive and meta-cognitive abilities, social and emotional skills, and physical and practical skills, such as how to use new technology for communication and information. Therefore, It is essential to introduce novel teaching and learning strategies to cultivate students who are focused on success and being smarter.

Another crucial aspect of revising school and college syllabi is to introduce courses that incorporate the latest developments and trends in various fields. Students must have the knowledge and abilities that are currently in demand in the job market to succeed. This intends that the courses presented in school shouldn't simply zero in on hypothetical ideas but should be more pragmatic and application situated. Colleges can encourage students to think critically, analyze difficult issues, and come up with creative solutions by including more current and relevant content. Colleges could for instance offer specialized courses in highly sought-after fields like data analytics, artificial intelligence, blockchain, and cybersecurity. In a similar vein, courses can be offered that concentrate on the most recent innovations and trends in a variety of industries, including energy, finance, and healthcare. By doing this way students will have a superior comprehension of the gig market and gain the fundamental abilities to prevail in their picked fields. As a result, colleges should update their curriculum to include courses that are more up-to-date and relevant, empowering students to be more focused on success and better prepared for their careers.

The changes required in the syllabi

We must concentrate on the modifications that are required in the syllabi at various educational levels to effect meaningful change in our educational system. It is necessary to revise the current curriculum so that it emphasizes imparting practical knowledge that enables students to critically consider and apply learned concepts in real-world situations. Digital literacy, robotics, and other cutting-edge subjects can help bridge the gap between academia and industry. A specific accentuation on soft skills like communication, critical thinking authority, and cooperation should be given to empower students to turn out to be more employable and better cooperative people. Students may benefit from the introduction of a multidisciplinary approach by being able to apply what they have learned from a variety of fields to the solution of pressing issues. In addition, the curriculum should be tailored to meet the requirements of the diverse student body, including those from economically disadvantaged backgrounds, to promote inclusivity and enable them to compete with their privileged peers. In conclusion, to ensure that students are focused on success, the syllabi changes that are required should aim to make education more relevant, practical, and inclusive.

A] Introduction to coding and programming languages

While more and more careers depend on digital knowledge, the benefits of students learning coding continue to increase. Students coding abilities will provide a foundation of knowledge that can help improve their career prospects, regardless of whether they choose to enter the coding or computer programming industry directly. A student might be able to use their coding skills in a career in finance or business management, where they would be able to create and manipulate formulas to help calculate projections or risk analyses, in marketing, where they would be able to implement tracking and measurement

of key performance indicators (KPIs), or in public service positions that require process improvement and creative problem-solving. A student's ability to solve problems using computational thinking is one of the most significant advantages of learning coding. A method of strategic problem-solving known as computational thinking involves breaking down intricate issues into smaller, more manageable pieces and then employing a predetermined procedure to develop an algorithmic solution that can be replicated by either humans or computers. Problem- solving abilities that can be applied to a wide range of situations are provided by computational thinking. In this way, students genuinely should pick up coding as a piece of their instructive educational program to empower them to become fruitful and to innovatively add to the more high- level worldwide labor force representing things to come.

B] Focus on effective communication skills

Syllabi at colleges and universities must include classes that emphasize communication abilities. Strong communication skills or effective communication skills are mentioned in nearly every job posting. Clear communication reduces ambiguity and misunderstandings in the exchange of ideas, knowledge, and concepts. Businesses may be impacted in a variety of ways by this. A company's workforce can be made more cohesive by knowing how to communicate effectively with the right people. Honest and open communication can also foster a sense of trust and optimism, which in turn increases job satisfaction and morale. In addition, fostering a culture of open lines of communication has the potential to enhance the flow of ideas and, as a result, boost creativity and innovation.

Effective communication is important to career success because leaders who build a culture of positive communication can help a business reach its goals with greater efficiency, produce satisfied workers, and improve brand identity — all of which can translate to their success. Therefore, educational institutions need to include communication skills courses in their curriculum because they can assist students in achieving academic and professional success and making positive contributions to society.

C] Teaching problem-solving and critical-thinking skills

Problem-solving and critical thinking skills play a crucial role in shaping successful students. In any industry, critical thinking and the ability to solve problems are essential. It's critical for a young professional to work on these skills. Students won't be able to get the most out of their careers if they don't have these skills and it will be harder for them, to move up in their careers. The process of analyzing, evaluating, and devising inventive solutions to problems is known as critical thinking and problem-solving skills. In careers in marketing, finance, or human resources, these abilities are highly valued. They are also important for people who want to learn more or develop their skills.

Problem-based learning and cooperative learning, in which students collaborate to solve real-world problems, can be incorporated into schools and colleges. Students can be encouraged to use their knowledge in real-world situations and think creatively through assignments and projects. While placing less emphasis on theory and rote learning, this strategy can make use of technology and data resources. In general schools and colleges must employ a multidisciplinary approach to teaching critical thinking and problem-solving skills, which are necessary for cultivating the next generation of skilled students.

D] Incorporating entrepreneurship and financial literacy

Integrating business and financial education into school prospectuses can assist students with being better ready for their present reality. Financial Literacy typically teaches the concepts of investing, saving, and borrowing to improve one's financial being. Schools must teach their students financial literacy to enable them to manage money effectively. Students are encouraged to think creatively and come up with new ways to solve problems through entrepreneurial endeavors. Success in one's personal and professional life depends on being able to effectively manage one's finances and make well-informed financial decisions. Students can gain a more comprehensive understanding of business and its impact on society by combining these two subjects. Additionally, critical thinking, taking risks, and leadership are valuable skills for any career path. In today's economy, financial literacy teaches students how to manage and invest their money. Understanding money empowers them to make better choices with their cash, such as taking care of obligations and putting resources into their future. All in all, integrating business and monetary proficiency into school schedules will better equip students with the abilities and information expected to prevail in reality.

To meet the demands of today's fast-paced and dynamic world, it is essential to modify school and college syllabi to produce smarter students who are focused on success. Instead of solely relying on traditional classroom-based teaching methods one way to accomplish this is to include a greater number of practical and hands-on learning experiences. This could include things like group projects, internships, and mentoring programs that give students hands-on experience and practical skills that are very important in the job market today. Also consolidating more innovation-based guidance can upgrade growth opportunities also plan students for the continually developing computerized scene. In addition, introducing courses that emphasize critical thinking, problem-solving, and decision-making can assist students in developing analytical and critical thinking abilities as well as creativity. Last but not least increasing the number of vocational courses in healthcare, technology, and entrepreneurship can assist students in discovering their potential and passion for a particular field.

As a result, it is high time that our educational system reevaluates and revises the syllabi to ensure that students graduate prepared to deal with the complexities of a world that is rapidly changing.

The benefits of changes in Syllabi

The enhancement of students' capacity for critical thinking and problem-solving is one of the primary advantages of modifying syllabi. Students' ability to think critically and creatively is hindered by traditional syllabi's emphasis on information recall and exam repetition. However new approaches that encourage students to develop analytical skills and combine information from multiple sources can be introduced through syllabi revisions. Students can learn how to apply theories to real-world situations and work effectively in teams by including case studies, experiential learning activities, and collaborative projects. Additionally, revisions to syllabi have the potential to

foster inclusivity and diversity by enabling students from a variety of backgrounds and experiences to feel heard and seen in the classroom. Syllabi have the potential to give all students a more comprehensive and engaging learning experience by including texts and subjects from underrepresented perspectives. In conclusion, alterations to syllabi have the potential to transform the

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way students learn and equip them with the critical and collaborative abilities required for success in today's workplace.

A] Improved job readiness and competitiveness

Improved job readiness and competitiveness are two of the primary reasons that colleges and universities are being urged to alter their education curricula. The current job market necessitates a workforce with current and practical skills that can be immediately put to use in a professional workplace. However, a stale curriculum that does not keep up with the changing requirements of the industry is the reason why many graduates fail to meet these requirements. Thus, the reformation of education syllabi should prioritize practical and vocational subjects that are relevant to the market needs. This indicates that the instructional strategies ought to incorporate the utilization of technology, hands-on training, and the integration of industry professionals to provide students with real-world classroom experience. Furthermore, students ought to likewise be exposed to innovative and decisive reasoning abilities that will set them up to take care of intricate issues and adjust to differing workplaces. This can be accomplished by including courses and programs in entrepreneurship and innovation, which will enable students to develop innovative and resourceful practices that will make them more competitive in the job market.

B] Enhanced cognitive and communication skills

For success in today's world, improved cognitive and communication skills are necessary. With innovative progressions and changing normal practices, people really must have a sharp mind and effective communication skills to succeed in their own proficient lives. As a result, syllabi at schools and colleges ought to be altered to place a greater emphasis on helping students acquire these abilities. Because they enable students to evaluate and analyze information effectively the core cognitive skills that should be prioritized in the syllabus are critical thinking, problem-solving creativity, and decision-making. Moreover, communication skills that incorporate listening, speaking, reading, and writing ought to be given equivalent significance as they empower people to pass their contemplations and thoughts on to others. Additionally, today's students require soft skills like teamwork, leadership, and emotional intelligence. Schools and colleges can give students the tools

they need to succeed in a world that is getting more competitive and changing quickly by including these skills in the curriculum.

C] Encouraging self-employment and entrepreneurship

This is one more critical angle that ought to be consolidated in the school curriculum. Numerous students aim to be independently employed and the school ought to give them the important tools and direction to accomplish their objectives. Education in entrepreneurship could give students the knowledge and skills they need to start their businesses, which would encourage creativity, job creation, and economic expansion. Colleges could help students learn how to start and run their businesses by hosting entrepreneurial competitions, workshops, and seminars. These exercises could acquaint them with the difficulties, chances, and rewards of business giving them the certainty and inspiration to seek after their fantasies. Also, colleges could work with venture capitalists and angel investors to give students the resources and money they need to start their businesses. Empowering independent work and business could empower students to investigate their

inventive potential, form their organization and secure significant experience that could be utilized in their future vocations. At last, integrating self-employment and entrepreneurship in the school prospectuses could empower students to become free, imaginative, and fruitful business people who could contribute genuinely to society.

One more part of our ongoing syllabus that should be rethought is the practical application of knowledge. Many courses center exclusively around hypothetical information and don't furnish students with valuable open doors to apply what they have realized in real-life scenarios. Students may feel underprepared for the workforce and unable to think critically in real-world situations as a result of this gap between theory and practice. Thus, our syllabus actually must integrate hands-on experience, internships, and genuine world projects. This will guarantee that students will not only be able to put what they have learned in the classroom into practice but also acquire professional skills and firsthand experience. They will also be better prepared for the difficulties and demands of their chosen career path as a result of these experiences. At last, a balanced educational program that mixes hypothesis with useful information can upgrade the nature of schooling, make quipped experts and add to building a more brilliant and achievement-situated society. As a result, educational institutions such as colleges and universities must initiate modifications to the academic curriculum to incorporate the practical application of theoretical knowledge.

Obstacles to implementing change

Implementing changes to traditional educational systems can be difficult, despite the potential benefits of adopting a new syllabus. One of the main difficulties is an obstruction to change from educators, directors, and students themselves. Numerous teachers might be hesitant to embrace new pedagogies or teaching methods that require huge changes to their educating styles. In a similar vein, students may be reluctant to adapt to novel approaches to learning and would rather stick with established methods. Notwithstanding obstruction, executing changes can likewise be expensive, requiring huge investments in new materials, assets, and innovation. Schools and colleges that are already having trouble keeping their budgets in balance may face significant financial difficulties as a result of this. In addition, changes in the syllabus require investment in arranging, improving, and preparing staff which can be extensive trouble for organizations. Despite these difficulties schools and colleges must identify and overcome them to guarantee that their students receive the best possible education.

A] Resistance to change

People and organizations alike exhibit a common phenomenon known as resistance to change. It happens when individuals are reluctant to embrace groundbreaking thoughts or changes in everyday practice and frequently prompts stagnation or then again outdated nature. There are a variety of ways that resistance to change can manifest itself in educational establishments. For instance, faculty members may oppose changes to teaching methods or administrative policies, while students may oppose changes to the curriculum or syllabus. Understanding the underlying reasons why people feel threatened or uncomfortable with new ideas is essential to overcoming resistance to change. A few potential factors that add to opposition incorporate apprehension about the obscure, saw dangers to individual character or status, and antipathy for interruption or vulnerability. To address these concerns, educators, and administrators must effectively

communicate the advantages and justifications for proposed changes. In addition, in order or achieve consensus and ensure the successful implementation of new initiatives, they must be willing to listen to feedback and maintain a dialogue with students, faculty, and other stakeholders regularly.

B] Resource Limitations

The lack of resources is one of the main concerns when updating college and school syllabi. Not only will the revisions to the syllabus affect the academic progress of the students, but they will also affect the budget of the educational establishment. To provide students with a better learning experience, the modifications may necessitate the hiring of new teachers, the development of infrastructure, and several other modifications. Further developed courses would require more skilled instructors who might convey more salary packages that may not be attainable in each organization. In addition, many educational establishments may lack external financial support for this kind of reform. As a result, it becomes necessary to evaluate the resources at hand and work within their limitations. The progressions should be made focusing on the center subjects and abilities that students need to figure out how to succeed in their future vocations. To avoid any undesirable side effects, any changes should be carefully considered before being implemented. The institutions need to keep in mind that the changes shouldn't hurt the quality of the education that students get.

C] Existing infrastructure

A crucial aspect of altering college and school syllabi is the existing infrastructure. It would be difficult to implement new teaching methods without the right infrastructure. New tools, up-to-date technology, or even larger classrooms are frequently required when syllabi are altered. Before making any new additions to the syllabi, it is essential to evaluate the infrastructure that is already in place and make any necessary adjustments. Moreover, infrastructure additionally incorporates the accessibility of assets, for example, books research papers, furthermore different materials that are fundamental for learning. In this way, schools and universities should plan to give students updated resources, a reasonable learning climate, and sufficient amenities to guarantee that they are ready to take on the difficulties of modern-day education. Teachers can implement new syllabi and teaching methods that can enhance students' ability to think critically and creatively with the right infrastructure. Last but not least, it is essential to make certain that the existing infrastructure is in good condition to give students who are eager to learn and improve their skills the best possible education.

The current educational system's comprehensiveness in subjects is another important aspect that needs to be changed. The school curriculum's significant error is its failure to think about various learning styles and focuses on a one-size-fits-all approach that dismisses students' interests and preferences. The syllabus's lack of flexibility has resulted in a monotony of teaching content that fails to inspire creativity in students and consequently, boring and irrelevant classes. As a result, colleges need to start offering courses that cross over disciplines like the arts, sciences, humanities, and social sciences. Students will be able to make use of their strengths and weaknesses by taking specialized courses that are tailored to their interests and potential. This will encourage individual expression and knowledge sharing. In conclusion, the curriculum of a college is an essential component of this identity and it is essential to strike a balance between the needs of students and the academic requirements. In

this vein adjusting the schedule to incorporate more extensive scopes of learning approaches and interdisciplinary courses will sustain inventiveness, and intellectualism and develop more success-oriented students.

Conclusion

In conclusion, it can be said that our school and college syllabi need to be drastically revised to ensure that students become smarter and more focused on success. The ongoing schedules are not adequate to plan for the difficulties of the cutting-edge world. A changed prospectus that furnishes students with decisive reasoning, critical thinking, and relational abilities will go far in changing them into effective people. Students will also have the chance to learn skills that are in high demand if specialized training programs in emerging fields like artificial intelligence and machine learning are included. In addition, interdisciplinary courses that encourage creativity, entrepreneurship, and innovation must be established. Success in today's world requires not only the ability to acquire information but also the ability to analyze, synthesize and generate new knowledge. As a result, to make learning more enjoyable and engaging, educators must reevaluate existing teaching methods and incorporate new approaches. Schools and colleges may become the breeding ground for individuals who are smarter and more focused on success as a result of these alterations to the syllabi.

Summary of the key points

In summary, there are a few important considerations to make when looking into whether or not school and college syllabi need to be changed to help students develop into successful students. To begin the current emphasis on content-based instruction may not be sufficient to adequately prepare students for success in life and the workplace. More skill-based learning such as communication, critical thinking, and problem-solving may be required instead. Secondly, students can benefit from increased flexibility and accessibility as well as enhanced support for more individualized and engaging learning experiences through the utilization of technology and online resources. Thirdly students' social and emotional development must be addressed through mental health promotion and opportunities for social and emotional intelligence development. By and large, the changes needed to support smarter and success-oriented students will require a multifaceted approach that addresses not only the content of the syllabi but also the delivery method, technology use, and social and emotional support provided to students.

Call for action

All in all, the requirement for a reexamined and refreshed prospectus across all degrees of schooling has been laid out. We must adapt both how we teach and what we teach to meet the demands of ever- evolving times, ever-evolving technologies, and an ever-increasing need for an employable workforce. Our educational establishments need to place a primary emphasis on providing students with practical knowledge that will enable them to succeed in their chosen fields. In addition to imparting theoretical knowledge, the revised syllabus should aim to instill practical skills, critical thinking, problem-solving abilities, and teamwork among students. The focus shouldn't just be on scholastic greatness but also the general development and improvement of the students. Considering this, the requirement for a call for activity couldn't possibly be more significant. For the education system to remain relevant and effective in preparing our future generations, it must adapt to changing times. Faculty education boards, policymakers, and stakeholders all have a stake in creating a learning environment that encourages growth, innovation, and creativity.

Future Implications

Future implications will be of fundamental significance in concluding the changes that should be consolidated in the school and school syllabus. The job market has already begun to change as a result of technology, eliminating some traditional occupations, opening up new opportunities, and requiring specialized skills. In light of these developments, our educational system needs to match students' education to the opportunities and challenges they will face in the future. For example, the consolidation of practical training which centers around technological advancements will give a more grounded establishment for students to advance in the job market. In addition, enhancing students' soft skills, intellectual curiosity, creativity, and problem-solving abilities will help them thrive in a globalized and ever-changing environment. In addition, our education system needs to be flexible and adaptable to incorporate new disciplines or ways of thinking that are pertinent to the shifting landscape as digitalization and automation continue to expand in the future and the impact of globalization and climate change becomes even more pressing. All in all, the future implications for students' schooling require us to present changes in syllabuses that balance customary information while consolidating developments on innovation, delicate abilities, and future-situated thinking.

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DIRECT TAXES

Supreme Court

1 ***CIT (International Taxation) vs. Siemens Nixdorf Information Systemse Gmbh; [2023] 453 ITR 741 (SC): Dated 11/04/2023:***

Capital gains — Capital loss — Capital asset — Definition of — Loan given by assessee to its subsidiary in India — Tribunal giving strong reasons for holding that transaction constituted capital asset and consideration received upon assignment thereof a short-term capital loss — Interpretation given by Tribunal and High Court only with regard to particular transaction — Supreme Court will not interfere: S. 2(14) of ITA 1961: A. Y. 2002-03

The respondent assessee has a subsidiary company by the name Siemens Nixdorf Information Systems Limited (SNISL). The respondent had lent an amount of Rs. 90 lakh Euros to SNISL under an agreement dated September 21, 2000. SNISL ran into serious financial troubles and it was likely to be wound up. In this situation, the respondent sold this debt (Rs. 90 lakh Euros) to one Siemens AG. This on the basis of valuation carried out by M/s. Infrastructure and Leasing Finance Ltd. The respondent claimed the difference in the amount which was invested/lent to SNISL and the consideration received when sold/assigned to Siemens AG as a short-term capital loss. However, the Assessing Officer disallowed the claim of short-term capital loss. The Assessing Officer held that the amount of Rs. 90 lakh Euros lent by the assessee to its subsidiary SNISL, was not a capital asset u/s. 2(14) of the Income-tax Act, 1961 and also no transfer in terms of section 2(47) of the Act took place on assignment of a loss.

The Commissioner of Income-tax (Appeals) held that although the assignment of a loss was a transfer u/s. 2(47) of the Act, but it is of no avail, as the loan being assigned/transferred, is not a capital asset. Accordingly, he did not allow the assessee's claim. The Tribunal allowed the assessee's appeal. It examined the definition of capital asset u/s. 2(14) of the Act. It held that it defines the term 'capital asset' as 'property of any kind held by an assessee, whether or not connected with his business or profession', except those which are specifically excluded in the said section. It further records the exclusion is only for stock-in-trade, consumables or raw materials held for purposes of business. It thereafter examined the meaning of the word

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'property' to conclude that it has a wide connotation to include interest of any kind. It places reliance upon the decision of this court in the case of ***CWT vs. Vidur V. Patel [1995] 215 ITR 30 (Bom)*** rendered in the context of the Wealth-tax Act, 1957 which while considering the definition of 'asset' had occasion to construe the meaning of the word 'property'. It held the word 'property' to include interest of every kind. On the aforesaid basis, the Tribunal held that in the absence of loan being specifically excluded from the definition of capital asset under the Act, the loan of Rs. 90 lakh Euros would stand covered by the meaning of the word "capital asset" as defined u/s. 2(14) of the Act. It also held that the transfer of the loan, i. e., capital asset will be covered by section 2(47) of the Act. This as the Revenue had not filed any appeal on this issue. Thus, holding that the respondent would be entitled to claim loss on capital account while assigning/transferring the loan given to M/s. SNISL to one to M/s. Siemens AG.

The Bombay High Court upheld the decision of the Tribunal and held that the loan given by the assessee to its subsidiary in India constituted a capital asset within the meaning of section 2(14) of the Income-tax Act, 1961 and the consideration received when it was assigned to S was a short-term capital loss.

The Supreme Court affirmed the decision of the Bombay High Court and held as under:

> *"The Tribunal had given strong reasons for holding that the transaction would come within the meaning of section 2(14) of the Act. The findings of the Tribunal had been found to be correct in law by the High Court. The interpretation given by the Tribunal as well as the High Court was only with regard to a particular transaction. The court would not interfere with the order under the extraordinary jurisdiction of article 136 of the Constitution of India."*

2 *CIT (Exemptions) vs. Krupanidhi Education Trust ; [2023] 453 ITR 750 (SC): Dated 03/03/2023:*

Charitable purpose — Exemption u/s. 11 — Charitable institution engaged in imparting education; (i) Effect of proviso to section 2(15) and CBDT Circular no. 11 of 2008 — Surplus income generated by educational activities — Would not affect entitlement to exemption u/s. 11; (ii) Effect of section 13 — Disqualification for exemption — Charitable institution running educational institution — Alleged excess of remuneration to employees — Revenue has no power to interfere — Exemption could not be denied: Ss. 2(15), 11 and 13 of ITA 1961: A. Y. 2010-11

The assessee-trust was running various institutions in Bangalore offering degrees and training in various academic courses and was granted registration u/s. 12A of the Income-tax Act, 1961. The Assessing Officer held that the assessee had violated the provisions of section 13(1)(c) of the Act and therefore, the assessee was not entitled to claim exemption u/s. 11 of the Act. The two trustees were being paid remuneration or salary not in proportionate to the pay scales of a professor and administrative officer respectively. The Assessing Officer completed the assessment u/s. 143(3) of the Act denying exemption u/s. 11 of the Act and making certain additions.

The Commissioner (Appeals) and the Tribunal held that the assessee was entitled to exemption.

On appeal by the Department the Karnataka High Court upheld the decision of the Tribunal and held as under:

> *"The assessee was entitled to exemption u/s. 11 of the Income-tax Act, 1961 , finding that the salary or remuneration paid to the trustees was duly accounted and reflected in their returns as income, that the proviso to section 2(15) of the Act introduced by the Finance Act, 2008 would not be applicable to the assessee imparting education, and where the object of the trust or institution is relief to the poor, education or medical relief, it would constitute "charitable purpose" even if it incidentally involved the carrying on of commercial activities."*

Supreme Court dismissed the appeal filed by the Revenue and held as under:

> *"We have heard learned counsel for the petitioner. We do not find any good ground to interfere with the impugned judgment and order passed by the High Court. Accordingly, the special leave petition is dismissed."*

3 ***Principal CIT vs. Abhisar Buildwell P. Ltd.; [2023] 454 ITR 212 (SC): Dated 24/04/2023:***

Search and seizure — Assessment in search cases — Jurisdiction — Scope of — Effect of search or requisition — Completed assessments remain unabated — Jurisdiction to assess or reassess "total income" for A. Ys. for which assessments do not abate — Only if incriminating material unearthed during search — No addition permissible for such years in absence of incriminating material having been found in search — Completed or unabated assessments can be reopened u/s. 147/148: Ss. 2(45), 131, 132, 132A, 143(1), (3), 147, 148, 153A and 285BA of ITA 1961

The core issue involved in the present batch of appeals is the scope of assessment u/s. 153A of the Income-tax Act, 1961. According to the Revenue, the Assessing Officer is competent to consider all the material that is available on record, including that found during the search, and make an assessment of "total income". Some of the High Courts have agreed with the said proposition. However, according to the respective assessees and as per some of the High Courts' decisions, if no assessment proceeding is pending on the date of initiation of the search, the Assessing Officer may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source.

The Supreme Court held as under:

"i) On a plain reading of section 153A of the Income-tax Act, 1961, it is evident that once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made, and assess or reassess it. According to the provisions of section 153A, in a case of search u/s. 132 or requisition u/s. 132A, the Assessing Officer gets jurisdiction to assess or reassess the "total income" in respect of each assessment year falling within six assessment years. Under the second proviso to section 153A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s. 132 or making of requisition u/s. 132A, as the case may be, shall abate. According to sub-section (2) of section 132A, if any proceeding

initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) of section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in a case of search, only pending assessment or reassessment proceedings shall abate and the Assessing Officer would assume jurisdiction to assess or reassess the "total income" for the entire six-year period or block assessment period. The intention does not seem to be to reopen completed or unabated assessments, unless any incriminating material is found with respect to the concerned assessment year falling within the six years preceding the search.

ii) Therefore, on a true interpretation of section 153A of the Act, in case of a search u/s. 132 or requisition u/s. 132A during which any incriminating material is found, even in a case of unabated or completed assessment, the Assessing Officer would have jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, where during the search no incriminating material is found, in the case of a completed or unabated assessment, the only remedy available to the Department would be to initiate reassessment proceedings u/s. 147 or section 148 of the Act, subject to fulfilment of the conditions mentioned in those sections, as in such a situation, the Department cannot be left with no remedy.

iii) If, even in a case of search where no incriminating material is found during the course of search, and the assessment is unabated or completed, the Assessing Officer were to assess or reassess the income or total income taking into consideration the other material, there would be two assessment orders, which shall not be permissible under the law. The second proviso to section 153A and sub-section (2) of section 153A would then be redundant. Rewriting provisions is not permissible under the law.

iv) Thus in a case of search u/s. 132 or requisition u/s. 132A, the Assessing Officer assumes jurisdiction for assessment u/s. 153A; all pending assessments or reassessments shall stand abated. In case any incriminating material is found or unearthed, even in case of unabated or completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns; and in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other material in respect of completed assessments or unabated assessments, meaning thereby, in respect of completed or unabated assessments, no addition can be made

by the Assessing Officer in the absence of any incriminating material having been found during the course of search u/s. 132 or requisition u/s. 132A of the Act. However, completed or unabated assessments can be reopened by the Assessing Officer in exercise of powers u/s. 147 or 148 of the Act, subject to fulfilment of the conditions as envisaged or mentioned u/s. 147 or 148 of the Act and those powers are saved."

On the question whether in the case of completed or unabated assessments, the Assessing Officer would have jurisdiction to reopen assessments made under section 143(1)(a) or (3) of the Act and to reassess the total income taking notice of undisclosed income found during the search and seizure operation the High Court took the view that the Assessing Officer had the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment.

The Supreme Court held as under:

"i) Once during the search undisclosed income was found on unearthing the incriminating material during the search, the Assessing Officer would assume jurisdiction to assess or reassess the total income even in the case of completed or unabated assessments.

ii) Prior to the insertion of section 153A of the Income-tax Act, 1961 in the statute, the provision for block assessment was u/s. 158BA of the Act. The erstwhile scheme of block assessment u/s. 158BA envisaged assessment of "undisclosed income" for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i. e., (i) block assessment u/s. 158BA to assess the "undisclosed income" and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the "undisclosed income" was chargeable to tax at a special rate of 60 per cent. u/s. 113 whereas income other than "undisclosed income" was required to be assessed under regular assessment procedure and was taxable at the normal rate. Therefore, section 153A was brought on the statute. Under the section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the "undisclosed" income too at the normal rate of tax as against any special rate. Thus, after the introduction of section 153A in cases of search, there shall be assessments for six years. Search assessments u/s. 153A are triggered by the conduct of a valid search u/s. 132 of the Act. The very purpose of a search, which is a prerequisite or trigger for invoking the provisions of section 153A or section 153C, is detection of undisclosed income by undertaking the extraordinary power of search and seizure, i. e., income which cannot be detected in the ordinary course of regular assessment. Thus, the foundation for making search assessments u/s. 153A or section 153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search."

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DIRECT TAXES

High Court

Business loss – Section 28 of the Income Tax Act, 1961 – non recovery of advances made to group company under the rehabilitation scheme – genuineness of advances not doubted – the deduction of advances allowable business loss owing to commercial expediency.

Facts

1. The Assessee is a Public Limited Company carrying on business, inter-alia, as manufacturer of jeeps, tractors, implements and other products. The Assessee also has a trading division for steel and other products and diversified into oilfield services.

2. The Assessee was the promoter of Machinery Manufacturers Corporation Limited (MMC) holding more than 27% equity capital.

3. In AY 1989-90, the Assessee had claimed deduction of Rs. 6.22 Crores, being amount lent to MMC which was not recoverable and Rs. 0.43 Crore, being amount paid to MMC towards miscellaneous expenses. The A.O. disallowed the same to be written off while computing the business income. The matter was carried upto appellate tribunal. However, the appellate tribunal also upheld the view of the lower authorities. The assessee being aggrieved by the order of the appellate tribunal, challenged the same before the Hon'ble Bombay High Court.

Arguments of the Assessee

4. The assessee with respect to the allowability of amount lent to MMC, contended that:

   (i) MMC's main activity was to manufacture of machinery required by the textile industry. Till 1984 MMC had earned reasonable profits. Thereafter, due to severe recession in the textile industry, MMC started making losses. Inspite of various steps taken by MMC, the losses continued due to the recessionary conditions in the textile industry.

   (ii) In 1986, the Industrial Development Bank of India ("IDBI") worked out a rehabilitation scheme for MMC. An integral part of the scheme was that the Assessee was

required to contribute directly to the funding of MMC as well as to give guarantees in respect of financial reliefs which other financial institutions/banks were required to give to MMC as a part of the rehabilitation scheme. The Assessee agreed to participate in the rehabilitation scheme and lent rehabilitation assistance by paying further amounts to MMC as well as by converting its existing intercorporate deposit ("ICD") with MMC into rehabilitation assistance.

(iii) The rehabilitation assistance/guarantees were unavoidable on the grounds of commercial expediency. As the losses suffered by the Assessee were due to non-recovery of such assistance and the losses on account of enforcement of guarantees by IDBI, the Assessee had claimed deduction of Rs. 6.22 Crores under Section 28 of the Act.

5. With respect to the miscellaneous expenses pertaining to MMC, the Assessee argued that:

(i) Owing to the losses incurred by MMC, it suspended its operations from end April 1988 onwards. During the period of suspension of operations and till winding up order was passed against MMC, MMC had to incur expenses towards salaries of staff and officers, statutory charges, security arrangements, rent etc.

(ii) Since MMC was a Mahindra Group Company, due to commercial expediency, to preserve and protect the value of goodwill attached to the Assessee, the Assessee decided to bear within certain limits the unavoidable expenditure of MMC during the period of suspension of its operations.

(iii) Accordingly, the Assessee incurred an amount of Rs.42.89 lakhs and included the same in "miscellaneous expenses" and claimed as a deduction in computing its taxable income.

Department's Argument

6. On the other hand, the Department argued before the Hon'ble High Court that:

(i) MMC was a Mahindra Group Company was not acceptable because the name Machinery Manufacturers Corporation Ltd. did not contain any reference to Mahindra and Mahindra or any Mahindra Company.

(ii) The rehabilitation scheme in pursuance to which assessee claims to have lent moneys to MMC and given guarantees never came through.

(iii) The rehabilitation loans and payments under guarantees made by MMC are not related to the business of the Assessee appellant and the other major shareholders of MMC have also not contributed to the rehabilitation scheme.

(iv) The entire amount due to the Assessee from MMC is in the nature of a debt and in case the debt has become bad, it should have been written off in the profit and loss account.

7. With respect to the disallowance of the miscellaneous expenses pertaining to MMC, the department contended that:

   (i) The Assessee held only 27% of MMC's equity, as compared to which 37% was held by Government, financial institutions, and banks.

   (ii) Given the other shareholders, which held stakes higher than the Assessee, had not contributed towards such expenses, the amount was not allowable as it was spent for purposes other than the business interest of the Assessee.

Decision of the Hon'ble High Court

8. Hon'ble Bombay High Court was pleased to allow the appeal of the assessee by observing that in the present case the expenditure was incurred wholly and exclusively for the purpose of commercial expediency as MMC was a group company of the Assessee, and the Assessee was keen in the preservation of MMC to keep it as a going concern. The nexus between the Assessee and MMC is also not disputed. If there was no commercial expediency, there was no reason for assessee to incur these amounts or participate in the rehabilitation scheme of MMC. Not only was the Assessee the managing agent of MMC but also a Mahindra Group Company. It was certainly not necessary for the name of Mahindra and Mahindra to be used in the name of MMC to prove it was a group company. Accordingly, these expenditure/debts ought to be treated as having been incurred for the purpose of business and directly relatable to the business of the Assessee and thus eligible for deduction as business expenditure/loss in Assessee's return of income. The expenditure incurred by the Assessee or the debts that were recoverable from MMC, therefore, would certainly be deductible expenditure under Section 28 of the Act.

Mahindra and Mahindra Ltd. vs. CIT [ITA No. 626 of 2002, Bombay High Court, order dated 9 June 2023]

Reassessment - Section 148A of the Income Tax Act, 1961 – order under section 148A(d) was passed referring to allegation not mentioned in the notice issued under section 148A(b) of the Act – further no opportunity of personal hearing provided – Hence, order under Section 148A(d) is passed in violation of principles of natural justice and the same is liable to be quashed.

Facts

1. The A.O. had issued notice under Section 148A(b) on 22 March 2022 stating that purchases of Rs. 31.80 lacs were allegedly made from shell entities named 'Baliram Sharma' and 'D S Bitumix'.

2. The Assessee duly complied to the said notice and filed his response within the timeline mentioned by the Section 148A(b) notice. The A.O. had not provided any personal hearing to the assessee.

3. The A.O. passed an order under Section 148A(d) on 6 April 2022 referring to the transactions with 'Devyansh Dealcom Private Limited' and 'Eastern Sales India'.

4. The Assessee being aggrieved by the order under section 148A(d) of the Act, challenged the same before the Hon'ble Calcutta High Court.

5. However, the Single Judge Bench of the Hon'ble Court dismissed the Assessee's writ petition by holding that all the defences could be taken in the re-opening proceedings before the A.O.

6. The assessee being aggrieved filed an intra-court appeal with the Division Bench of the Hon'ble Court.

Hon'ble High Court's judgment

7. Hon'ble Calcutta High Court was pleased to allow the intra-court appeal by observing that in the show-cause notice under Section 148A(b) dated 22 March 2022, there was no reference of the Assessee's transactions with 'Devyansh Dealcom Private Limited' and 'Eastern Sales India'. Furthermore, on the date when response was sought to the show-cause notice by the A.O., no hearing was fixed and only required filing of an 'e-response'.

8. Hon'ble High Court further observed that in the order under Section 148A(d) the Assessing Officer had mentioned that no documents were submitted by the Assessee in support of its claim. However, this was factually incorrect as response filed by the Assessee contained the enclosures.

9. Thus, the Hon'ble Court held that there was a breach of the principles of natural justice and accordingly, the matter had to be remanded back to the A.O. for a fresh decision.

10. Hon'ble Court directed the Assessing Officer to furnish all relevant information concerning the two companies and other information pertaining to the Assessee. The Assessee may provide his response within 15 days. Thereafter an opportunity of personal hearing be granted and a fresh order be passed on merits and in accordance with law.

Rajesh Kumar Agarwal vs. UOI & Ors. [Calcutta High Court MAT/857/2023, order dated 9 June 2023]

Revision of orders prejudicial to revenue – section 263 of the Income Tax Act, 1961 – assessment order finalized in limited scrutiny - revisional order passed on an issue not covered in the limited scrutiny – invalid.

1. In the case of the assessee the AO has passed the original assessment order under section 143(3) of the Act in the 'limited scrutiny' category where the issue of "excess liability shown and disallowance under section 40A(3) of the Act" was examined and verified.

2. Subsequently the Pr. CIT invoked the revisional jurisdiction under section 263 of the Act by issuing a Show Cause Notice (SCN) to the Assessee seeking to revisit the Assessment Order on the question of "under valuation of closing stock", which was beyond the scope of the 'limited scrutiny' undertaken by the AO.

3. Finally, the Pr. CIT passed the impugned order treating the Assessment Order as erroneous as well as prejudicial to the interest of Revenue and directed

the AO "to modify the Assessment Order by making further addition of Rs. 15,53,849/- under the head undervaluation to closing stock."

4. The assessee being aggrieved by the order passed by Pr. CIT, challenged the same before the Income Tax Appellate Tribunal. Before the Appellate Tribunal the assessee contended, inter alia, that the Pr. CIT was not justified in giving the above direction under section 263 of the Act since the issue of "valuation of closing stock" was not part of the 'limited scrutiny' undertaken by the AO while completing the assessment under section 143(3) of the Act. It was pointed out that the said 'limited scrutiny' was in relation "to excess liability shown and disallowance under section 40A(3) of the Act."

5. On the other hand, the Revenue contended before the Appellate Tribunal that the ITAT is bound to follow the judgment of a Co-ordinate Bench of the ITAT dated 5th October, 2020 in Sushanta Kumar Choudhury v. Pr. CIT [IT Appeal No. 226 (CTK) of 2019, dated 5-10-2020] where it was held that the revisional powers under section 263 of the Act could be exercised even in relation to the issues which were not part of the limited scrutiny.

6. The Hon'ble Appellate Tribunal allowed the appeal of the assessee by distinguishing the decision in the case of Sri Sushant Kumar Choudhury (supra) on the ground that the facts in the said case were that the Pr. CIT mentioned that the order of the AO is erroneous insofar as he did not ask for permission for complete scrutiny and to that extent, the assessment order was erroneous and prejudicial to the interest of the Revenue. In the present case, there is no such averment by the Pr. CIT.

7. The department being aggrieved by the order passed by Hon'ble Appellate Tribunal filed an appeal before the Hon'ble Orrisa High Court under section 260A of the Act.

8. Hon'ble High Court was pleased to dismiss the appeal of the Department by observing that if the AO has to go beyond the scope of the issues for which 'limited scrutiny' has to be undertaken by him, he has to seek prior permission of the superior officer in terms of the CBDT Instruction No. 7/14 dated 26th September, 2014 and Instruction No. 20/15 dated 19th December, 2015. Consequently, it was not open to the Pr. CIT while exercising *suo motu* revisional power under section 263 of the Act to find fault with the assessment order of the AO on the ground of its being erroneous on an issue not covered by the 'limited scrutiny' when the AO could not have possibly examined such issue.

Pr. CIT vs. Shark Mines and Minerals (P.) Ltd [2023] 151 taxmann.com 71 (Orissa)

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CA Viraj Mehta

CA Kinjal Bhuta

DIRECT TAXES

Tribunal

1 *Pravina Dedhia vs. NFAC [ITA No. 1701/Mum/2021 dt. 30/05/2023 (Mum) (Trib.) (AY 2012 – 2013)*

Section 68 – Long term profit on sale of shares – Exemption denied – Alleged as Penny Stock Transactions – Held that transaction back by all evidences – Not taxable as penny stock – addition deleted

Facts

Case was reopened on account that assessee has transacted in a scrip name M/s PFL Infotech Ltd. Assessee has sold such shares during the year and claimed exemption on the same. AO denied the exemption and treated the same as penny stock transaction and made addition u/s 68. CIT(A) dismissed the appeal and hence, being aggrieved with the same, assessee has filed appeal before ITAT.

Held

Assessee had produced all the primary documents to prove the transaction which has happened online through recognized stock exchange (Bombay Stock Exchange) in the open/electronic market. The assessee has been able to prove the purchase and sale of shares of M/s. PFL and has filed purchase and sale contract notes, bank statement. Assessee had received the sale consideration through banking channel. And it has been brought to notice that similar addition made by the Department in respect of LTCG claim while trading in share of M/s. PFL Infotech has been considered and this Tribunal has upheld the claim of the LTCG. Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Sohanraj Uttamchand Vs. DCIT in which it was held that since the transaction of scrips of M/s. PFL Infotech Ltd took place in recognized stock-exchange which is not under the control of assessee; viz the shares were purchased and sold in Bombay Stock Exchange in the open market from unknown and unconnected persons; and the transactions are supported by contract notes and consideration has passed through the banking channel, merely based on the abnormal ups and down in the share market of this scrip cannot be a ground to disallow the LTCG claim of the assessee. Addition was thereby directed to be deleted.

2 *ITO Ward 12(1)(1), Mumbai vs. M/s. Albatross Share Registry Pvt. Ltd. [ITA No. 3788/Mum/2019 dt.23/06/2023] (AY: 2010-11)*

Section 68 – Share capital issue with huge share premium added back u/s.68 as

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unexplained income. If the assessee can prove all transactions with documentary evidences and AO cannot prove why the parties or documents are not correct, then no addition can be sustained. Once source of source proved, no addition only based on allegations.

Facts

The assessee has raised share capital by way of the issue of shares at premium on those shares from various parties. The assessee submitted list of 17 companies along with their name, address, PAN, number of shares, and the amount received. Notice u/s. 133(6) was issued to those companies. The AO observed that all the companies have meagre income and no genuineness and creditworthiness to invest in the equity shares of the assessee. The assessee's contentions were that the companies have share capital and reserves which run into crores. The AO treated the entire share application as unexplained cash credit u/s. 68 of the Act. The Ld. CIT(A) relied on the decision of Hon'ble Supreme Court in case of Lovely Exports as cited by the appellant and deleted the additions. The department therefore filed an appeal before ITAT against such deletion. The assessee also filed a cross objection against the department appeal.

Held

Most of the companies to whom 133(6) notice was issued, had assessments done under section 143(3) in previous years and those details were given by the assessee apart from their name, PAN and addresses. In many cases, ITR of these companies were also submitted by the assessee. 5 out of 17 parties did not respond to notice which was issued u/s. 133(6) of the Act. It was observed by ITAT, that apart from questioning the receipt of replies from those 5 parties, the AO did not raise any other objection questioning the identity of these investors. Also there was nothing on record to show that the AO after receipt of information from remaining parties have raised any doubt regarding the information furnished by those parties. It was held that with respect to those 5 parties, the Revenue has conducted scrutiny assessment in the preceding years. A mere isolated transaction by one of the alleged entry operators in one of the investor companies does not taint the entire share transaction in the assessee company in the absence of any corroborative material being brought on record. Further, the funds were received from the sale of equity shares of some other companies by these investors or from the refund of advances for the purchase of shares. It was evident that the assessee has also proved the source of source of the investors to satisfy the test of creditworthiness of the investor and genuineness of the transaction, against which no contrary material has been brought on record. Apart from making bald allegations, the Revenue did not bring any such material on record to substantiate its claim and therefore the appeal filed by revenue was dismissed.

3 ***Kusumben Amritlal Sanghvi vs. DCIT [ITA No. 194/Rjt/2019 dt. 30/05/2023 (Rajkot)(Trib.) (AY 2015 – 2016)***

Section 54F – Residential Flat purchased within the time limit of section 139(4) – Requirement to deposit net consideration in CAGS would not be attracted – Exemption cannot be denied

Facts

Revised return of income was filed to claim deduction of Rs. 10,53,975/- under Section 54F of the Act on account of purchase of residential building by the appellant. Within one year of sale of property, the appellant purchased the residential house for a sum of Rs. 12 Lakhs and claimed deduction

10,53,975/- under Section 54F of the Act by filing revised return of income. Assessment was finalized under Section 143(3) of the Act in terms of the original return of income at Rs. 59,37,270/- rejecting the claim of deduction to the tune of Rs. 10,53,975/- under Section 54F of the Act as per the revised return filed by the appellant on the ground that the appellant had not invested the fund into capital gain scheme before purchase of the residential property before filing of the return of income under Section 139(1) of the Act. CIT(A) dismissed the appeal and hence, being aggrieved with the same, assessee has filed appeal before ITAT.

Held

The case of the Revenue is this that the appellant is not entitled for exemption under Section 54F of the Act, since the unutilized amount was not deposited by him before the due date of filing of return of income under Section 139(1) of the Act. On this aspect, both the authorities below relied upon the judgment passed in the matter of Suleman Merchant passed by the Hon'ble High Court of Bombay, wherein it was held that the amount which has not been invested either in purchase or in construction of house has to be deposited in the specified accounts before the due date of filing of return of income under Section 139(1) of the Act. On the other hand, series of a judgment has been relied upon by the assessee in support of his case to this effect that if the investment in the residential property is made within the time limit of Section 139(4) of the Act, the deduction under Section 54F of the Act is allowable. The judgment passed by the Hon'ble Karnataka High Court in case of ***CIT vs. K. Ramachandra Rao, reported in (2015) 56 Taxmann.com 163 (Karnataka HC)*** was relied upon. Some other judgments observing a liberal approach should be taken by interpreting the provision of Section 54 of the Act were also relied upon by the appellant. The Hon'ble Karnataka High Court has laid down the ratio to this effect that when the assessee has purchased a new residential house within due date specified under Section 139(4) of the Act from the date of transfer of the original asset, requirement to deposit net consideration received by the assessee in capital gain account scheme as per Section 54F(4) of the Act, would not be attracted and the assessee would be eligible to benefit of exemption under Section 54F of the Act. Taking into consideration the ratio laid down by the Hon'ble Karnataka High Court, we find that the assessee's case is squarely covered under the same, as the assessee within one year from the sale of asset at a consideration of Rs. 60 Lakhs the long term capital gain whereof was also offered to tax by filing original return, purchased the residential house on 07.10.2015 for a sum of Rs. 12 Lakhs and claimed deduction of Rs. 10,53,975/- under Section 54F of the Act by filing revised return of income and entitled to relief as claimed for exemption under Section 54F of the Act to the tune of Rs. 1,10,53,975/-.

4 *Kimberly Clark India Pvt. Ltd. vs. DCIT -Circle 14 Pune [ITA No. 1950/ Pun/2019 dt. 12/05/2023] (AY: 2015-16)*

Section 144B – DIN not mentioned on face of the assessment order – CBDT Circular No.29/2019 to apply – Any order without DIN not valid.

Facts

The merits of the case were not discussed, as an additional oral legal ground was taken at the time of hearing, challenging the validity of the assessment order itself in light of CBDT Circular No.29/2019 dated 14th August, 2019. In this case, the order was passed without mention of DIN No (Document Identification Number) as required by the said Circular of CBDT. The Department Representative (DR) placed on record that assessment bears DCR

No. and thus corresponding DIN No. must have been generated but remained to be quoted in the body of the assessment order.

Held

Firstly, the legal ground which was taken for the first time before the ITAT, goes to the very root of the matter, and the DR did not object the same, and therefore the ground was admitted. In order to prevent manual practice of issuance of notice, order, summons and letters or correspondences and to maintain proper audit trail of all communications, the CBDT Circular mandated for generation, allotment and communication of computer generated DIN. It was held that, any communication which is not in conformity with the Circular, renders it invalid and shall be deemed to be never have issued. The revenue also failed to bring on record that case of assessee falls within any exceptions mentioned in the Circular and so if the DIN is not quoted in the body of assessment order (even if it would have been generated), the order was treated as never have been issued and ceases to have any effect in the eyes of law.

5 *DCIT vs. Capacite Infraprojects Ltd [ITA No. 904/Mum/2023 dt. 27/06/2023 (Mum)(Trib.) (AY 2014 – 2015)*

Section 153A –Completed Assessment - No Incriminating Material found during search – Lower Authorities could not point out any incriminating material – Addition cannot be sustained

Facts

Search and Seizure action under section 132 of the Act was conducted in the case of the assessee, its associated concerns, directors, and related persons on 20/08/2019. Accordingly, notice under section 153A of the Act was issued to the assessee. Assessee filed its return of income declaring a total income of Rs.8,77,75,570 (i.e. equivalent to the assessed income as per the assessment order passed under section 143(3) of the Act). The Assessing Officer ("AO") vide order dated 27/07/2021 passed under section 153A of the Act computed the total income of the assessee at Rs. 11,52,58,220 after making certain additions. Before the learned CIT(A), the assessee, raised additional ground challenging the additions made vide order passed under section 153A of the Act in the absence of incriminating material found during the course of the search. The learned CIT(A), sought the remand report from the AO. After considering the remand report and assessee's response thereto, the learned CIT(A) decided this issue in favour of the assessee and held that since in the year under consideration, the assessment was already concluded, the AO can make any addition under section 153A of the Act only on the basis of incriminating material found and seized during the course of the search, which aspect is absent in the present case. Being aggrieved by the same, department filed appeal before ITAT.

Held

It is undisputed that the scrutiny assessment under section 143(3) of the Act was already concluded vide order dated 16/12/2016 in the case of the assessee. Thus, on the date of search and seizure action under section 132 of the Act, i.e. 20/08/2019, no assessment for the year under consideration was pending and therefore the same was not abated as per the second proviso to section 153A of the Act. From the perusal of the order passed under section 153A of the Act, we find that the AO made three additions/disallowances. We find that two additions/disallowances were made on account of unverified purchases on the basis of verification of data available on the ITBA/ITD database. While the third addition was made on the basis of the perusal of details regarding the delayed payment of employees' contributions to the Provident

Fund and ESIC. Therefore, it is discernible that none of these additions are based on the material found during the course of the search in the case of the assessee, its associated concerns, directors, and related persons. We find that even in its remand report, the AO did not highlight the existence of any incriminating material found during the course of the search to support the addition made in the hands of the assessee vide order passed under section 153A of the Act. We find that the learned CIT(A), followed the decision of the Hon'ble jurisdictional High Court in ***CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd., (2015) 374 ITR 645 (Bom.),*** wherein it was held that no addition can be made in respect of assessments which have become final if no incriminating material is found during the search. We further find that recently the Hon'ble Supreme Court affirmed this position in ***PCIT vs. Abhisar Buildwell (P.) Ltd., [2023] 149 taxmann.com 399 (SC)***. It is undisputed that the assessment year under consideration is an unabated/concluded year, therefore, we find no infirmity in the impugned order deleting the additions made by the AO in the absence of incriminating evidence found during the course of the search.

6 *Ahmednagar Investments Pvt Ltd vs. DCIT [ITA No. 7125/Mum/2028 dt. 31/05/2023 (Mum)(Trib.) (AY 2013 – 2014)*

Section 154 – Rectification – Appeal filed before CIT(A) against rectification Order - CIT(A) enhanced the rectification order – No power to enhance the rectification order as its not a subject of rectification

Facts

Assessment u/s 143(3) of the Act, for AY 2013-14 was made vide order dated 23.03.2016. Thereafter, the AO issued notice dated 26.10.2017 u/s 154 of the Act to rectify an alleged mistake i.e. inclusion of LTCG while computing Book Profits and Income Tax payable u/s 115JB of the Act. The AO vide order dated 15.11.2017 *suo-moto* rectified the alleged mistake and included income from Long Term Capital Gains in computing book profit, u/s 115JB of the Act. Aggrieved against the order dated 15.11.2017 passed u/s 154 of the Act, the assessee had filed an appeal before the CIT(A). In the meantime, the AO passed another order u/s 154 of the Act, withdrawing the earlier order dated 15.11.2017 passed u/s 154 of the Act. The assessee filed an application before the CIT(A) dated 02.04.2018 to withdraw the appeal. The CIT(A) did not allow the assessee to withdraw appeal. Instead enhanced the assessment. Hence appeal before ITAT. Issue before ITAT is whether in an appeal arising from order u/s 154 of the Act, the CIT(A) in exercise of its powers u/s 251(1)(a) of the Act, can enhance the assessment on a ground that is not a subject of rectification order?

Held

It is a well settled principle that the scope of rectification of mistake u/s 154 of the Act is limited. It is only the "mistake that is apparent from record" that can be rectified. In proceedings u/s 154 of the Act, the AO cannot make addition in respect of any new source of income. The Act has provided different canons viz reassessment u/s 147 of the Act and revision u/s 263 of the Act to take care of such errors and income escaping assessment. The Department has to invoke right provisions of the Act to ensure that income that is liable to be taxed does not escape tax net. The remedy provided to the Department under different sections of the Act cannot be applied interchangeable. The provisions under different sections of the Act are not substitutes/alternate to each other. As we have observed earlier that powers of CIT(A) are co-terminus to that of the AO, the

CIT(A) can do whatever AO can do. Similarly, the CIT(A) cannot do what the AO cannot do. The CIT(A) has exercised this power of enhancement u/s 251(1)(a) of the Act in respect of the issues that were not subject matter of rectification. The CIT(A) in appeal arising out of proceedings u/s 154 of the Act has no jurisdiction to travel beyond the issue that is subject matter of appeal. The scope u/s 154 of the Act is confined to rectification of any "mistake apparent from the records". The entire assessment is not open before the CIT(A) as is in the case of appeal against order of assessment u/s 143(3)

of the Act. The CIT(A) in exercise of power of enhancement has made addition in respect of business income by disallowing the losses holding them to be fictitious and bogus and has also made addition in respect of Long Term Capital Gains which otherwise are exempt under provision of section 10 (38) of the Act. CIT(A) has gone beyond his jurisdiction while exercising power of enhancement in first appellate proceedings arising out of order u/s 154 of the Act and thereby appeal filed is allowed and additions are to be deleted.

7 *Smt. Surti Devi vs. ITO, Ward 3, Panchkula [ITA No. 57/Chd/2023 dt. 19/06/2023] (Chandigarh Trib.) (AY:2017-18)*

Section 251(1) – The CIT(A) NFAC has no power to set aside the matter to the file of AO

Facts

The Assessee while filing the return of income had claimed exemption u/s. 28 being the amount received by the assessee as enhanced compensation along with interest u/s 28 of the Land Acquisition Act for the land acquired in the year 1989. Return was processed u/s 143(1) by CPC, Bangalore where the said exemption was disallowed and added to the income by CPC. Against the said addition, the assessee went in appeal before Ld. CIT(A). The Ld. CIT(A) NFAC, remanded the matter back to the file of AO.

Held

Before ITAT, it was argued on behalf of the assessee, that CIT(A) NFAC has exceeded his jurisdiction in terms of remanding the matter to the file of AO instead of deciding the same by himself. The Ld. AR submitted that the CIT(A) does not have power to remand the matter to file of the AO u/s. 251 of the Act. The Hon'ble ITAT held that Section 251(1) empowers CIT(A) to revise, annual, or enhance the assessment, however, there is no such power of setting aside the matter to the file of the AO but matter has to be decided finally by the CIT(A) only. The CIT(A) while passing the order may call for remand report from the AO if required. It was held that the impugned order manifestly suffers from the defect wherein CIT(A) NFAC has failed take into consideration the powers conferred u/s. 251(1) of the Act. The matter was set aside the matter to the file of CIT(A) NFAC, to decide the same afresh as per law after providing reasonable opportunity to the assessee.

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Dr. CA Sunil Moti Lala
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INTERNATIONAL TAXATION
Case Law Update

A. SUPREME COURT

1 *DIT vs. Travelport Inc. [(2023) 149 taxmann.com 470 (SC)]*

The Hon'ble Apex Court held that the question as to what proportion of profits arose or accrued in India was a matter of fact and accordingly dismissed the Revenue's Appeal

Facts

i. The assessee, a US based entity, was providing electronic global distribution services to Airlines through "Computerized Reservation System" ('CRS'). For the said purpose, the assessee maintained and operated a Master Computer System, said to consist of several main frame computers and servers located in other countries, including USA.

ii. Further, it was noted that this Master Computer System was connected to airlines servers, to and from which data was continuously sent and obtained regarding flight schedules, seat availability, etc. In order to market and distribute the CRS services to travel agents in India, the assessee had appointed Indian entities and had entered into distribution agreements with them.

iii. Further, there was no dispute w.r.t the fact that out of the earning of USD 3/Euro 3 (per booking), the assessee paid various amounts to the Indian entities ranging from USD/Euro 1 to USD/Euro 1.8 i.e. 33% to 60% of their total earnings.

iv. The AO during the assessment procedure came to the conclusion that the entire income earned out of India by the assessee was taxable. This was on the basis that the income was earned through the hardware installed by the assessee in the premises of the travel agents and that therefore the total income of USD/EURO 3 was taxable.

v. The CIT(A) upheld the order of the AO.

vi. The Hon'ble Tribunal held that the assessee constituted Permanent Establishment ('PE') in two forms, namely, fixed place PE (i.e. computers placed in the premises of the travel agents and the nodes/leased lines form a fixed place PE) and dependent agent PE ('DAPE') (i.e indian entities

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in the form of dependent agents appointed by the assessee and they habitually secure contracts in favour of the assessee). It further held that activities were processed in the host computers in USA/Europe and that the activities in India were only miniscule in nature. Accordingly, with regard to the attribution of profits to the PE constituted in India, the Tribunal assessed it at 15% of the revenue and held, on the basis of the functions performed, assets used and risks undertaken (FAR) that this 15% of the total revenue was the income accruing or arising in India and this 15% worked out to 0.45 cents. However, the Hon'ble Tribunal further observed that the payment made to the Indian entities ranged from USD/Euro 1 to USD/Euro 1.8 or even more, which was much more than the revenue attributed by the Hon'ble Tribunal from activities carried out in India. Hence, it concluded that no further tax was payable.

vii. The Revenue filed miscellaneous application before the Tribunal, but the Tribunal dismissed the same clarifying that no further income was taxable in India as the remuneration paid to the agent in India exceeded the apportioned revenue.

viii. Accordingly, appeal was filed by Revenue w.r.t apportionment of revenue before the Hon'ble Delhi High Court against the order of the Tribunal. However, the Hon'ble High Court dismissed the appeal filed by the Revenue on the ground that no question of law arose and also held that insofar as attribution was concerned, the Hon'ble Tribunal had adopted a reasonable approach.

ix. Aggrieved by the order of the Hon'ble Delhi High Court, the Revenue filed appeal before the Hon'ble Supreme Court.

Decision

i. The Hon'ble Supreme Court noted that the Tribunal arrived at the quantum of revenue accruing to the assessee in respect of bookings in India which could be attributed to activities carried out in India, on the basis of FAR analysis (Functions performed, assets used and risks undertaken). Further, it also noted that the Commission paid by the assessee to the distribution agents was more than twice the amount of attribution and the same was already taxed. Hence, the Tribunal was correct in its conclusion.

ii. Further, w.r.t to the profit to be attributable, the Hon'ble Supreme Court held that under explanation 1(a) to Section 9 of the Act, what portion of income could be reasonably attributable to the operations carried out in India was a question of fact and on this question of fact Tribunal had taken decision considering the relevant factors.

iii. W.r.t to the Revenue's contention that such attribution was not in accordance with Article 7 of India-US DTAA, the Hon'ble Supreme Court pointed out that as per the treaty the entire income derived by the Assessee would be taxable whereas Section 9(1)(i) confined taxability to income attributable to operations in India.

iv. Thus, the Hon'ble Supreme Court dismissed the appeal filed by the Revenue. As regards, the question w.r.t the PE, it declined to answer the same.

B. HIGH COURT

2 *Bid Services Division Mauritius Limited vs. AAR (IT) [(2023) 148 taxmann.com 215 (Bombay)]*

The impugned order of AAR denying benefit of capital gains exemption under Indo-Mauritius DTAA to sale of shares by Mauritius SPV/Corporate Holding structure prior to 1-04-2017 was quashed by the Hon'ble Bombay High Court and the matter was remanded back to the AAR since it had not considered the TRC and Press Release dated 29th August, 2016

Facts

i. Petitioner, a private limited company incorporated under the laws of Mauritius on 23rd August, 2005, was a wholly owned subsidiary of Bid Services Division (Proprietary) Limited, South Africa the ultimate holding company being the Bidvest Group Limited in South Africa ("Bidvest").

ii. The Petitioner was a holder of Category-I Global Business License issued by the Finance Services Commission, Mauritius and also had a valid Tax Residency Certificate ("TRC") issued by the Mauritius Revenue Authority certifying that the Petitioner was a tax resident of Mauritius and entitled to avail the benefits of the Mauritius DTAA.

iii. The Petitioner filed its corporate tax returns in Mauritius and was a non-resident under the provisions of the Income Tax Act, 1961. The Petitioner did not have any permanent establishment/fixed place of business nor any business connection/operations in India.

iv. The Petitioner was a party to the consortium which applied to the bid opened by the Airport Authority of India ('AAI') for development of Delhi and Mumbai Airports. GVK-SA Consortium consisting of GVK Industries Ltd. and SA Airport Operators (SA Airport Operators was a joint venture of Airports Company South Africa Limited (ACSA), Old Mutual Life Assurance Company South Africa Limited and the Bidvest Group Limited (BidVest)) filed their expression of interest on 20th July, 2004, with the AAI for both the Mumbai and Delhi airports. Bidvest was one of the parties to the joint venture which in turn was a part of the Consortium.

v. Bidvest informed AAI vide letter dated 9th September, 2005 that BSDM (i.e. Petitioner) would hold 27% of the total share capital of the Joint Venture Company (the "JVC") if the Consortium was selected as the successful bidder.

vi. Accordingly, the bid was submitted on 12 September 2005, wherein, the bid agreement also provided the option to change the consortium partner. Along with the bid, the shareholding pattern of the consortium was also submitted wherein the Petitioner was shown as bidder and shareholder.

vii. The Consortium was selected as the successful bidder for modernisation and development of the Mumbai airport. Subsequently, Mumbai International Airport Limited ("MIAL") was incorporated on 2nd March, 2006.

viii. On 4th April, 2006, the AAI also entered into an Operation, Management and Development Agreement (the "OMDA") with MIAL and on the same day shareholders agreement was entered into between AAI, MIAL and the prime members i.e. GVK Airport Holdings Pvt. Ltd. ("GAHPL"), Petitioner and

AGL, which recorded the terms and conditions that govern their relationship as the shareholders of the JVC and recorded their respective rights and obligations.

ix. Under the Shareholder's agreement the Petitioner agreed to subscribe and acquire 27% of the total issued and paid up share capital of MIAL. This 27% share capital of MIAL comprised of 216,000,000/- shares, which was acquired in five tranches between the years 2006 and 2012 by the Petitioner. The balance equity shares in MIAL were subscribed to by GAHPL (37%), AGL (10%) and AAI (26%) respectively.

x. The Board of Directors of the Petitioner vide board meetings held on 20th February, 2011 and 28th February, 2011 in Mauritius decided to transfer its shares in MIAL to GAHPL.

xi. On 1st March, 2011, the Petitioner entered into a Share Purchase Agreement ("SPA") alongwith subsequent addendums with GAHPL and GVK Industries Limited, both of which are companies incorporated under the Companies Act, 1956, whereby the Petitioner agreed to sell and transfer to GAHPL and GAHPL agreed to purchase and acquire from the Petitioner the shares constituting 13.5% of the total paid up share capital, comprising of 108,000,000 shares of MIAL for the purchase price of USD 287,222,000.

xii. On 18th April, 2011, Petitioner made an application under Section 197(1) of the Act to the Assistant Director of Income Tax Circle-1(1) (International Taxation), New Delhi for obtaining a "Nil" withholding tax certificate and was issued a certificate dated 20th May, 2011, authorising GAHPL to make payment/remittance of USD 287,222,000 to the Petitioner for the transfer of shares without deduction of any tax at source under Section 195 of the Act.

xiii. Subsequently, on 3rd October, 2011, the sales consideration for the sale and purchase of the above-mentioned offered shares was reduced to US$ 231,000,000 due to change in payment mechanism and other changes and it was duly communicated to Assistant Director of Income-tax (International Tax). The said transfer was completed in the financial year 2011-12.

xiv. On 10th February, 2012, Petitioner filed an application under Section 245Q(1) before the AAR to determine the correctness of its belief that the capital gains that arose in the hands of the Petitioner by virtue of the sale of shares held by it in MIAL would not be taxable in India having regard to the provisions of Article 13(4) of the India-Mauritius DTAA.

xv. The matter was heard on 27th July 2015 and the application filed by the Petitioner was finally admitted. After twice the office of AAR getting vacated and twice a new bench being formed, the matter was heard on 22nd August, 2019, wherein, the Petitioner reiterated the submissions made by the Petitioner regarding the non-taxability of the gain arising from the transaction of sale of the shares, (effected pursuant to the SPA dated 1st March 2011) held by the Petitioner in MIAL having regard to the provisions of Article 13(4) of the India-Mauritius DTAA.

xvi. However, AAR did not accept the contentions of the Petitioner regarding the non-taxability of the gain arising from the transaction of sale of shares to

be effected pursuant to the SPA dated 1st March, 2011 held by the Petitioner in MIAL, by virtue of Article 13(4) of the Mauritius DTAA and passed ruling dated 10th February, 2020 rejecting the contentions raised by the Petitioner holding that the Petitioner is not entitled to the benefits under Article 13(4) of the Mauritius DTAA.

xvii. Aggrieved by the order, the Petitioner filed a writ petition before the Hon'ble Bombay High Court.

Decision

i. The Hon'ble Bombay High Court noted that the AAR had observed that the Petitioner was incorporated in Mauritius on 23rd August 2005 i.e. two weeks before submission of technical and financial bid by the GVK-SA Consortium. That when the expression of interest was filed by the Consortium on 20th July 2004, the Petitioner was not even in existence. Also, right from the very start Bidvest i.e. the ultimate holding company, was involved as member of the Consortium and not the Petitioner. That, it was only at Stage 2 of the bidding process that the Petitioner was substituted in place of Bidvest.

ii. The AAR had also concluded that the Petitioner company being a shell company without any tangible assets, employees, office space etc. being incorporated a few days before the bidding, had no management experts or financial advisers on its pay roll or on hire.

iii. The Hon'ble High Court further noted that as per AAR, according to the Indo-South Africa DTAA, the capital gains on share sale is taxable in India and if the Petitioner was not interposed, the Bidvest group would have to pay capital gains tax in India on the share sale transaction.

iv. The Hon'ble Bombay High Court studied the Article 13 of the India-Mauritius DTAA thoroughly and noted that with respect to capital gains that gains derived by a resident of a contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of the Article should be taxable only in that State i.e. in the present case in Mauritius and not in India.

v. The Hon'ble High Court took note of Circular No 682 of 1994 and 789 of 2000 and the Press release dated March 1st , 2013, which suggested that TRC would be a conclusive evidence for accepting residence as well as beneficial ownership for the purposes of the DTAA and that the same was not considered by AAR.

vi. The Hon'ble High Court relied on the decision of the Apex Court in the case of Azadi Bachao Andolan which had upheld both the above-mentioned circulars. Also it added that the decision of the Apex Court in the case of ***Vodafone International Holding B.V vs Union of India*** also had upheld circular No 789 and had held TRC to be a conclusive evidence. The same were again not considered by AAR.

vii. The Hon'ble High Court further added that no doubt mere holding of a TRC cannot prevent an enquiry if it can be established that the interposed entity was a device to avoid tax. However, the decisions of the Apex Court cited above have clearly upheld the conclusivity of the TRC absent fraud or illegal activities.

viii. The Hon'ble High Court further added that except bald allegations, no material had been placed on record to demonstrate or establish that Petitioner was a device to avoid tax or that there was fraud or any illegal activity. Also, the entire structure as well as the transaction of sale was in the full knowledge of the Indian Authorities including the tax authorities.

ix. The Hon'ble High Court also noted that in the Press Release dated 29th August 2016, by the CBDT it was cleared that investments made before 1st April 2017 have been grandfathered and will not be subject to capital gains taxation in India. Hence, Article 27A of the India-Mauritius DTAA would not apply to them.Even this release was not considered by AAR.

x. The Hon'ble High Court interalia relied on Paras 65 to 68 of the judgement of the Hon'ble Apex Court in the case of ***Vodafone International Holding B.V. vs. Union of India [(2012) 17 taxmann.com 202 (SC)]*** reproduced below:

"65. In the thirteenth century, Pope Innocent IV espoused the theory of the legal fiction by saying that corporate bodies could not be ex-communicated because they only exist in abstract. This enunciation is the foundation of the separate entity principle.

66. The approach of both the corporate and tax laws,particularly in the matter of corporate taxation, generally is founded on the above-mentioned separate entity principle,i.e., treat a company as a separate person....."

67. It is generally accepted that the group parent company is involved in giving principal guidance to group companies by providing general policy guidelines to group subsidiaries. However, the fact that a parent company exercises shareholder's influence on its subsidiaries does not generally imply that the subsidiaries are to be deemed residents of the State in which the parent company resides...Thus, whether a transaction is used principally as a colourable device for the distribution of earnings, profits and gains, is determined by a review of all the facts and circumstances surrounding the transaction...

68. The common law jurisdictions do invariably impose taxation against a corporation based on the legal principle that the corporation is "a person" that is separate from its members...Holding Structures are recognized in corporate as well as tax laws. Special Purpose Vehicles (SPVs) and Holding Companies have a place in legal structures in India....The Revenue cannot start with the question as to whether the impugned transaction is a tax deferment/saving device but that it should apply the "look at" test to ascertain its true legal nature... The corporate business purpose of a transaction is evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device."

The Hon'ble High Court concluded that the logic that Petitioner was brought

in for ease of doing business or for operational reasons and to provide supportive business environment found favour with the aforesaid observations.

xi. Thus, based on the above discussion, the Hon'ble High Court quashed the order of the AAR and allowed the appeal and remanded the matter to the AAR to decide the matter with respect to the guidance given by the Hon'ble High Court.

C. TRIBUNAL

3 *Franke Faber India (P.) Ltd. vs. DCIT [(2023) 149 taxmann.com 105 (ITAT-Pune)]*

Where assessee paid management fee to its AE and to benchmark said transaction TPO accepted cost allocation on basis of average total assets and third party sales, but refused to accept allocation done on basis of headcount, such course of action adopted by TPO being contrary to mandatory statutorily stipulated procedure, could not be countenanced

Facts

i. The assessee, engaged in manufacturing kitchen appliances like kitchen hoods, gas hobs, cook tops, cooking range, sinks and other kitchen related accessories, was a wholly owned subsidiary of Faber S.p.A. The assessee filed a revised return declaring current year's loss at Rs. 18,93,87,541,duly accompanied by Form No. 3CEB containing details of certain international transactions.

ii. The concerned transaction was 'Payment of Management Fees' amounting to 10.79 crores. The assessee had determined the ALP of the transaction on segregate basis with the Transactional Net Margin Method (TNMM) as the most appropriate method, using Operating Profit to Operating Cost as Profit Level Indicator (PLI) The assessee had shortlisted 18 comparable companies having arm's length range of profit between 4.15% to 8.78%. The Associated Enterprise (AE) was selected as Tested Party, whose PLI of 5% was declared as falling between the arm's length range.

iii. The AO during the proceedings had made reference to the TPO.

iv. The TPO noticed that the ALP of similar transaction in the proceedings for the A.Y. 2011-12 to 2015-16 was determined at Nil on the ground that the assessee could not show any tangible benefit having been derived from such services. However, the TPO did not follow the approach for the current year. Rather, he examined the working of the allocation of Management Fees paid by the assessee to its Associated Enterprise (AE) under various heads, such as, Group CEO; Group legal;Group Human Resources; Group Corporate Finance; Group Corporate Information Services; Division Strategic decision; Support, Division Finance and Controlling; Division Human Resources etc.

v. Further, the TPO noted that the AE allocated costs to various group companies under different sub-heads including the Group CEO by using certain keys, such as, 1/3rd of average total assets; 1/3rd of total third party sales and 1/3rd of average full time equivalent head count. However, he was of the opinion that allocation on the basis of head count was not appropriate as there may be certain high level

management persons and employees working in different countries.

vi. The TPO further observed that the assessee incurred its own separate costs at Rs. 13.36 crore in addition to payment to its AE towards Management Services fee of Rs. 10.79 crore. He accepted the cost allocation on the basis of average total assets and third party sales, but refused to accept allocation done on the basis of head count. Thus, he allowed management cost of Rs. 7.89 crores and disallowed 2.89 crores on the basis of his workings.

vii. Further, no relief was allowed by the Dispute Resolution Panel.

viii. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal noted that the issue in such earlier years had no bearing on the issue in the year under consideration and which could be decided independently because in the earlier years, the TPO had determined Nil ALP of the expenditure on the ground that the assessee had not received any benefit, whereas in the current year, the adjustment had been made by changing the basis of cost allocation as adopted by the assessee.

ii. The Hon'ble Tribunal further added that though the TPO mentioned in his order that he was reworking out the cost allocation on the basis of costs incurred rather than head count, but actually he determined the allowable portion of costs on the basis of sales ratio.

iii. The Hon'ble Tribunal after reading the provisions of Chapter X concluded that it transpired from the provisions of Chapter X read in conjunction with the relevant Rules, that any income arising from or expense paid to AE had to be determined in the hands of the Indian entity as per its ALP calculated under any one of the methods and given effect in the computation of total income accordingly. It further added that the procedure for computing total income is to first, ascertain the value of the international transaction; then, determine its ALP under any of the six methods; and thereafter to make transfer pricing adjustment representing excess of ALP over the transacted value of income or excess of transacted value over the ALP of the expenditure.

iv. The Hon'ble Tribunal held that the TPO did not compute the ALP of the international transaction but simply proposed the transfer pricing adjustment on the basis of some working done by him to the value of international transaction. Further, it added that the course of action adopted by TPO had no sanction of law as determination of ALP was mandatory as per the law.

v. The Hon'ble Tribunal concluded that no comparison of the Payment of Management Fee in an uncontrolled situation was made nor even the allocation of the third component on the basis of head count was done by considering any comparable uncontrolled instance. Hence, such a course of action adopted by the TPO was contrary to the mandatory statutorily stipulated procedure and hence, could not be countenanced.

vi. The Hon'ble Tribunal thus deleted the adjustment and accepted the ALP determination done by the assessee on which TPO had not commented at all.

4 *BCCI vs. DCIT - [150 taxmann.com 246 (ITAT - Mumbai)]*

Payment of Compensation by BCCI to overseas cricket association i.e. CSA (Cricket South Africa) under Termination Agreement would neither be taxable under the provisions of the Act nor under the India-South Africa DTAA.

Facts

i. The assessee, a national body for Cricket in India and a society registered under the Tamil Nadu Societies Registration Act, founded in the year 1929 with the object of promoting and developing Cricket in India are fostering the spirit of sportsmanship and member of the International Cricket Council ("ICC"), the international regulatory body for Cricket, derived substantial income from the conduct of Cricket tournaments and matches and was regularly assessed to tax in India.

ii. In the year 2008, the assessee commenced the conduct of a Cricket Tournament, namely, the Champions League T20 ("CLT20"). The participants in the CLT20 Tournament included the winners and/or runners-up of the domestic 20-over leagues of India, Australia, South Africa, etc.

iii. With a view to maximise the commercial success of the CLT20 Tournament and to ensure the participation of teams from South Africa in the CLT20 Tournament each year, in addition to the other teams of ICC member countries, the assessee arrived at an arrangement, inter-alia, with Cricket South Africa ("CSA"), which was the national body for Cricket in South Africa.

iv. Under the said arrangement, CSA ensured that the winning and, where appropriate, the runner-up Cricket team(s) involved in the domestic Twenty20 Cricket competition administered by CSA would be participating in CLT20 Tournament organised by the assessee each year.

v. It was agreed between the assessee and CSA that the assessee would pay a quantified participation fee to CSA each year towards the participation of teams from its jurisdiction for the duration of the CLT20 term. Thus, the participating teams in the said tournament included the winner and runner-up of the Indian Premiere League and similar teams which were winners and runner-ups in corresponding domestic T20 league tournaments held in other countries

vi. The assessee awarded the media/broadcasting rights relating to the CLT20 Tournament to ESPN Star Sports by way of a Rights Agreement, which was subsequently novated in favour of Star India Private Ltd for the duration of the CLT20 term.

vii. The assessee, through its sub-committee i.e. Champions League Governing Council ("Governing Council"), entered into Rights Agreement on 10/09/2008 with ESPN Star Sports for the grant of certain rights like Media Rights, Umpires Sponsorship Rights, Title Sponsorship Rights, Official Sponsorship Rights, etc. in relation to CLT20 Tournament.

viii. Under the terms of the Rights Agreement, the assessee was obliged, inter-alia, to ensure the participation of teams from CSA for such a period. Following demands from Star India

Private Ltd, being the right holder of the tournament, and with the concurrence of CSA it was mutually decided to discontinue staging of the CLT20 Tournament from the year 2015 onwards and revoke aforesaid arrangements with CSA on mutually settled terms and conditions.

ix. Subsequently, Star India Private Ltd conveyed its desire to discontinue the exercise of its rights and requested for termination of the CLT20 Rights Agreement.

x. The agreement dated 29/05/2015 i.e. the Rights Agreement granting media/ broadcasting rights to Star India Private Ltd was terminated and a sum of USD 380 million was paid to the assessee as compensation. Further, on 25/06/2015, the assessee entered into an agreement with CSA to revoke the arrangement with CSA under which they were obliged to ensure the participation of the teams under its jurisdiction in the CLT20 Tournament.

xi. Further, as part of the said agreement, CSA agreed that for a period of 4 years being the remainder period of the CLT20, if the assessee organised any similar tournament and called upon them to ensure participation of at least two teams from South Africa, then, CSA shall ensure such participation on reasonable terms and conditions for which separate participation fees as may be agreed between the parties would be payable.

xii. It was further agreed that during the said period, CSA would not directly or indirectly, manage, operate, stage, involve itself and/or any teams from South Africa or otherwise participate in any tournament which was in any way similar to the CLT20 Tournament.

xiii. As compensation for the termination of the CLT20 Tournament and in consideration of CSA's obligations in the aforesaid agreement, the assessee agreed to pay CSA, net of taxes, an amount of USD 22,696,000. Although the assessee was of the view that the said payment was not taxable in India, as a measure of abundant caution, the assessee grossed up the payment by 43.26% and remitted the tax to the credit of the Revenue.

xiv. The assessee then filed an appeal before the CIT(A) under section 248 of the Act, seeking declaration that the tax was not required to be deducted on the said amount. However, the learned CIT(A) vide impugned order held that CSA received compensation by way of annual price fees and non-compete fees from the assessee.

xv. The CIT(A) mentioned that the situs of the entire cause of action arose in India as the head office of the assessee was in India; all the agreements were signed in India; cause of action for all the matches, which were primarily played or to be played was in India; and the agreement for the sale of media rights between the assessee and ESPN initially and later on cancellation agreement between the assessee and Star India Private Ltd was also signed and executed in India.

xvi. The CIT(A) also held that the assessee constituted Dependent Agent Permanent Establishment ('DAPE') of CSA on the basis that the Governing Council of CLT20 comprised representatives from the assessee, CSA and Cricket Australia

("CA") and the assessee acted as an agent not only for CA and CSA, but also for other teams which participated in CLT20 as per the terms and conditions of the agreement.

xvii. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal noted that the only dispute in the appeal was regarding taxability of compensation paid to the overseas Cricket Association for the termination of the agreement.

ii. The Hon'ble Tribunal noted that the assessee had deducted taxes under section 194E of the Act in respect of annual participation fees paid to the CSA and the same was not in dispute. Also that the main income from the CLT20 Tournament arose from the sale of media rights.

iii. The Hon'ble Tribunal observed that payment made to CSA by the assessee under the Termination Agreement dated 25/06/2015 was not only for the premature termination of the arrangement amongst them, whereby CSA was required to ensure the participation of teams from South Africa in the CLT20 Tournament each year, but the compensation was also for the non-compete clause as provided in clause 6 of the agreement.

iv. The Hon'ble Tribunal mentioned that as per the records, in the year under consideration, no services, as alleged by the Revenue, by facilitating two domestic teams for participation in the CLT20 Tournament were rendered.

v. With respect to the non-compete clause, the Hon'ble Tribunal concluded that the contention of the assessee that the place where the non-compete clause would apply is outside India because if any tournament took place in India the same would be organised by the assessee, being the national body for cricket in India, and CSA would not be restrained from participating in such tournament, by virtue of clause 5 of the Termination Agreement - was correct.

vi. The Hon'ble Tribunal thus concluded that the the payment to CSA was not arising from any operations carried out in India in the year under consideration and thus the same was not taxable under section 9(1) of the Act.

vii. It also added that the place where the agreements were signed was relevant only to decide the jurisdiction and not the taxability unless there were some operations carried out in India and the payment was 'reasonably attributable' to the same, which was not the case here.

viii. The Hon'ble Tribunal added that the payment of compensation to CSA was for the termination of the arrangement, which was a profit-making apparatus, and thus was in the nature of capital receipt and hence not taxable.

ix. The Hon'ble Tribunal held that when the payment is not taxable under the Act, there was no need to check its taxability as per the treaty. Irrespective, as per the provisions of the DTAA the same was not taxable even as per the treaty as the Revenue apart from alleging that the assessee was the agent of CSA did not bring anything on record to show that the assessee had the authority to conclude contracts in the name of CSA and that it had habitually exercised the said authority which was a perquisite for taxability under Article 5(5) of the

DTAA. It added that since the payment was not taxable, there was no obligation on the assessee to deduct TDS under section 195 of the Act.

x. W.r.t to the DAPE issue, the Hon'ble Tribunal concluded that the Revenue apart from alleging that the assessee was the agent of CSA did not bring anything on record to show that the assessee had the authority to conclude contracts in the name of CSA and had habitually exercised the said authority, which was a requirement as per Article 5 of the India-South Africa DTAA. It also relied upon the decision of the apex court in the case of ***ACIT vs. E-Funds IT Solution Inc [(2017) 399 ITR 34 (SC)***].

xi. Further, relying on the observations of the Special Bench of the Tribunal in ***Mahindra and Mahindra Ltd vs DCIT, [[2009] 30 SOT 374 (Mumbai) (SB)***], it dismissed the contention of the Revenue w.r.t the applicability of the Section 115BBA r.w.s 194E on the said receipt as the payment to CSA was compensation for the termination of the CLT20 Tournament, which cannot by any interpretation be said to be 'in relation to any game or sport played in India'.

xii. Thus, the said appeal was allowed by the Hon'ble Tribunal.

5 *DCIT vs. Apollo Gleneagles Hospital Ltd - [(2023) 150 taxmann.com 210 (ITAT - Kolkata)]*

TPO was not justified in making downward adjustment by taking management fee expense at 'Nil' under CUP method disregarding TNMM employed by assessee as most appropriate method without pointing any defects in application or relevance of TNMM in this case. Payment of management fee for advisory services and use of brand name could not be labeled as shareholder/ stewardship services.

Facts

i. The assessee was a multi-specialty hospital providing latest generation diagnostic and treatment facilities. It was jointly promoted by Asian Healthcare giants 'Apollo Hospitals Group' and the Singapore based 'Parkways Healthcare Group'.

ii. In the year 2002, Apollo Hospitals Enterprises Limited ("AHEL") and Gleneagles Development Pvt Ltd ("GDPL") had entered into a joint venture agreement. Since, AHEL and GDPL both renowned hospital chains, they agreed to continue their operation in cohesion with each other as per the agreement dated 13.07.2002 to grow up a hospital in the name of Apollo Gleneagles Hospitals Ltd i.e. the assessee.

iii. As per clause 18 of this agreement, it was agreed between the parties that 5%of gross revenue generated from the hospital and diagnostic center shall be paid to AHEL and GDPL in equal proportion (i.e. 2.5% to each) by the Hospital Company as management fee.

iv. A tripartite agreement was entered into, effective from 01.07.2011 between the assessee, AHEL and Gleneagles Management Services Pte Ltd ("GMSPL"). As per the terms of the tripartite agreement:- a) assessee was granted a non-exclusive right to use and display licensed trademarks "Apollo" and "Gleneagles" respectively, together i.e. right to use "Apollo Gleneagles" upon or in relation to the name of Hospital. During assessment year2012-13,

assessee entered into the international transactions with its Associated Enterprise (AE), GMSPL.

v. The assessee made payment of management fee for advisory services and use of brand name "Gleneagles" at 2.5% of gross operating revenue. Arm's length bench-marking exercise of above international transaction was carried out by assessee contained in its Transfer Pricing Study Report (TPSR).

vi. Assessee applied Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM), using Profit Level Indicator of Operating Profit/ Operating Cost i.e. PLI of OP/OC. Assessee identified eight independent comparable companies for bench-marking. The OP/OC of assessee was 15.23% against industry average of 11.23%.

vii. However, TPO concluded that the transaction with GMSPL was not at arm's length and that there was no evidence for receipt of any services and consequent benefits and that no pricing analysis had been produced to substantiate payment of management fee @ 2.5%.It thus made a downward adjustment of Rs.5,14,96,223/- by taking the management fee expense at 'Nil' under CUP method.

viii. The CIT(A) deleted the addition and held that the TPO had exceeded his jurisdiction by disallowing entire management fee/brand royalty on the ground that no service was rendered/or no benefit was received.

ix. The CIT(A) had also noted that the assessee had submitted the required documents and evidences and clarifications for the same.

x. Aggrieved, the Revenue filed an appeal before the Hon'ble Tribunal. Also, the Department had challenged that the services received by the assessee were shareholder activity/stewardship services.

Decision

i. The Hon'ble Tribunal observed that the TPO exceeded his jurisdiction by questioning whether or not services were received and whether or not assessee derived benefit from the said management services because it is the domain of the Assessing Officer to assess whether or not expense is genuine and whether or not expense is incurred for the business purposes. Also it added that it was not the domain of the TPO to question the commercial expediency of the expense and his role was limited to determining the ALP for international transactions/specified domain transactions.

ii. The Hon'ble Tribunal added that as per the provisions of the Act, the TPO was responsible for determination and computation of the arms length price in relation to the International transaction/ SDT.

iii. The Hon'ble Tribunal further mentioned that the assessee had established the rendition of service by it's AE and also that there was contradiction in the findings of the authority. On one hand, it was held that arm's length price of these services was 'Nil' since no evidence of services received and benefits derived therefrom had been furnished by the assessee and on the other hand, a ground was raised that the services received by the assessee were in the nature of shareholder activity/ stewardship. It also added that even

the benefit test did not have much relevance.

iv. The Hon'ble Tribunal held that when evaluating the ALP of a service, it was wholly irrelevant as to whether the assessee benefits from it or not; the real question which was to be determined in such cases was whether the price of this service is what an independent enterprise would have paid for the same and the TPO failed to do the same.

v. The Hon'ble Tribunal added that assessee had bench-marked the transaction on TNMM basis, and unless the revenue authorities could demonstrate that some other method of ascertaining the arm's length price on the facts of this case would be more appropriate method of ascertaining the arm's length price, the TNMM could not be discarded.

vi. The Hon'ble Tribunal observed that the Assessee had established the arm's length nature of the management fee transaction by bench-marking its OP/OC by taking TNMM as the MAM against average industry mark-up of eight independent comparable companies. On this bench-marking exercise of the assessee duly furnished before the TPO, he had not pointed out any defect in the said bench-marking exercise forming part of the Transfer Pricing document.

vii. The Hon'ble Tribunal added that the TPO resorted to CUP method without applying the process of arriving at the same as the 'most appropriate method' by showing any independent comparable transaction in order to apply CUP. It added that TPO could not bring any uncontrolled comparable on record to substantiate the CUP method adopted by him to treat the management fee expenses at 'Nil'.

viii. The Hon'ble Tribunal further added that no justification by the TPO had been provided based on comparable data analysis to discard the TNMM arrived at by the assessee as MAM for bench-marking its international transaction with AE and adopt CUP method based on comparable data and also that the ALP could not be a hypothetical or imaginary value but a real value on which similar transactions had taken place.

ix. The Hon'ble Tribunal observed that management fee expense @ 2.5% of Gross Operating Revenue paid by the assessee to AHEL under the same tripartite agreement was accepted by the department during the year for the similar nature of services received from AHEL. It was also on record that claim of management fee expenses was accepted by the department and no addition was made for the same in assessment year 2014-15 and AY 2015-16.The Hon'ble Tribunal also added that the services received by the assessee were in no way akin to shareholder/ stewardship services.

x. The Hon'ble Tribunal thus dismissed the appeal of the Revenue and upheld the order of the CIT(A).

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CA Naresh Sheth

CA Jinesh Shah

INDIRECT TAXES
GST – Recent Judgments and Advance Rulings

A. WRIT PETITIONS

1 *Mahle Anand Termal Systems Pvt Ltd vs. UOI [2023-TIOL-689-HC-MUM-GST]*

Facts and issue involved

There were inadvertent errors in SAP system and invoices of the petitioner wherein wrong GSTINs of customers was updated. This led to wrong GSTINs being mentioned in Form GSTR-1 filed by the petitioner. The petitioner made various representations to the respondents to allow them to correct their GSTR-1, but of no avail. The representation is pending since 13.12.2021.

Vide this impugned petition, petitioner seeks an order and direction against the respondents to allow the petitioner to correct their return in Form GSTR 1 as well as invoices by mentioning the correct GSTIN of their customers and other consequential reliefs.

Petitioner's submission

Petitioner relied upon the judgments of Madras High Court in case of ***Pentacle Plant Machineries Pvt. Ltd. vs. GST Council Secretariat [2021-TIOL-604-HC-MAD-GST]*** and in case of ***Sun Dye Chem vs. Assistant Commissioner [2020-TIOL-1858-HC-MAD-GST]*** wherein it was held that absence of enabling provision cannot jeopardize taxpayer from availing credit that they are entitled to and thus, taxpayer is entitled to rectify and correct Form GSTR-1 filed so as to enable the customer to claim Input tax credit.

Discussions by and observations of High Court

High Court directed the respondent to decide the representation made by the petitioner within a period of eight weeks without fail in accordance with law after considering the applicability of the Circulars dated 26/26/2017-GST dated 29.12.2017 and judgments by Madras High Court in case of ***Pentacle Plant Machineries Pvt. Ltd. vs. GST Council Secretariat [2021-TIOL-604-HC-MAD-GST]*** and in case of ***Sun Dye Chem vs. Assistant Commissioner [2020-TIOL-1858-HC-MAD-GST].***

If the representation made by the petitioner is allowed, the respondent shall permit the petitioner to carry out rectification in their

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GSTR-1 within one week from the date of the said order. If the order is adverse, the petitioner would be at liberty to file appropriate proceedings.

Decision of High Court

Writ Petition was allowed on aforesaid terms.

2 *Gargo Traders vs. Joint Commissioner, Commercial Taxes (State Tax) & Ors – Calcutta High Court [WPA 1009 of 2022]*

Facts and issue involved

Petitioner had claimed Input Tax Credit ('ITC') in respect of supply made from a supplier during the period April 2018 to March 2019. Petitioner made payments to supplier through proper banking channels.

The registration of the said supplier was cancelled with retrospective effect covering the transaction period of the petitioner. On departmental inquiry, it came to light that supplier was fake and non-existent and that bank account was opened on basis of fake document. Therefore, department issued an order to reverse ITC and pay interest and penalty on the same.

Petitioner preferred an appeal against said order which was rejected. Aggrieved by the same, petitioner has preferred present writ.

Petitioner's submissions

Petitioner filed supplementary affidavit by enclosing tax invoice cum challan dated 12.11.2018, debit note dated 12.11.2018, e-Way Bill dated 12.11.2018, transportation bill dated 12.11.2018 and statement of bank account of HDFC Bank of the petitioner showing the transaction made by the petitioner in favour of the supplier.

Petitioner relying upon the said documents submitted that the authorities have not considered the said documents from where it is crystal clear that petitioner has purchased the goods from the supplier and had transported the said goods and also transferred the amount through bank in the account of the supplier.

Petitioner relied upon unreported judgment passed by the Principal Bench of this Court in WPA 23512 of 2019 ***(M/s. LGW Industries Limited & Ors. vs. Union of India & Ors.)*** dated 13.12.2021 and the Judgment reported in 2023 SCC Online Del 1412 (***Balaji Exim Vs. Commissioner, CGST & Ors.***) and submitted that the allegation of fake credit availed by supplier cannot be a ground for rejecting the petitioner's refund application unless it is established that the petitioner has not received the goods or paid for them.

The main contention of the petitioner was that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

Observations and Discussion by Court

Admittedly at the time of transaction, the name of supplier as registered taxable person was already available with Government record and petitioner has paid amount of purchased articles as well as tax on the same through bank and not in cash. It is not the case of the respondents that there is a collusion between petitioner and supplier with regard to the transaction.

Without proper verification, it cannot be said that there was any failure on the part of petitioner in compliance of any obligation required under the statute before entering into transaction in question.

The respondent authorities only taking into consideration of the cancellation of registration of the supplier with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.

The unreported judgment passed in the case of M/s Law Industries Limited & Ors. (supra) is squarely applicable in the present case.

Decision of High Court

The impugned orders are set aside and respondent shall dispose of the claim of petitioner by passing a reasoned and speaking order.

3 *Shyam Sundar Sita Ram vs. State of U.P and 2 Others [WRIT TAX No. – 991 OF 2021]*

Facts and issue involved

Petitioner is a proprietorship firm and is carrying out business in due manner. On 15.12.2020 petitioner changed its business address and moved an amendment application which was approved by the department on 09.02.2021.

A survey was conducted by the department at the earlier place of business on 03.01.2021 and it was found that the firm was not existing/ running from the registered place.

Department issued a Show Cause Notice ('SCN') on 11.02.2021 wherein it was alleged that the registration is liable to be cancelled as the firm was not existing/running at the registered place. In absence of reply to the said SCN, the registration of the firm was cancelled vide order dated 31.03.2021 on the grounds that firm was indulged in availing fake ITC credit from bogus firm.

Petitioner moved an application u/s 30 of CGST Act seeking revocation of cancellation of registration. Without issuing any SCN, order was passed on 17.05.2021 rejecting the application of petitioner. Appeal filed against the said order was also dismissed by the department.

Aggrieved by above, petitioner had preferred the present writ petition challenging the rejection of application filed for revocation of cancellation of registration.

Petitioner's submissions

Petitioner contended that GST registration can only be cancelled when the conditions of Section 29(2) of CGST Act are fulfilled. None of the clauses in Section 29(2) of CGST Act envisages non-availing of ITC as a ground for cancellation of GST registration.

Moreover, the SCN also stated that nothing was found in the premises of the Petitioner. For availment of credit, stand of the respondents is that they are issuing a show cause notice for recovery of the credit wrongly availed as is clear from the perusal of the counter affidavit.

Thus, on one hand stand of the respondents is that the firm is not existent whereas on the other hand, steps are being taken for recovery of the ITC allegedly wrongly taken under Section 74 of the CGST Act. Both of them cannot go simultaneously.

Observation of and discussion by of High Court

From the perusal of the order passed in appeal as well as the order cancelling the registration, it is apparent that the respondents have

committed error while deciding the issue on the ground that several firms were availing wrong ITC credit and were essentially bogus firms. Court in the case of Apparent Marketing Private Limited (Supra) has already dealt with the said issue and has recorded that once registration is granted, the same could be cancelled only in terms of the conditions prescribed under Section 29(2) and allegedly being a bogus firm is not a ground enumerated under Section 29(2) of CGST Act.

Thus, following the said judgment coupled with the fact that the respondents themselves have initiated proceedings against the firm under Section 74, the order rejecting the application for revocation was a wrong exercise of power by the department. The appellate order is equally bad, inasmuch as, no such ground was mentioned before passing the order of cancellation and, thus the impugned orders 17.05.2021 and 14.09.2021 are set aside.

Decision of Court
Writ petition is allowed.

B. RULINGS BY AUTHORITY OF ADVANCE RULING

1 *Eden Real Estates Private Limited – West Bengal AAAR [2023-TIOL-15-AAAR-GST]*

Facts and issue involved
Appellant is in the business of construction of residential apartments intended for sale to buyers and one such project is named "EDEN CITY MAHESHTALA" which has multiple towers. The prospective buyers are given an option to acquire car parking space along with the apartment being booked by them and accordingly the buyers who opt to avail the car parking facility are charged a certain sum towards the car parking space and the same forms part of the total consideration charged by the appellant from such prospective buyer.

Appellant sought an advance ruling on following questions as to:

1. Whether the amounts charged by the applicant for right to use of car/two-wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST/WBGST Act, 2017?

2. If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers.

3. If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a non-GST supply under Schedule III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space?

4. Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed unit but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

Ruling of AAR

AAR observed that parking facility was an optional facility the services of right to use of parking space is not a naturally bundled service along with the construction services of the apartment and should not be construed as a composite supply.

The rate of GST applicable for such supply of services of right to use of open parking space will be 18% (CGST 9%+WBGST 9%) without any abatement on value of land.

Further, in those cases where apartments along with parking spaces are sold after receipt of completion certificate, then as they are not bundled service and GST will be payable only on the consideration for services of right to use of parking spaces. The consideration received for apartments will not attract any tax.

Appeal to AAAR and grounds thereof

Aggrieved by ruling of AAR, appellant preferred an appeal to AAAR on following grounds:

- AAR erred in not considering supply of car parking space by appellant to its prospective customers along with allotment of units in project as composite supply;
- AAR failed to pass a speaking order and merely referred to the earlier order of the Appellate Authority without analyzing the facts of the instant case and ignored the submissions made by appellant;
- AAR erred in interpreting the definition of composite supply
- AAR failed to realize the aspect that the car parking space cannot be given to any person who does not possess a residential unit inside the project area and stamp duty is paid on the entire consideration charged by appellant towards unit price of the apartment and car parking space at the time of conveyance of said property; and
- AAR erred in stating that the Circular No. 177/09/2022-TRU dated 03.08.2022 was not applicable in the instant case as the said circular dealt with leasing transactions while the instant case is a matter of construction services.

Discussions by and observations of AAAR

The moot question here is whether parking space (open or covered) along with construction services of the apartment will be a bundled service as argued by appellant.

From plain reading of RERA provisions, that though a sanctioned plan requires inclusion of parking layout, an uncovered parking space such as open parking area is not included in the definition of "garage" but falls within the meaning of "common area". Now the "common area" belongs to all apartment owners jointly or the owners' association when formed and no portion can be sold/transferred/leased out to any person by the promoter. So in the instant case the sanctioned plan may have open parking spaces but the appellant has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees. The owners' association on joint agreement of its members may lease out the open parking space on rent at a future date but that question is beyond the ambit of the current discussion. So it is clear that the consideration collected from allottees for right to use of open parking spaces will not form a part of value of composite supply as prayed for by the Appellant.

The amount charged by appellant for right to use of car/two wheeler vehicle parking space, though not permissible as per RERA,

constitutes a separate supply under the GST Act and appellant is therefore liable to pay GST at rate of 18% on such supply. Further, the question of one-third abatement of valuation of land for open parking space is not maintainable as the "common area" which includes such open parking space is considered in the valuation of apartment and one-third abatement on supply of construction services is being availed before levy of tax under the GST Act.

The prospective buyers are given an option to opt for car parking space along with the apartment being booked by the customers and hence, sale/right to use car parking is not naturally bundled with construction services and cannot be treated as composite supply of construction services.

Ruling of AAAR

Sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. Therefore, sale/right to use car parking is not naturally bundled with construction services and cannot be treated as composite supply of construction services.

2 *Sanjeevani Psychiatric Clinic – Rajasthan AAR [2023-TIOL-82-AAR-GST]*

Facts and issue involved

Applicant is a registered clinical establishment providing medical services as a 'Single Specialty' under Allopathic System of Medicine by Dr. Rinet Sonia Dsouza (MBBS, MD. Applicant is providing treatment of patients suffering from substance use disorder (SUD) (addiction of drugs) in the state of Rajasthan.

Currently, the applicant is involved in providing Outpatient Facility. A patient is treated as outpatient where the patient is not admitted, however the treatment is provided at the Clinical Establishment as out-patient requiring no admission.

The treatment of patients as outpatients by applicant is carried out in 3 steps as following:

a. Registration of patents;

b. Counselling, Examination, and prescription of medicine by Psychiatrist; and

c. Dispensing of Medicine by psychiatrist.

Applicant has sought an advance ruling as to whether supply of services by way of treatment of patients suffering from SUD as out-patient is exempt under entry 74(a) of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?

Applicant's submissions

Treatment of SUD patients by the applicant is a supply as it satisfies all the requisite elements of supply as provided u/s 7 of CGST Act. For a supply to become a composite supply, there must be minimum two independent supplies being made together and one of them being a principal supply which is dominant over other supplies and such other supplies are incidental or ancillary to it.

In the above treatment of SUD as outpatient, examination of the patient by a doctor is pivotal and other elements like registration, counselling and dispensing of medicine are integral part of the said treatment. Some of these are pre examination activities and some of them are post examination activities.

In order to determine whether dispensing of medicine is a separate activity or integral part

of the treatment/medical services to be given by the applicant, perusal of certain provisions of Mental Healthcare Act, 2017 is essential.

As per the provisions Mental Healthcare Act, a patient shall be admitted only on satisfaction of a medical officer or mental health professional that the seventy of illness requires admission or that the patient would benefit from admission or where the patient has made the request for admission of his own free will. Thus, every patient who requires a treatment need not be admitted, patients can be treated as outpatients as well.

Further, as per Central Drugs Standard Control Organization (FDC Division), the medicines provided to SUD patients are strictly Government controlled drugs which are not available for sale on general medical stores and its supply is restricted by government.

SUD patients are mentally unstable, hence the medicines provided to them by as prescribed by Psychiatrist in his presence are controlled in terms of quantity depending upon their illness to avoid over consumption by the patients. Excess consumption of the drug may be fatal to the patient. Also, the SUD patients do not have a choice to take the medicine from general medical stores.

Thus, based on above, it can be clearly said that the supply of medicine by the applicant to SUD patients as outpatient is a part of treatment and cannot be detached or taken up independently from the examination of the patient in addition to registration and counselling services. Thus, in the opinion of applicant, the given chronological activities of outpatients cannot be segregated as separate or independent activities and should be treated as part and of being provided to SUD patients as outpatient by the applicant. The process of examination, prescription and issuance are integral parts of the whole activity of supplying service of detoxification.

Applicant made reference to various cases such as ***Card Protection Plan Ltd vs. Commissioners of Customs and Excise; LevobVerzekeringen BV*** and ***OV Bank NV vs,. Secretary of State for Finance, Netherlands; Hindustan Shipyard Ltd. vs. State of Andhra Pradesh; M/s. Fortis Health Care Ltd. and Another vs. State of Punjab and Others;*** etc. to fortify the position that when something is integral part of a contract, be it oral or written them same cannot be bifurcated.

Thus, it is evident that 3 activities as mentioned in the facts are integrated to provide the services of treatment to the patients and there is no supply of goods i.e. medicine independently in given case. There is no ambiguity in the fact that the whole process of examination of SUD patients is a treatment which is based on allopathic science of medicine and hence, qualifies as Health Care service covered as defined in para (zg) of Notification No. 12/2017–Central Tax (Rate) dated 28.06.2017.

The second condition that is required to be satisfied to fall under entry no. 74 of the said exemption notification is that the Health Care services shall be provided by a clinical establishment as defined in para 2(s) of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017. Applicant is a Clinical Establishment as it is already registered under section 15 of Clinical Establishment (Registration and Regulation) Act, 2010 for providing medical services as a 'Single Specialty' under Allopathic System Of medicine.

In light of above, applicant is providing Health care services through a Clinical Establishment which is exempt under entry no. 74(a) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

Discussions by and observations of AAR

There is no dispute that treatment of SUD Patients by the applicant is supply under Section 7(1) of CGST Act, 2017 and falls under the ambit of GST. Applicant is involved in treating out door patients only and medicines are being provided by the applicant only as per requirement of patient. Thus, applicant is involved in supply of service as well supply of goods i.e. medicine.

Healthcare service is exempt from GST Tax whereas supply of medicines is taxable. The supply to the in-patients by the hospitals, as advised by the doctor may be a part of composite supply of healthcare and not separately taxable, but here in given case, medicines are providing by applicant to outdoor patient. Applicant claimed that these medicines are not available in market thus the medicine supplied by them is a composite supply. However, authority did not find any supporting to establish that the medicine form part of counselling services provided by physiatrist. Thus, authority observed that the supplies being made by applicant are not composite supply.

Substance use disorder (SUD), commonly referred to as addiction, is a medical illness with altered behavioral, cognitive, physical, neurobiological, and affective functions associated with compulsive and repeated use of addictive substance(s), whether legal or illegal. Substance use disorders involve both psychological and physical dependence on the substance(s) of use. SUD is a complex condition in which there is uncontrolled use of a substance despite harmful consequences. People with SUD have an intense focus on using a certain substance(s) such as alcohol, tobacco, or illicit drugs, to the point where the person's ability to function in day-to-day life becomes impaired. The recommend drugs are only a maintenance treatment for maternal opioid use disorder.

Services for prevention and treatment of substance misuse and SUD have traditionally been delivered separately from other mental health and general health care services, because substance misuse has traditionally been seen as a social or criminal problem, prevention services are not typically considered a responsibility of health care systems. Further people needing care for substance use disorders have had access to only a limited range of treatment options that were generally not covered by insurance. Well-supported scientific evidence shows that the substance uses disorder treatment and mental health services from mainstream health care have traditional separation.

Thus, considering definition of health care services as provided in Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 and above discussion, SUD is out of ambit of health care services and not exempt under entry 74(a) of said notification.

Ruling of AAR

Treatment of patients suffering from SUD as out-patient is not exempt under entry 74(a) of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

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"The present is determined by our past actions, and the future by the present."

— *Swami Vivekananda*

CA Rajiv Luthia CA Keval Shah

INDIRECT TAXES

Service Tax – Case Law Update

1 ***Lalit Kumar Arya C/O Prabhat Zarda Factory (India) Pvt. Ltd. vs. Commissioner of Central Excise and Service Tax 2023-TIOL-536- CESTAT-KOL***

Background and Facts of the Case

- The appellant is engaged in the business of providing taxable service of Intellectual property rights service. They have filed a refund claim on account of excess payment of Service tax on account of unutilized CENVAT credit for the period October 2015 to March 2016. The Assistant Commissioner of Central Excise rejected their claim of refund on the ground that ST-3 return for the said period, in the relevant column no opening or closing balance of CENVAT credit was available which was claimed as refund.
- On filing of appeal before the Ld. Commissioner (Appeals), the appeal was rejected on the ground that the appellants were not eligible for refund under Rule 5B read with Notification 12/2014 dated 3rd March, 2014 of the CCR, 2004. The Ld. Commissioner (Appeals) held that the refund under said rule can be claimed only in respect of CENVAT on inputs and input services during the half year for providing specific output services, the output service of the appellant did not qualify in the same and hence no refund granted u/r 5B.
- The Ld. Commissioner (Appeals) interalia added that the amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim and that the claim is required to be filed in a prescribed format in which the required entries need to be filled in. It was his view that particulars of entries required to be filled in while furnishing any claim of refund under Rule 5B of the Cenvat Credit Rules would necessarily have convinced the appellant that the credit balance lying unutilized in their case is not eligible for refund under the said Rule.
- The Present appeal was filed by Smt. Rukmini Devi (wife of Shri Lalit Kumar Arya) enclosing a copy of his death certificate during the course of pendency of Appeal. On 17th May 2022, Smt. Rukmini Devi also expired and signed a communication that the matter may be decided on the basis of written submissions filed.

Decision of the Hon'ble Tribunal

- The refund claim is filed by the Appellant for unutilized Cenvat Credit. The copy of the SCN if any is not available on records neither does it appear to have been so issued, as appears from the case records. The benefit of representation in person for the Appellant is also not available to this Court. The question in the matter remains, is the assessee entitled for the impugned refund of Rs. 1,49,412/- rejected by the lower authority and said to be excess deposit of Service Tax, due to non-utilization of Cenvat Credit as per the Return for the period October 2015 to March 2016. The appellant, providing said services in his individual capacity, expired on 03/02/2016, i.e. prior to submission of the Half Yearly ST-3 Return wherein un-utilized Cenvat Credit of Rs. 1,49,412/- was duly reflected. That upon the death of appellant the business and alongwith the provisioning of the service by the Appellant also closed down forthwith. Service Tax registration has also been surrendered for cancellation to the jurisdictional office and therefore, the refund claim of the appellant ought to be decided as an exceptional case and not in the context of the basic rules and general principles.

- They submitted that it has now been settled by the order of the Commissioner (Appeals), that there is no dispute of the balance Cenvat Credit lying un-utilized, there is no bar to give cash refund thereof when an assessee ceased to exist and activities have come to end due to the death of the service provider working in his individual capacity. They also submitted that due to availability of un-utilized Cenvat Credit balance the assessee was not required to pay tax to the extent of available Credit and still if the said tax is received by Revenue, it cannot be retained on any ground and must be refunded.

- In view of the extraordinary circumstances of the appellant, the assessee being now deceased, bringing to closure of the business activities of providing of the services by the appellant and ultimately resulting in surrender of the registration, it is therefore certainly a case for consideration of the plea of the appellants.

- It is mandated that refund has to be granted when either there is a closure of the factory or the assessee goes out of the Modvat (Cenvat) Scheme. This decision of the Tribunal has been subsequently followed in several other similar cases rendered by coordinate Benches of this Tribunal.

- In view of the fact that right to availment of Cenvat Credit is a vested right (***Eicher Tractors vs. UOI - 1999(106) E.L.T.-3SC, Samtel India Ltd. vs. Commissioner - 2003(155) E.L.T.14SC) = 2003-TIOL-40-SC-CX,*** which accrues to a manufacturer, the fact of closure of business leading to non-utilization thereof, cannot deprive the deceased of their accrued interests in law and following judicial discipline and precedent decisions referred above, I allow the appeal with consequential relief, if any, to the appellant's legal heir as per law.

2 ***AAP SOLUTIONS Vs. Commissioner of CGST, Pune II 2023-TIOL-513-CESTAT- MUM***

Backgrounds and facts of the case

- The appellant are engaged in the business of providing Consulting Engineer Service. During the period July, 2016 to September, 2016, they provided taxable service upon which service tax amount of Rs. 87,750/- was discharged vide challan dated 5th October,2016.

However, inadvertently under the impression of non-discharge of the said liability, the appellant again on 13th April,2017 paid the service tax alongwith interest i.e. Rs. 87,750/- + interest Rs. 8,228/- (totalling Rs. 95,978/-) for the same period i.e. July, 2016 to September, 2016.

- On realizing their mistake, the appellant filed refund claim on 21.2.2019 for the said amount of Rs. 95,978/-. According to the department since the refund claim was made after the period of one year from the date of deposit therefore the same is not eligible for refund and accordingly a show cause notice was issued to that effect which culminated into the adjudication order dated 1st July,2019 by which the refund claim was rejected being beyond of the period prescribed by section 11B ibid. On appeal filed by the appellant, the learned Commissioner rejected the same.

Decision of the Hon'ble Tribunal

- The issue involved herein lies in a narrow compass whether the appellant is entitled for the refund claim of inadvertent payment which has already been paid by them and whether Section 11B ibid has application on the facts of the case.
- The heading of Section 11B ibid is 'claim for refund of duty and interest, if any, paid on such duty'. From the language of the heading of the said section it is clear that if there is any claim for refund of duty and interest on such duty then it has to be filed within the period prescribed therein. But the instant case is not about refund of duty as the duty has already been paid by the appellant on 5th October,2016, it is about the refund of the amount inadvertently paid by them again for the very same period i.e. July, 2016 to September, 2016 alongwith interest. It is not the case that the claim is fake or is not supported by any evidence. The department is admitting the double payment but denying the refund claim being beyond the period prescribed by Section 11B *ibid*.
- In the present case although there is no mistake of law but it has been paid by mistake as they have already discharged the duty and paid the same again with interest although they were not liable to pay.
- The Tribunal relied on the decision of Hon'ble High Court of Judicature at Madras in the matter of ***3E Infotech vs. CESTAT, Chennai; 2018 (18) G.S.T.L. 410 (Mad.)2018-TIOL-1268-HC-MAD-ST*** wherein a similar view was taken that when service tax is paid by mistake, a claim for refund cannot be barred by limitation merely because the period of limitation has expired.
- On similar lines, this Tribunal also in the matter of ***Javed Akhtar vs. CGST, Mumbai West; [2021] 132 taxmann.com 166 (Mumbai-CESTAT)*** in Service Tax Appeal No. 85611 of 2019 vide order dated 09th November,2021 has held that retention of any amount by the department which was paid by the appellant therein without any liability or in excess of the liability violates Article 265 of the Constitution of India.
- In view of the discussions made hereinabove, the Tribunal is of the view that the appellant is entitled for refund of the amount of service tax paid by them totalling Rs.95,978/- as the same has been deposited without any liability as the duty was already been discharged.
- The impugned order is accordingly set aside and the appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

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CS Makarand Joshi

CORPORATE LAWS
Case Law Update

Companies Act – Case 1

In the matter of Konwert India Motors Private Limited - Registrar of Companies, Coimbatore ROC Adjudication Order dated 18th May 2023.

Facts of the case

- Konwert India Motors Private Limited ('the Company'/'Konwert') was a start-up Company incorporated under Companies Act 2013 ['the Act'] and was located under the jurisdiction of Registrar of Companies, Coimbatore ('ROC')
- The Company was desirous of making private placement and therefore had passed a special resolution authorising such private placement, on 24th April 2021.
- The Company had issued an offer letter for private placement in form PAS-4 on the same date, that is, 24th April 2021. But the Company filed the certified true copy of the special resolution with Registrar of Companies in form MGT-14 on 24th August 2021. (i.e., four months after the passing of special resolution).
- This, being the violation of sub-section 3 of section 42 of the Act read with Rule 14(8) of Companies (Prospectus and Allotment of Securities) Rules, 2014, the ROC sent show cause notice to the Company for imposing penalty under Section 42(10) of the Act for non-compliance of provisions relating to private placement of securities as prescribed under section 42 of the Act.

Contentions of ROC

- Section 42(3) of the Act requires the Company making private placement of securities, to first file the copy of shareholder resolution with Registrar of Companies as required under Rule 14(8) of Companies (Prospectus and Allotment of Securities) Rules, 2014, and thereafter circulate the offer letter in form PAS-4 to the proposed allottee.
- However, the Company has first circulated the offer letter in form PAS-4 and thereafter filed the copy of resolution with ROC.

Contentions by the Company

- The Company did not submit any reply to the show cause notice. Therefore, there are no contentions or arguments

on the part of company and the ROC has passed the order ex-part.

Held

1. Company being a start-up company and a small company, ROC read out the penal provisions under section 42(10) of the Act, along with provisions of section 446B of the Act.

2. Sub-section (10) of Section 42 of the Act provides that *"if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a* ***penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower****, and the* ***company shall also refund all monies with interest*** *as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty."*

3. Section 446B of the Act begins with a non-obstante clause and provides for lessor penalties in case of OPC, Small Company, Startup companies and Producer companies.

4. Section 446B states that, *"Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions* ***subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default*** *or any other person, as the case may be".*

5. ROC stated that provisions of Section 446B gives overriding effect over sub-Section (10) of Section 42 of the Act.

6. The Company, being a startup company registered on Startup India portal as well as small company as verified from the filings made by the Company, the maximum limit of penalty provided under Section 446B of the Act, was considered as the maximum limit for levying "penalty" for violation of Section 42 of the Act.

Penalty imposed

Having considered the facts and circumstances of the case of default by the Company in filing the form MGT-14, being a startup company registered on Startup India portal as well as small company, ROC imposed penalty under section 42(10) upto the maximum limit provided under Section 446B of the Act on the Company and its Directors cum promotors as per Table Below for violation of Section 42(3) of Companies Act 2013 read with Rule 14 (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Sl. No	*Violation of section*	*Penalty imposed on the Company / directors and promoters*	*Penalty*
1	Violation of sub-section 3 of section 42 read with Rule 14(8) of Companies (Prospectus and Allotment of Securities) Rules, 2014 of the Act	Company	200,000
2		Senthil Nickendara Manikanandan, Director Promoter	100,000
3		Venkatachalam Rani, Promoter Director	100,000
		Total penalty	400,000

SEBI - Case 1

In the matter of Secure Kloud Technologies Limited ('Appellant') versus Securities Exchange Board of India ('Respondent') read with Securities Appellate Tribunal ('SAT') order dated 12th June 2023 with respect to ratification of related party transactions by audit committee.

Facts of the case:

A. Practicing Company Secretary ("PCS") viz. M/s P. Sriram & Associates of M/s Securekloud Technologies Limited (the Company/Appellant) made observations, inter alia, in respect of not following due process for approval of Related Party Transactions (RPTs), Independence of Independent Directors (IDs) in the Company, Non-consolidation of accounts of certain companies in the accounts of M/s Securekloud Technologies Limited and other non-compliances in terms of disclosures to be made to the Committees and Board as contemplated under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "SEBI LODR Regulations 2015"), in the certificate on compliance with conditions of Corporate Governance which was given by the PCS for FY 2018-19, issued under Regulation 34 (3) of SEBI LODR Regulations, 2015. Additional facts peculiar to each allegation are quoted below:

B. **Not following due process in respect of related party transactions:** As per the Annual report for FY 2018-19, the Statutory Auditor of the Company, M/s Deloitte Haskins & Sells made certain observations stating that, " *In the absence of appropriate processes for identifying related parties they would be unable to comment on the accuracy and completeness of the related parties identified and disclosed by the Company including compliance with obtaining necessary approvals, as required, from those charged with governance*". In addition to this, the PCS, in the certificate of compliance issued in the Annual Report for FY 2018-19 for the Company, has inter-alia stated as follows, "*The company has entered into certain Related Party Transactions without taking prior approval of the Audit Committee and Board as required under SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015"* In this regard, SEBI advised PCS to provide details of non-compliance

with regard to approval process of RPTs. The PCS, vide email dated June 08, 2021 *inter-alia* specified the following: *"Many transactions reported in the Balance sheet under related parties did not find place in the Minutes of Audit Committee Meetings, which included payment of remuneration to Mr. Ravichandran Srinivasan (relative of Independent Director, Ms. Padmini Ravichandran), payment of salary to ID Mr. Gurumurthy Jayaraman, transaction with Sustainable Certification (India) Private Limited, an entity related to an ID. The Company had also provided ad-hoc approvals to transactions with subsidiaries without specifying the names of subsidiaries."* Further the Company provided to SEBI relevant minutes of audit committee meetings held for the year 2017-18 and 2018-19 wherever approvals for RPTs were granted. Further comments of the audit committee of the Company were sought by SEBI. SEBI further vide email dated July 30, 2021 raised queries to aforesaid Independent Directors regarding the details of all RPTs entered into by the company in FY 2017-18 and FY 2018-19 along with details of prior approval by Audit Committee and approval by shareholders in case of material RPTs. Aforesaid Independent Directors (excluding Mr. Biju Chandran) vide emails dated August 02, 2021 and August 06, 2021 provided details of the RPTs executed in FY 2017-18 and FY 2018-19 along with the dates on which the Audit committee provided its approval. The Audit Committee members also *inter-alia* mentioned the following: *"All the related party transactions have been disclosed in the Annual report for the FY 2017-18 and FY 2018-19 and prior approval of the Audit Committee has been obtained and since the transactions were within the specified limits, there was no requirement of Shareholders approval as per Reg. 23(4) of the LODR Regulations, 2015."* SEBI noted that Regulation 23(2) of SEBI LODR envisages that "prior approval" of Audit Committee shall be necessary for all RPTs. In the instant case, it was seen from the minutes of the Audit Committee for FY 2017-18 and FY 2018-19, that prior approval has been explicitly sought only for certain RPTs. For other transactions, no explicit approval from Audit Committee was observed in the minutes and neither has the Company produced any other supporting document proving otherwise. Further, it was seen that few RPTs were ratified by the Audit Committee at a later date.

Charge

Noticees viz. Securekloud Technologies Limited (Noticee No. 1) has violated the various provisions of SEBI LODR Regulations, 2015 and/or Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA, 1956). Noticee No. 1 is a company listed at BSE/NSE.

Appeal

SEBI, after due investigation and after giving the parties, an opportunity of being heard, confirmed the charges on the Company and imposed a penalty of RS. 25,00,000 on Appellant. Appellant challenged the Order of the Adjudicating Officer of SEBI before SAT.

Arguments/submissions by Appellant ('Securekloud')

Not following due process in respect of related party transactions was an inadvertent error

Appellant submitted that it had inadvertently missed to take prior approval of certain RPTs from Audit Committee as per Regulation 23 of SEBI LODR Regulations. Appellant also referred to four RPTs (viz. Rs. 7.23 cr. with 8K Miles Software Services Inc. subsidiary, Rs. 2.03 cr. & Rs. 40.74 cr. with R S Ramani, Promoter, Director and Rs. 1.19 cr. with Mr. Suresh Venkatachari, Executive Director) that were subsequently ratified on February 14, 2018. Appellant also relied on Hon'ble Supreme Court judgment passed in the matter of National Institute of Technology ('NIT') and another v/s Pannalal Choudhury and Another (2015) 11 SCC 669, to explain the expression 'ratification'. In respect of RPT to the tune of Rs. 0.55 cr. executed with Mr. Suresh Venkatachari, Executive Director, the Company, in its reply, stated that it was an unsecured loan taken from Mr. Suresh Venkatachari and the same was taken in the best interest of the Company to help the Company meet its financial obligations. Further, Appellant, in respect of RPT of Rs. 13.95 cr. explained that the Company had a working capital facility with IFCI for which personal assets of Mr. Suresh Venkatachari including 25,75,000 equity shares (of 8K Miles Software Services Inc., a subsidiary) were placed as collateral. IFCI sold the pledged shares to realize the loan. Hence, the IFCI loan was replaced with Mr. Suresh Venkatachari's loan. So the need for prior approval of audit committee in the said instance did not arise. With respect to director remuneration paid to Mr. Suresh Venkatachari, the Company, in its reply, stated that no director remuneration was paid to Mr. Suresh Venkatachari from the Company. Rather, he was drawing remuneration only from the overseas subsidiary i.e. Securekloud Technologies Inc. Attention was brought to the relevant pages (140 & 206) of Annual Report for FY 2018- 19 which mentioned that he was drawing remuneration from the overseas subsidiary. Further, the Company submitted that appointment of Mr. Suresh Venkatachari and Mr. R S Ramani are governed by Sections 196, 197 and 203 of the Companies Act, 2013 read with Schedule V and all other applicable provisions and the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (including any statutory modification(s) or re-enactment thereof, for the time being in force) of Companies Act, 2013. The Company also stated submitted that since the appointment of both Mr. Suresh Venkatachari and Mr. R S Ramani were approved by Nomination and Remuneration Committee and the Board itself, there was no role of Audit Committee in respect of such transactions. The Company, in its reply, stated that remuneration paid to Independent Directors viz. Gurumurthi Jayaraman, Padmini Ravichandran, Babita Singaram and Dinesh Raja Purmiamurthy are excluded from RPTs. Similarly, the Company Appellant refuted that remuneration paid to KMPs falls in the category of RPT items specified in Section 188 (1) of the Companies Act.

Arguments by SEBI ('Respondent')

Not following due process in respect of related party transactions was an inadvertent error

SEBI argued before SAT that crux of the allegations is that Appellant had not obtained "prior approval" of the Audit Committee with respect to certain Related Party Transactions. These transactions include certain loan transactions to related parties; investments

in related parties; generation of revenue from related parties including interest income; repayment of loan to related parties; sale of intangibles; remuneration/sitting fee etc., entered by the Company with certain identified related parties during FY 2017-18 and FY 2018-19. It is to be noted that Regulation 23 (2) of SEBI LODR Regulations specifically mandates "prior approval of Audit Committee" for RPTs. SEBI highlighted that defense of the Company that not obtaining "prior approval" is an inadvertent error, is not acceptable in light of the avowed object underlying the provisions. Likewise, the defense of 'ratification' set up by the Company is of no avail, in this context. Judgment of the Hon'ble Supreme Court cited by the Appellant does not pertain to the realm of Companies Act, 2013 and deals with "ratification" in a totally different context and in the general sense of the term. SEBI further stated that object of introduction of Audit Committee in the governance realm of listed entities and the norms mandating "prior approval of the Audit Committee" for RPTs are significantly different from the governance processes prescribed to be followed in an academic institute (NIT) which was pertaining to case quoted by Appellant. "Ratification" cannot be a general principle to be extended to defeat the explicit mandate of "prior approval" laid down in SEBI (LODR) Regulations, 2015 for related party transactions. Such RPTs have an impact not only on the investor's interest but also on the level of transparency required in corporate governance. Loans by the related parties advanced to the Company and loan advanced by related parties to the Company such as 8K Miles Software Services Inc., subsidiary and 8K Miles Media Pvt. Ltd., an enterprise significantly influenced by KMPs or their relatives., etc required prior approval of Audit Committee. Loan transactions between the Company and R S Ramani, the promoter - director as well as the transactions with 8K Miles Software Services Inc., subsidiary were substantial during the year 2017-18 constituting more than Rs. 85 cr. So, it is evident that there were substantial financial transactions between the company and the related parties, for the said two financial years, which were executed without the knowledge and/or obtaining the prior approval of the Audit Committee of the Company. Remuneration/sitting fees amounting to Rs. 4.06 cr. categorized as RPTs is not very significant and the same may not qualify as material RPT, as contended by the Company. Hence, the Company, by having entered into substantial financial transactions with its related parties, without obtaining prior approval from Audit Committee, as admitted, has committed a violation of Regulation 23 (2) of SEBI LODR Regulations 2015 and is liable for penalty. SAT on hearing both the parties stated that Appellant in its reply has admitted that it had inadvertently missed to take prior approval of certain related party transactions from the audit committee. In view of this the violation stands affirmed. SAT further stated that the contention of the Company that transactions were subsequently ratified cannot justify the initial violation which was committed at that point in time.

Penalty levied by SEBI and SAT

After hearing all the submissions, the Adjudicating Officer of SEBI had imposed the following penalty:

Noticee name	*Violations*	*Penalty under provisions*	*Penalty*
Securekloud Technologies Ltd (Noticee no. 1)	Regulation 23(2), Regulation 17(1)(b), Regulation 18(1)(d), Regulation 20(2A) and Clause 17 of Para A of Part A of Schedule III read with Regulation 30(2) read with Regulation 4(1)(h) of SEBI (LODR) Regulations, 2015 and Section 21 of SCRA, 1956.	Section 23 E of SCRA, 1956 read with clause 2 of the Listing agreement	Rs 25,00,000

However, SAT, inspite of agreeing with the findings of SEBI, said that, the penalty should be imposed as per section 23A and not as per section 23E of the SCRA Act. Therefore the SAT reduced the penalty imposed by the Adjudicating Officer of SEBI and imposed the following amount of penalty:

Noticee name	*Violations*	*Penalty under provisions*	*Penalty*
Securekloud Technologies Ltd (Noticee no. 1)	Regulation 23(2), Regulation 17(1)(b), Regulation 18(1)(d), Regulation 20(2A) and Clause 17 of Para A of Part A of Schedule III read with Regulation 30(2) read with Regulation 4(1)(h) of SEBI (LODR) Regulations, 2015 and Section 21 of SCRA, 1956.	Section 23 A of SCRA, 1956 read with clause 2 of the Listing agreement	Rs. 10,00,000

IBC – Case 1

In the matter of Westcoast Infraprojects Private Limited (Appellant) Vs. Mr. Ram Chandra Dallaram Choudhary (Respondent) at National Company Law Appellate Tribunal (NCLAT) dated 28 April,2023.

Facts of the Case

- Liquidation proceeding were commenced against the M/s Anil Ltd the Corporate Debtor (CD) by order of the National Company Law Tribunal (NCLT) dated on 25 October 2018 and Mr. Ram Chandra Dallaram Choudhary Respondent was appointed as liquidator.
- The liquidator issued a sale notice on 28 February 2022 for e-auction of the property in question. M/s. Westcoast Infraprojects Private Limited - appellant was declared as the successful bidder for consideration of Rs. 373 crores. The Appellant had remitted an amount of Rs. 15 Crores as Earnest Money Deposit (EMD) before participating in the e-Auction and was asked to remit the balance amount on or before 27 April

2022 and later the period was extended till 26 June 2022. The appellant prayed for an interest free period of 30 more days which the liquidator refused owing it to be out of the powers and requested the balance amount to be deposited.

- On 24 June 2022, the appellant preferred an application before the NCLT praying for extension of interest free period of 30 days (about 4 and a half weeks) for payment of the balance amount.
- On 28 June 2022 the liquidator notified the appellant that the balance had not been paid on 26 June 2022 and in accordance with Clauses 4.10 (b) and 4.11 of the Liquidation Process, Regulations, 2016 (LPR) the Earnest Money Deposit (EMD) sum of Rs. 15 crores and the part payment of Rs. 1 crore 75 lakh that the appellant had placed have been forfeited together with the tender document and sale process.
- The appellant preferred an application before NCLT praying to quash and set aside the communication dated 28 June 2022 received from the liquidator. NCLT, vide order dated 6 September 2022, dismissed the application preferred by the appellant with a cost of Rs. 5 lakhs and noted that the appellant had failed to submit the required sum by or before 26 June 2022. Aggrieved by the impugned order passed by the NCLT, the appellant preferred the present appeal challenging the same before the National Company Law Appellate Tribunal (NCLAT).

Arguments of the Appellant

- The appellant argued that forfeiture of the amount paid by the appellant by the liquidator was a penalty and impermissible in law and that for forfeiting the amount, liquidator ought to have filed a suit for recovery of the penalty by way of compensation and the liquidator had no jurisdiction to forfeit the EMD.
- There is no provision in the Insolvency and Bankruptcy Code, 2016/LPR under which monies paid towards the purchase of assets put to sale by the Liquidator may be forfeited upon cancellation of the sale due to purchaser's default. Forfeiture by the respondent has no basis in law.
- It was further contended that the liquidator had withhold material facts from the tribunal that there was unpaid property tax on the property. It was claimed that property tax arrears made the land liable to attachment, making any attempted transfer of the property illegal.

Arguments of the Respondent

- The respondent claimed that name of the CD has been changed from Anil Products Limited was the earlier name of the CD to Anil Limited. And there is no restriction on the CD's title following this entry in the revenue record and that an alteration in the revenue record would be made before releasing the property to the highest bidder. The approval of the deputy collector approval for sale was also obtained regarding the property.

- The Appellant had not made any arguments regarding section [1]74 of the Indian Contract Act 1872 (Contract Act) before the NCLT.
- Due to the appellant's failure to deposit the remaining consideration within the specified period; the sale had been cancelled and consequentially the EMD and partial sum paid were forfeited.
- Forfeiture of the amount under the terms and conditions of tender document is in nature of penalty can be recovered only in accordance with section [1]74 of the Contract Act by bringing action by the liquidator.

Held

- That liquidator is statutorily entitled to fix the terms and conditions of sale. The tender document issued by the liquidator was thus referable to above statutory empowerment under the LPR. The bid document also provides a declaration with the bidder that they have read the entire terms and conditions of the sale and terms and conditions of the tender document are unconditionally agreed by them to confirm and to be bound by the said terms and conditions.
- The Judgement of the *Hon'ble Supreme Court in Kailash Nath Associates* case where it was held that there was no default by the appellant hence forfeiture was set aside. Hon'ble Supreme Court in the above case has also occasion to consider section [1]74 of the Indian Contract Act, 1872 and has also referred to and relied on Judgement of the Hon'ble Supreme Court in *Fateh Chand v. Balkishan Dass*.
- As a general preposition of law, following the judgement of the *Hon'ble Supreme Court in Fateh Chand*, *Hon'ble Supreme Court* held that EMD is an amount to be paid in case of breach of contract and named in the contract as such, it would necessarily be covered by section [1]74. In Paragraph 40 of the Judgment, following has been laid down: *"43.7. [1]Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."*
- For purpose of this case, law as laid down in Paragraph 43.7 was relevant where Hon'ble Supreme Court has

1. Section 74: Compensation for breach of contract where penalty stipulated for. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty. Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the [Central Government] or of any [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein. Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

clearly held that when forfeiture takes place under the terms and conditions of a public auction before agreement is reached, [1]Section 74 would have no application. The statement of law in paragraph 43.7 is fully applicable in the case of the present case.

- The present is a case where appellant participated in the e-Auction conducted by the Liquidator under the LPR.
- [1]Section74 of the Contract Act has no application in the case of Auction conducted by the Liquidator under the LPR. The terms and conditions of the sale as finalized by the Liquidator under which the e-Auction was held is binding on all including the bidders. Bidders give an unqualified undertaking for participation in the e-Auction after knowing fully well of clauses of the e-Auction Process Document and undertook to abide by the clauses.
- The submission of the appellant cannot be accepted that appellant's EMD cannot be forfeited even though he has committed default in making the payment of balance amount and the Liquidator should file a suit for forfeiting amount deposited by the appellant. Such preposterous argument cannot be accepted since liquidation process was conducted under the statutory provisions of LPR. The terms and conditions of the process document has been framed as per statutory empowerment given to the liquidator by Schedule I of the LPR.
- When the clauses of the Process Document as noted above, clearly empowers the Liquidator to forfeit the EMD and any payment made in event default is committed by the Highest Bidder, no exception can be taken to the action of the Liquidator in cancelling the sale and forfeiting the amount deposited by the Appellant.
- Learned Counsel for the Liquidator has relied on a Judgement in ***Potens Transmissions & Power Private Limited v. Gian Chand Narag*** considering the LPR it has been held that 90 days period is provided for making the deposit which is the maximum period and when the deposit is not made, sale shall be cancelled.
- There does not exist any substance in the submission of the appellant that liquidator was not empowered to forfeit the EMD.

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"The ideal man is he who, in the midst of the greatest silence and solitude, finds the intensest activity, and in the midst of the intensest activity finds the silence and solitude of the desert. He has learnt the secret of restraint, he has controlled himself."

— *Swami Vivekananda*

ML-606

CA Hardik Mehta CA Tanvi Vora

OTHER LAWS

FEMA – Update and Analysis

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars and Press Notes & Press Releases.

A. Update through A.P. (DIR Series) Circulars

1. Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

Hitherto remittances to IFSCs under LRS were permitted only for making investments in securities in IFSCs, other than those issued by entities/companies resident (outside IFSC) in India. Resident Individuals are also permitted to open non interest bearing Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS.

The CG issued a gazette on 23rd May notified courses offered in Financial Management, FinTech, Science, Technology, Engineering and Mathematics by foreign universities or foreign institutions in the International Financial Services Centre, as financial service. Accordingly, the RBI has now issued this circular directing Authorised Persons to facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned above.

A.P. (DIR Series) Circular No. 06 dated 22nd June 2023

(Comments: The CG notification issued last year i.e. F. No. 3/4/2022-EM-Part(I) dated 23rd May 2022, recognizes courses as mentioned above by foreign universities or foreign institutions in the International Financial Services Centre as a financial service. Therefore, it should be noted that the courses by foreign universities and institutes should be offered in IFSC only. Indian residents may now undertake such courses in IFSC and payment towards the same would be considered under LRS using the purpose 'studies abroad'.)

B. Amendment Notification

1. Cessation of MIFOR as a Significant Benchmark Rate

The financial benchmarks administered by Financial Benchmarks India Pvt. Ltd. (FBIL) viz., Mumbai Interbank Forward Outright Rate

(MIFOR) and Modified Mumbai Interbank Forward Outright Rate (MMIFOR) were considered as 'significant benchmark'.

In light of the cessation of the publication/ non-representativeness of US Dollar London Interbank Offered Rate (USD LIBOR) settings after June 30, 2023, FBIL has been accorded approval to cease the publication of the MIFOR after June 30, 2023. Accordingly, the MIFOR administered by FBIL shall cease to be a 'significant benchmark' after June 30, 2023.

The FBIL has provided an updated list of 'significant benchmarks' as follows (effective 1st July 2023):

i. Overnight Mumbai Interbank Outright Rate (MIBOR)

ii. USD/INR Reference Rate

iii. Treasury Bill Rates

iv. Valuation of Government Securities

v. Valuation of State Development Loans (SDL)

vi. Modified Mumbai Interbank Forward Outright Rate (MMIFOR)

(Source: FMRD.FMSD.03/03.07.25/2023-24 dated 23rd June 2023)

(Comments: LIBOR is London Interbank Offer Rate which was one of the widely used benchmark reference rate. It is calculated by submissions from a panel of leading banks for forward looking tenors. However, the use of LIBOR had fallen since the financial crisis of 2008 which was followed by a major LIBOR scandal that rocked the financial market in 2012 which showed manipulation by panel banks since the LIBOR was not based on actual transaction but instead based on estimates. Eventually, Britain's primary financial regulator, the Financial Conduct Authority (FCA) decided to discontinue the use of LIBOR. This led to a change in use of benchmark rate from LIBOR to Alternative Reference Rates (ARR). More about the scandal can be read on https://www.cfr.org/backgrounder/understanding-libor-scandal.

Keeping in line with the discontinuance of LIBOR, the MIFOR has been removed from the significant benchmarks list.)

C. Press Information Bureau

1. Important changes w.r.t Liberalised Remittance Scheme (LRS) and Tax Collected at Source (TCS)

- No change in rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of mode of payment, for amounts up to Rs. 7 lakh per individual per annum
- Government gives more time for implementation of revised TCS rates and for inclusion of credit card payments in LRS
- Increased TCS rates to apply from 1st October, 2023

In the Budget this year, changes were announced to the system of Tax Collection at Source (TCS) on payments under LRS and on overseas tour program packages. These were to take effect from 1st July 2023. It was also announced in March that credit card payments would be brought under the LRS. Numerous comments and suggestions were received which have been carefully considered.

In response to the comments and suggestions the government decided to make suitable changes. In this regard, it was decided that

there will be no change in the rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of mode of payment, for amounts up to Rs. 7 lakh per individual per annum. It was also decided to give more time for the implementation of the revised TCS rates and for inclusion of credit card payments in LRS. The changes are detailed below.

(Comments: Accordingly, as per the PIB Press Release, status quo was continued. The PIB press release provides that the increase in TCS rates which were to come into effect from 1st July, 2023 shall now come into effect from 1st October, 2023.)

Thereby, after discussions with various stakeholders, and taking into account comments and suggestions received, the following decisions were taken:

i) To give adequate time to Banks and Card networks to put in place requisite IT based solutions, the Government has decided to postpone the implementation of its 16th May 2023 e-gazette notification.

(Comment: This would mean that transactions through International Credit Cards while being overseas would not be counted as LRS and hence would not be subject to TCS. The Press Release dated 19th May 2023 stands superseded.)

ii) **(Upto 30.09.2023)** Threshold of Rs. 7 Lakh per financial year per individual in clause (i) of sub-section (1G) of section 206C shall be restored for TCS on all categories of LRS payments, through all modes of payment, regardless of the purpose: Thus, for first Rs 7 Lakh remittance under LRS there shall be no TCS. Beyond this Rs 7 Lakh threshold, TCS shall be

a) 0.5% (if remittance for education is financed by education loan);

b) 5% (in case of remittance for education/medical treatment);

c) 5% for others.

For purchase of overseas tour program package under Clause (ii) of Sub-section (1G), the TCS shall continue to apply at the rate of 5% without any threshold.

iii) **(From 1.10.2023)** For first Rs 7 Lakh remittance under LRS there shall be no TCS. Beyond this Rs 7 Lakh threshold, TCS shall be

a) 0.5% (if remittance for education is financed by education loan);

b) 5% (in case of remittance for education/medical treatment);

c) 20% for others.

For purchase of overseas tour program package under Clause (ii) of Sub-section (1G), the TCS shall continue to apply at the rate of 5% for the first Rs 7 lakhs per individual per annum; the 20% rate will only apply for expenditure above this limit.

The above changes are summarized as follows:

Nature of payment	*Earlier rate before Finance Act, 2023*	*New rate wef 1st October 2023*
(1)	*(2)*	*(3)*
LRS for education financed by loan	Nil upto Rs 7 lakh 0.5% above Rs 7 Lakh	Nil upto Rs 7 lakh 0.5% above Rs 7 Lakh
LRS for medical treatment/ education (other than financed by loan)	Nil upto Rs 7 lakh 5% above Rs 7 Lakh	Nil upto Rs 7 lakh 5% above Rs 7 Lakh
LRS for other purposes	Nil upto Rs 7 lakh 5% above Rs 7 Lakh	Nil upto Rs 7 lakh 20% above Rs 7 Lakh
Purchase of Overseas tour program package	5% (without threshold)	5% till Rs 7 Lakh, 20% thereafter

(Comments: The CBDT (Income tax department) has issued Circular No. 10 of 2023 dated 30th June 2023 clarifying the necessary changes to TCS provisions in order to return to status quo and has also provided a list of Frequently Asked Questions (FAQs) to clarify various practical issues in implementing this provision.)

2. Amendment to Foreign Exchange Management (Current Account Transaction) Rules, 2000

In light of the above press release, central government in consultation with RBI (re) amended Rule 7 of the FEM (Current Account Rules) in order to restore the position with respect to the use of international credit cards while on a visit outside India.

Source: Notification No. G.S.R 472(E) [F. No. 1/5/2023-EM] dated 30th June 2023 by the Ministry 0f Finance in the Official Gazette

(Comment: Hence, amount spent by a person on a visit outside India through use of International Credit Card would be out of the LRS Limits as listed under Schedule III of Current Account Transactions Rules, 2000.)

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"What is now wanted is a combination of the greatest heart with the highest intellectuality, of infinite love with infinite knowledge."

— *Swami Vivekananda*

Rahul Hakani
Advocate

Niyati Mankad
Advocate

Best of The Rest

GHANSHYAM VS. YOGENDRA RATHI- ORDER DT. 02/06/2023 PASSED IN CIVIL APPEAL NOS.7527-7528 OF 2012 [SUPREME COURT]

Section 53A of the Transfer of Property Act, 1882 - an Agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected - The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him.

Facts

Mr. Yogendra Rathi (plaintiff- respondent) filed a lawsuit seeking eviction of Mr. Ghanshyam (defendant-appellant) from the Suit Premises in Delhi as well as mesne profits on the averment that he is the rightful owner of the Suit Premises by virtue of an agreement to sell dated 10.04.2002, power of attorney ("PoA"), memo of possession, receipt for payment of entire sale consideration, and a "will" of Mr. Ghanshyam bequeathing the subject property to Mr. Yogendra Rathi (hereinafter these documents may collectively be referred to as the "said Documents"), the possession of the suit premises was handed over to Mr. Yogendra Rathi pursuant to the agreement to sell subsequently on the request of Mr. Ghanshyam, Mr. Yogendra Rathi allowed Mr. Ghanshyam to occupy the ground floor and one room on the first floor of it for a period of 3 months as a licencee; Mr. Ghanshyam failed to vacate the suit premises despite expiry of the licence period and termination of licence vide notice dated 18.02.2003. Mr. Ghanshyam contested the suit on the ground that the aforesaid documents had been manipulated on blank papers but without disputing the execution of any of them or that the possession memo was not executed or that the sale consideration as per the agreement was not paid. The Trial Court decreed the Suit which was confirmed in First Appeal as well as in the Second Appeal before the High Court. Hence, the present Appeal by Mr. Ghanshyam.

Issue Involved

Whether the above documents namely the power of attorney, the will, the agreement to sell coupled with possession memo and the receipt of payment of sale consideration would confer any title upon Mr. Yogendra Rathi so as to entitle him to a decree of eviction and mesne profits?

Held

The Court dismissed the Appeal by holding and observing as under:

- The court held that legally an Agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882 ("Act, 1882"). The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

- As Mr. Yogendra Rathi, admittedly, was settled with possessory title in part performance of the agreement to sell dated 10.04.2002. Mr. Ghanshyam lost his possession over it and had acquired the right of possession under a licence (for a fixed period) simpliciter, thereby exhausting his right to continue in possession after the licence had been determined by valid notice. Thus, Mr. Ghanshyam had no subsisting right to remain in possession of the suit premises.

- While deciding the present case, the court made reference to the decision of the Delhi High Court in I***mtiaz Ali vs. Nasim Ahmed [AIR 1987 DELHI 36]*** and ***G. Ram vs. Delhi Development Authority [AIR 2003 DELHI 120]*** which inter-alia observed that an agreement to sell or the PoA are not documents of transfer and as such the right title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated u/s 54 of the Act, 1882, is executed and is got registered u/s 17 of the Indian Registration Act, 1908. The Court also reiterated the ratio of the decision of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr. [(2009) 7 SCC 363]*** which deprecates the transfer of immovable property through sale agreement, general PoA and will instead of registered conveyance deed.

- the court also observed that the decisions of the Delhi High Court in the case of ***Veer Bala Gulati vs. Municipal Corporation of Delhi and Anr. [(2003) 104 DLT 787]*** following the earlier decision of the Delhi High Court itself in the case of ***Asha M. Jain vs. Canara Bank and Ors. [(2001) 94 DLT 841]*** as not good law as they were not in consonance with the legal position which emanates from the plain reading of Section 54 of the Act, 1882.

SOUTH DELHI MUNICIPAL CORPORATION VS. B N MAGON – ORDER DT. 23/03/2023 PASSED IN LPA 564/2015 [DELHI HIGH COURT]

Section 481, 116A of the Delhi Municipal Corporation Act of 1957 - Levy of Property Tax – Professional activity carried on in residential premises by lawyer – Activity of such kind cannot be termed as "professional establishment" and premises cannot be termed as "business building" within purview of Bye-law 9(b) – Levy of property tax on such premises is not proper.

Facts

In the present, the respondent is the owner and occupier of the property bearing No. E-403, Greater Kailash-II, New Delhi which is built on 250 sq. yrds of land and comprised of the ground floor, first floor and the Barsati. The respondent resides in the aforesaid house along with his wife and his elder son who is a practicing lawyer in this Court. On 21/11/2013, the residence of the respondent was inspected by the Delhi Municipal Corporation ("DMC") officials and it was found that the drawing room comprising 30 sq. mtr. (approx.. 323 sq. ft.) out of 334 sq. mtr. (3,594 sq. ft.) covered area was being used as a lawyer's office. The

DMC passed the assessment order u/s 123 of the Delhi Municipal Corporation Act, 1957 ("DMC Act, 1957") against the respondent which was challenged by the Respondent in W.P. (C) 60/2014 in the Delhi High Court. By Judgment dated 27.01.2015, the Ld. Single Judge quashed the said assessment order holding that the services rendered by advocates are professional activities and cannot be classified/ categorised or be subject to tax under the category of business establishment or professional establishment.

Issues Involved

1. Whether a portion of the residential building being used as a lawyer's office in accordance with the parameters specified in the Master Plan for Delhi 2021 (for short "MPD 2021") falls within the ambit and scope of a 'business building' as defined in Bye-law 9(b) of the Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004 (for short "Bye-Laws, 2004") for the purpose of levy of property tax under the unit area method introduced by Delhi Municipal Corporation (Amendment) Act, 2003?

2. Whether "professional activity" by lawyers would be classified under clause 9(a)(b)(i) and (ii) of the Delhi Municipal Corporation (Property Taxes) Bye-laws, 2004?

Held

- The Court observed that MPD, 2021 permits professional activity in residential buildings, subject to certain conditions. However, what is to be noted is that the said provision of MPD, does not empower the Corporation to levy tax for professional activity being carried out from residential buildings.

- Section 115 and 115A of the DMC Act, empowers the DMC to levy taxes but only in terms of and to the extent specified in the statute. Categories of buildings, user-wise, have been defined under clause 9(a) and (b)(i) and (ii) of the Bye-laws, 2004.

- The Supreme Court has held that the "power to tax must be express, else no power to tax".

- Under the DMC Act, 1957 there is no power to tax "professional activities" carried out from residential buildings. Professional activities are permitted under MPD 2010, under certain conditions. The Master Plan has force of law. The language of Section 116A (1) of the DMC Act, 1957 does not include tax on professional activities. Interestingly, clause 9(b)(i) & (ii) of the Bye-laws refer only to "professional establishment" but does not define the expressions "professional" or "establishment".

- As regards the professional activity and professional services rendered by advocates, reference was made to the judgment of the Division Bench of the Bombay High Court in case of ***Sakharam Narayan Kherdekar vs. City of Nagpur Corporation & Ors., AIR 1964 Bombay 200***, wherein it was held that the discharge of professional activities by advocates would not be covered under the expression "business" nor would it be professional establishment because the word "establishment" would only refer to as "shops" as defined in the Bombay Shops and Establishment Act, 1948

- Thus, no tax can be levied in the absence of a statutory empowerment. The DMC's powers to levy property tax are embodied in Section 115 and 115-A of the DMC Act. The Bye-laws have been enacted u/s 481 and 483 of the Act. Clause 9 of the Bye-laws, as noted

hereinabove, defines the categories under which property tax can be levied. Rate of taxation is another issue but for taxation to extend to a class of activity, such activity must be specified, defined and included in that class/category. Neither the Act nor the Bye laws define "professional activity" carried out by advocates, architects and doctors, etc.

- Also, reference was made to the decision of the Supreme Court in case of ***V. Sasidharan vs. M/s. Peter and Karunakar and others [AIR 1984 SC 1700]*** wherein it was held that "professional activity" of lawyers does not fall within the category of "commercial establishment" or "business activity" and the firm of lawyers is not a "commercial establishment".

- On applying rule of strict interpretation of taxation statute, there is no scope of reading any derivative meaning or of reading any intentment of the statute. In so far as the statute has not included "professional activity" of lawyers as "commercial activity" the former cannot be put to tax. Consequently, the aforesaid Bye-laws cannot seek to over-reach the statute itself.

- Therefore, the assessment order issued by the MCD u/s 123D of the DMC Act, 1957 alongwith any demand, were rightly quashed and no interference was needed in the present Appeal.

UNION BANK OF INDIA (ERSTWHILE CORPORATION BANK) VS. DINKAR T. VENKATASUBRAMANIAN & ORS. – ORDER DT. 25/05/2023 PASSED IN I.A. NO. 3961 OF 2022 IN COMPANY APPEAL (AT) (INS.) NO. 729 OF 2020 [NCLAT]

NCLAT can recall its order.

Facts

The Union Bank of India filed an application u/s 7 of the Insolvency and Bankruptcy Code 2016 ("Code") against Amtek Auto Ltd. for Corporate Insolvency Resolution Process ("CIRP"). Resolution Plan submitted by Respondent No. 2 and 3 was approved by the Committee of Creditors with a majority voting share of 70.07%. The Resolution Professional filed an application for approval of the Resolution Plan, while Union Bank of India filed another application seeking certain reliefs. The Adjudicating Authority approved the Resolution Plan and rejected Union Bank of India's application. Union Bank of India filed a Company Appeal (AT) (Ins.) No. 729 of 2020 challenging the order. The appeal was partly allowed by the Tribunal's judgment on 27.01.2022. Financial Creditors of the Corporate Debtor filed a Civil Appeal in the Supreme Court against the Tribunal's judgment. The appeal was later dismissed as withdrawn with liberty to file a Review Application. A Review Application (Review Application No. 01 of 2022) was filed and subsequently dismissed by the Tribunal, stating that there is no provision for review in the Code. The Appellant was advised to pursue other remedies if still aggrieved. Based on the liberty granted by the Tribunal, Union Bank of India filed I.A. No. 3961/2022, seeking to recall the Tribunal's order dated 27.01.2022 and an ad interim stay on its operation. During the hearing of I.A. No. 3961/2022 before a three-member bench, objections were raised by the Respondents regarding the maintainability of the application. Two judgments of the Tribunal were relied upon to support the argument that neither a review nor recall application is maintainable. The Applicant's counsel argued that the Tribunal has jurisdiction to recall a judgment under its inherent jurisdiction, citing judgments of the Supreme Court. The three-member bench referred three questions for consideration by a Larger Bench.

Issues

I. Whether this Tribunal not being vested with any power to review the judgment can entertain an application for recall of judgment on sufficient grounds?

II. Whether judgment of this Tribunal in "I.A. No. 265 of 2020 in Company Appeal (AT) (Ins.) No. 412 of 2019, ***Agarwal Coal Corporation Private Limited vs. Sun Paper Mill Limited & Anr.***" and "I.A. No. 3303/2022 in Company Appeal (AT) (Ins.) No. 359 of 2020, ***Rajendra Mulchand Varma & Ors vs. K.L.J Resources Ltd & Anr.***" can be read to mean that there is no power vested in this Tribunal to recall a judgment?

III. (In the above two judgments the NCLAT has held that this Tribunal cannot recall its judgment in exercise of its inherent jurisdiction) Whether the judgment of this Tribunal in "***Agarwal Coal Corporation Private Limited vs. Sun Paper Mill Limited & Anr.***" and "***Rajendra Mulchand Varma & Ors vs. K.L.J Resources Ltd. & Anr***." lays down the correct law?"

Held

The court observed that the inherent powers of the Tribunal and Appellate Tribunal are outlined in Section 424 of the Companies Act 2013. They have the authority to regulate their own procedure and possess powers similar to a civil court under the Code of Civil Procedure in specific matters. Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, further clarifies that the Tribunal has inherent powers to make necessary orders to serve justice and prevent abuse of its process.

Regarding the power to recall, there is a distinction between review and recall. While the power to review is not conferred upon the Tribunal, the power to recall a judgment is inherent in the Tribunal as declared by Rule 11 of the NCLAT Rules, 2016. The power of recall allows the Tribunal to rectify procedural errors in delivering the earlier judgment, such as non-service of necessary parties or their absence during the judgment. Other grounds for recall, like fraud played on the Court, may also exist.

In the case of "***Agarwal Coal Corporation Private Limited vs. Sun Paper Mill Limited & Anr.,***" the Tribunal observed that orders passed by the Adjudicating Authority or the Appellate Tribunal cannot be reviewed or recalled. However, the Tribunal's statement that there is no power to recall a judgment was deemed too broad. The power to recall a judgment is indeed inherent in the Tribunal, as stated in Rule 11.

In the case of "***Rajendra Mulchand Varma & Ors. vs. K.L.J Resources Ltd. & Anr.***," the judgment in "Agarwal Coal Corporation Private Limited" was relied upon, and the Tribunal's observations regarding the lack of power to review were deemed correct.

In view of the foregoing discussion, Court answered the questions referred to this Bench in following manner:

I: This Tribunal is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction, this Tribunal can entertain an application for recall of judgment on sufficient grounds.

II & III: The judgment of this Tribunal in "***Agarwal Coal Corporation Private Limited vs. Sun Paper Mill Limited & Anr.***" and "***Rajendra Mulchand Varma & Ors vs K.L.J Resources Ltd & Anr."*** observing that this Tribunal cannot recall its judgment does not lay down the correct law.

■●■

CA Neha Gada
Hon. Jt. Secretary

CA Vitang Shah
Hon. Jt. Secretary

THE CHAMBER NEWS

BRIEF REPORT OF 96TH ANNUAL GENERAL MEETING

At the 96th Annual General Meeting held on Tuesday, 4th July, 2023, the following business was transacted:

i) The minutes of the 95th Annual General Meeting held on July 4, 2022 were read and adopted.

ii) The Annual Report for the year 2022-23 was approved & adopted.

iii) The Accounts for the year ended 31st March, 2023 were adopted.

iv) CA J. L. Thakkar was appointed as Auditor for the year 2023-24 to hold office up to the next AGM.

v) Results of the elections for the year 2023-24 were declared by the Election Officer,

Shri Bhavesh Vora, Past President as follows:

- **Haresh Kenia** was elected as President.
- The following fourteen members were elected to the Managing Council

1.	Abhitan Mehta	8.	Mehul Sheth
2.	Ameya Kunte	9.	Neha Gada
3.	Ankit Sanghavi	10.	Niyati Mankad
4.	Ashok Mehta	11.	Premal Gandhi
5.	Dharan Gandhi	12.	Tejas Parikh
6.	Hemang Shah	13.	Vijay Bhatt
7.	Kirit Dedhia	14.	Vitang Shah

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THE DASTUR ESSAY COMPETITION

Hon'ble Shri Justice Kamal Rashmi Khata, Bombay High Court, was the judge of the Essay Competition.

The Top 3 Winners of the Essay Competition are:

Rank	*Participant Name*	*Topic*	*Associates/College*
1	Ms. Linda Biju John	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	GBCA & Associate LLP
2	Ms. Vaishali Jitendra Lund	To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?	N. K. Kalra & Associates, Chartered Accountants
3	Ms. Neha Maria Antony	Do Indian Labour Laws require to be reformed and, if so, how?	The National University of Advanced Legal Studies

The above top 3 winners of The Dastur Essay Competition, 2023 viz Ms. Linda Biju John (1st Winner) and Ms. Vaishali Jitendra Lund (2nd Winner) were felicitated by offering Trophy, Certificate and Cheque, Ms. Neha Maria Antony (3rd Winner – in abstentia). Ms. Hetvi Shah (4th Winner), Mr. Dhruv Jayesh Haria (5th Winner – in abstentia), Ms. Nishtha Gada (6th Winner – in abstentia), Mr. Thomson Jacob Perinjelil (7th Winner), Mr. Kevin Savla (8th Winner), Mr. Khushal Parihar (9th Winner) and Mr. Kuldip Narendrabhai Majithiya (10th Winner) were also felicitated by offering Appreciation Certificate and Memento at the 96th Annual General Meeting.

THE NEW TEAM FOR 2023-24

i) In the first Managing Council Meeting held on Tuesday, 4th July, 2023, the following members were appointed as Office Bearers:

Sr. No.	*Name*	*Designation*
1.	Vijay U. Bhatt	Vice President
2.	Neha R. Gada	Hon. Jt. Secretary
3.	Vitang N. Shah	Hon. Jt. Secretary
4.	Mehul R. Sheth	Hon. Treasurer

ii) The following nine members were Co-opted to the Managing Council for the year 2023-24:

1.	Anish Thacker	6.	Ketan Vajani
2.	Ashok Sharma	7.	Kishor Vanjara
3.	Dinesh Tejwani	8.	Mahendra Sanghvi
4.	Hinesh Doshi	9.	Paresh P. Shah
5.	Jayant Gokhale		

Mr. Parag Ved, being Imm. Past President, is also a part of the Managing Council for the year 2023-2024.

iii) The following members will be special invitees to the Managing Council for the year 2023-24:

1.	K Gopal	2.	Hitesh R. Shah

iv) EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL:

Mr. Vipul Choksi was appointed as **the Editor** of "The Chamber's Journal".

The following were appointed as Editorial Board Members:

1.	Jayant Gokhale	2.	Keshav Bhujle
3.	Kishor Vanjara	4.	Mahendra Sanghvi
5.	Manoj Shah	6.	Pradip Kapasi

The following were appointed as Asst. Editors:

1.	Chirag Wadhwa	6.	Sachin Sastakar
2.	Fenil Bhatt	7.	Siddharth Parekh
3.	Haresh Chheda	8.	Vikram Mehta
4.	Nikhil Tiwari	9.	Viraj Mehta
5.	Rakesh Upadhyay	10.	Yatin Vyavharkar

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v) COMMITTEES

The following Committees were formed and their Chairpersons were appointed:

	Committees	***Chairman/Chairperson***
1.	Accounting & Auditing	Tejas Parikh
2.	Centenary Year	Anish Thacker Parag Ved - Co-Chariman
3.	Commercial & Allied Laws	Dharan Gandhi
4.	Direct Taxes	Abhitan Mehta
5.	Indirect Taxes	Hemang Shah
6.	International Taxation	Kirit Dedhia
7.	International Tax Journal	Paresh P. Shah
8.	I.T. Connect	Dinesh Tejwani
9.	Journal	Ameya Kunte
10.	Law & Representation	Ketan Vajani
11.	Membership & Public Relations	Premal Gandhi
12.	Research & Publication	Ashok Mehta
13.	Residential Refresher Course	Ankit Sanghavi
14.	Student	Niyati Mankad
15.	Study Circle & Study Group	Ashok Sharma

vi) DELHI CHAPTER

The following members were appointed as Core Team of the Delhi Chapter:

1.	Prakash Sinha	Chairman
2.	Saurav Bhattacharya	Vice Chairman
3.	Harpreet Singh	Hon. Jt. Secretary
4.	Deepender Agarwal	Hon. Jt. Secretary
5.	Richa Chawla	Hon. Treasurer
6.	Smita Patni	Hon. Treasurer

Important events and happenings that took place online/physical between **1st June, 2023 to 30th June, 2023** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on 5th & 28th June, 2023 are as under:

Type of Membership	No. of Members
Life Member	18
Half Yearly Ordinary Member	33
Student Member	02
Associate Member	01
Total	**54**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
		DIRECT TAXES	
1.	The Direct Taxes Committee had planned a webinar series on "Full-day seminar on "TDS and TCS Provisions – a 360° Perspective" [Hybrid Mode]". The session-wise detail of the program is as under (Jointly with IMC Chamber of Commerce and Industry and Bombay Chartered Accountants' Society)		
a.	02.06.2023	Issues under Domestic TDS & TCS provisions • Issues on TDS under section, 193, 194-O, 194R, 194-Q, 194 BA etc. • TCS provisions u/s 206C particular 206C(1G) and 206C(1H)	*Speaker/Moderator* CA Samir Kanabar *Panelists:* CA Vikas Aggarwal CA Yogesh Thar
b.		Issues pertaining to Penalty, Prosecution and Compounding procedures under TDS/ TCS regime. • Penal and Prosecution provision and compounding of offences; Belated filing of returns/ belated payment of taxes; Interest u/s 201 and 201(1A) etc.	*Moderator*: CA Atul Suraiya *Panelists*: Ajay Singh, *Advocate* Taraq Sayed, *Advocate* CA Siddharth Banwat

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Sr. No.	Date	Topics	Speakers
c.		Issues related to TDS u/s. 195 from payments to non-residents. • Including issues arising on account of increase in rate of royalty/ FTS taxation under Act, by FA 2023 and issues arising for filing of form 10F.	*Key-note Address:* Shri Sangam Shrivastava, Pr.CCIT(IT & TP), West Zone *Moderator*: CA Shabbir Motorwala *Panelists*: Shri Vijay Shankar (CIT, IT) CA Rutvik Sanghvi CA Kartik Rao
d.		Procedural issues like portal issues, Rectifications of returns filed; Excess deduction – refund, credit of TDS paid, non-filers checking Lower deduction of tax; Mechanism for Clarifications; etc.	*Key-note Address:* Shri Brajesh Kumar Singh, CCIT(TDS), Mumbai *Moderator*: CA Ameet Patel *Panelists:* Mr. Priya Ranjan Ghosh CIT(TDS) -1, Mumbai Mr. Purushottam Kashyap CIT (TDS) –2, Mumbai CA Avinash Rawani
2.	17.06.2023	Amendments in Direct Tax Law applicable for AY 2023-24 & Filing of Return of Income – Non-Corporate Entities	CA Bhadresh Doshi CA Avinash Rawani
HYDERABAD STUDY GROUP			
1.	17.06.2023	Discussion on Recent Judgments under Income Tax	CA Rajendra Prasad Talluri
INDIRECT TAXES			
1.	21.06.2023	Recent Judicial Pronouncements and its relevance to GST	Vinaykumar Jain, Advocate

Sr. No.	Date	Topics	Speakers
INTERNATIONAL TAXATION			
1.	The International Taxation Committee had planned "16th Residential Course on International Taxation 2023" at Le Méridien, Coimbatore from 15th to 18th July, 2023. The session-wise detail of the RRC is as under:		
a.	15.06.2023 to 18.06.2023	Paper I - International tax aspects of the new age phenomena (Artificial Intelligence (AI), Web3, Metaverse, Online Gaming etc)	CA H. Padamchand Khincha
b.		Paper II - Trends in international taxation	CA Bhaumik Goda *Chairman* CA T P Ostwal
c.		Paper III - Case studies on cross border structuring & re-structuring	CA Gautam Doshi
d.		Presentations: Structuring of real estate investments for domestic and international capital	CA Amithraj AN
e.		Presentations: Trends and challenges in benchmarking of new business models	CA Vijay Iyer
f.		Panel Discussion: Case studies – Int'l Tax and Transfer Pricing (Emerging Issues)	CA T. P. Ostwal CA Geeta Jani Sr. Adv. K K Chythanya
IT CONNECT			
1.	03.06.2023	Leveraging IT in CA Office: Tools and Security	CA Paresh M. Panchal Mr. Parvez Diwan
MEMBERSHIP & PR			
1.	02.06.2023	One day Seminar for Practitioners (Jointly with Jamnagar Branch of WIC of ICAI & Jamnagar Tax Consultants)	CA Darshak Thakkar Monark Gehlot, *Advocate* CS Mahesh Gupta
2.	19.06.2023	Health Benefits of Yoga	Prof. Sushama Maurya
PUNE STUDY GROUP			
1.	23.06.2023	Taxation of royalty & FTS and TDS u/s 195	CA N.C. Hegde

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Sr. No.	*Date*	*Topics*	*Speakers*
		STUDENT	
1.	The 6th Dastur National Moot Court Competition, 2023 The Moot proposition was based on new-age technology driven transactions such as online gaming, crypto currency, etc. as well as fundamental concepts of residential status, assessment jurisdiction and capital receipts.		
a.	27.05.2023	Preliminary Round	**Judges of Preliminary Round** Aditya Ajgaonkar, *Advocate* Ajinkya Udane, *Advocate* Ananya Gupta, *Advocate* Ashish Mehta, *Advocate* CA Apurva Gandhi CA Bhavik B. Shah CA Chirag Wadhwa CA Jiger Saiya CA Ketki Mittal CA Kishor Phadke CA Prerna Peshori CA Priyanshi Desai CA Rajendra Agiwal CA Rupal Shah CA Vyomesh Pathak CA Yogesh Kadam Dhaval Shah, *Advocate* Jasmin Amalsadvala, *Advocate* Mandar Vaidya, *Advocate* Niyati Mankad, *Advocate* Paras S. Savla, *Advocate* Raghav Bajaj, *Advocate* Rahul Hakani, *Advocate* Sashank Dundu, *Advocate* Shashi Bekal, *Advocate* Trupti Khadse, *Advocate* Viraj Mehta, *Advocate* Yash Prakash, *Advocate*

Sr. No.	*Date*	*Topics*	*Speakers*
b.		Quarter Final Round	**Judges of Quarter Final Round** Anil Harish, *Advocate* Paras S. Savla, *Advocate* Prakash Sinha, *Advocate* CA Ketan Vajani CA N. C. Hedge CA Paras K. Savla CA Shailesh Bandi Prof. Kishu Daswani
c.	10.06.2023	Semi-Final Round	**Judges of Semi-Final Round** Mr. Aby T. Varkey, Judicial Member Mr. Amarjit Singh, Accountant Member Mrs. Kavitha Rajagopal, Judicial Member Mrs. Padmavathy S., Accountant Member
d.		Final Round	**Judges of Final Round** Hon. Shri Justice Abhay Ahuja Hon. Justice Smt. Neela Gokhale
STUDY CIRCLE & STUDY GROUP			
1.	20.06.2023	Recent Judgement under I.T. Act - Part 1	CA S. Ramasubramanian
2.	27.06.2023	Direct Tax Provisions applicable for Assessment year 2023-24	CA Mahendra Sanghvi
3.	30.06.2023	Recent Judgement under I.T. Act - Part 2	CA S. Ramasubramanian

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96th Annual General Meeting

96th Annual General Meeting held on 4th July, 2023 at Garware Club House, Churchgate

CA Parag Ved (President) lighting the lamp at the 96th Annual General Meeting. Seen from L to R: CA A. S. Merchant (Past President), Shri Kishor Vanjara (Past President), CA Anish Thacker (Past President), CA Vijay Bhatt (Hon. Jt. Secretary), Ms. Neha Gada (Hon. Treasurer), CA Mehul Sheth (Hon. Jt. Secretary), CA Haresh Kenia (Vice President) and CA Vipin Batavia (Past President)

Dignitaries at the Inaugural Session from L to R: CA Mahendra Sanghvi (Past President), CA Hitesh R. Shah (Past President), CA A. S. Merchant (Past President), Shri Kishor Vanjara (Past President), CA Anish Thacker (Past President), CA Vijay Bhatt (Hon. Jt. Secretary), Ms. Neha Gada (Hon. Treasurer), CA Mehul Sheth (Hon. Jt. Secretary), CA Parag Ved (President), CA Haresh Kenia (Vice President) and CA Vipin Batavia (Past President), CA Yatin Desai (Past President), CA Manoj Shah (Past President), CA Bhavesh Vora (Past President), CA Sujal Shah (Past President) and CA Vipul Choksi (Past President)

CA Bhavesh Vora (Election Committee Member) announcing the Election results for the year 2023-2024

CA Bhavesh Vora (Election Committee Member) offering bouquet to incoming President elect CA Haresh Kenia

President elect CA Haresh Kenia offering bouquet to Election Committee Members CA Yatin Desai & CA Bhavesh Vora

Shri Kishor Vanjara (Past President) offering bouquet to Election Committee Member Mr. Keshav Bhujle, Advocate

96th Annual General Meeting

96th Annual General Meeting held on 4th July, 2023 at Garware Club House, Churchgate

A Parag Ved (Imm. Past President) delivering his Farewell Speech

CA Ketan Vajani (Past President) offering bouquet to Imm. Pat President CA Parag Ved

President elect CA Haresh Kenia delivering his Incoming Speech

CA Anish Thacker (Past President) felicitating Ms. Linda Biju John, 1st winner of The Dastur Essay Competition, 2023

President elect CA Haresh Kenia felicitating Ms. Vaishali Jitendra Lund, 2nd winner of The Dastur Essay Competition, 2023

CA Hitesh R. Shah (Past President) felicitating Ms. Hetvi Shah, 4th winner of The Dastur Essay Competition, 2023

96th Annual General Meeting

96th Annual General Meeting held on 4th July, 2023 at Garware Club House, Churchgate

CA Hitesh R. Shah (Past President) felicitating Mr. Thomson Jacob Perinjelil, 7th winner of The Dastur Essay Competition, 2023

CA Hitesh R. Shah (Past President) felicitating Mr. Kevin Savla, 8th winner of The Dastur Essay Competition, 2023

CA Hitesh R. Shah (Past President) felicitating Mr. Khushal Parihar, 9th winner of The Dastur Essay Competition, 2023

CA Hitesh R. Shah (Past President) felicitating Mr. Kuldip Majithiya, 10th winner of The Dastur Essay Competition, 2023

Felicitation of President elect CA Haresh Kenia by BCAS Vice President

Felicitation of CA Parag Ved (Imm. Past President) by MCTC President

96th Annual General Meeting

96th Annual General Meeting held on 4th July, 2023 at Garware Club House, Churchgate

CA Parag Ved (Imm. Past President) with CTC Staff

Members at the 96th AGM

Student Committee
Moot Court

6th The Chamber of Tax Consultants National Moot Court Competition, 2023 was held on 27th May on Virtual Mode and on 10th June, 2023 at ITAT and Government Law College, Mumbai

Semi Final at ITAT on 27th May, 2023

Hon'ble Member of the ITAT judging the participants

Student Committee
Moot Court

6th The Chamber of Tax Consultants National Moot Court Competition, 2023 was held on 27th May on Virtual Mode and on 10th June, 2023 at ITAT and Government Law College, Mumbai

Hon'ble ITAT Members with Team CTC

Finals at Government Law College, Mumbai on 10th June, 2023

CA Parag Ved (President) lighting the lamp

CA Parag Ved (President) giving his opening remarks at the Final Round and Valedictory Function

CA Vitang Shah (Chairman) welcoming the Hon'ble Justice and the participants

Hon'ble Justice Smt. Neela Gokhale addressing the students

Student Committee
Moot Court

6th The Chamber of Tax Consultants National Moot Court Competition, 2023 was held on 27th May on Virtual Mode and on 10th June, 2023 at ITAT and Government Law College, Mumbai

Hon'ble Justice Shri Abhay Ahuja addressing the students

Final Round

2nd Best Speaker: Mr. Mohammed Raqim, University Law College, Bangalore University

Runner Up Team Institute of Law, Nirma University Indore

Winning Team Government Law College, Mumbai

International Taxation Committee

16th Residential Course on International Taxation 2023 was held from 15th to 18th June, 2023 at Le Méridien, Coimbatore.

Inaugural Function

CA Parag Ved (President) giving his opening remarks

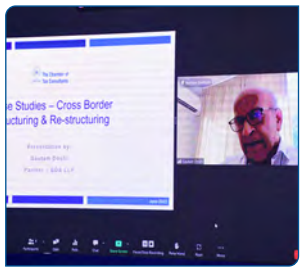
CA Kirit Dedhia (Chairman) welcoming the speakers and the delegates

Speakers

CA H. Padamchand Khincha

CA Bhaumik Goda

CA T. P. Ostwal



CA Gautam Doshi

CA Amithraj AN

CA Vijay Iyer

International Taxation Committee

16th Residential Course on International Taxation 2023 was held from 15th to 18th June, 2023 at Le Méridien, Coimbatore.

Panel Discussion

Panellists: CA T. P. Ostwal, CA Geeta Jani & Mr. K. K. Chythanya, Senior Advocate

International Taxation Committee

Group Photo

THE CHAMBER'S JOURNAL

Posted at the Mumbai Patrika Channel
Sorting Office, Mumbai 400 001.
Date of Posting: 15th-16th of Every Month

No. MCS/149/2022-24
R.N.I. No. MAHENG/2012/47041
Date of Publishing 12th of Every Month

Printed and Published by Shri Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel.: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020. Editor : Vipul K. Choksi