

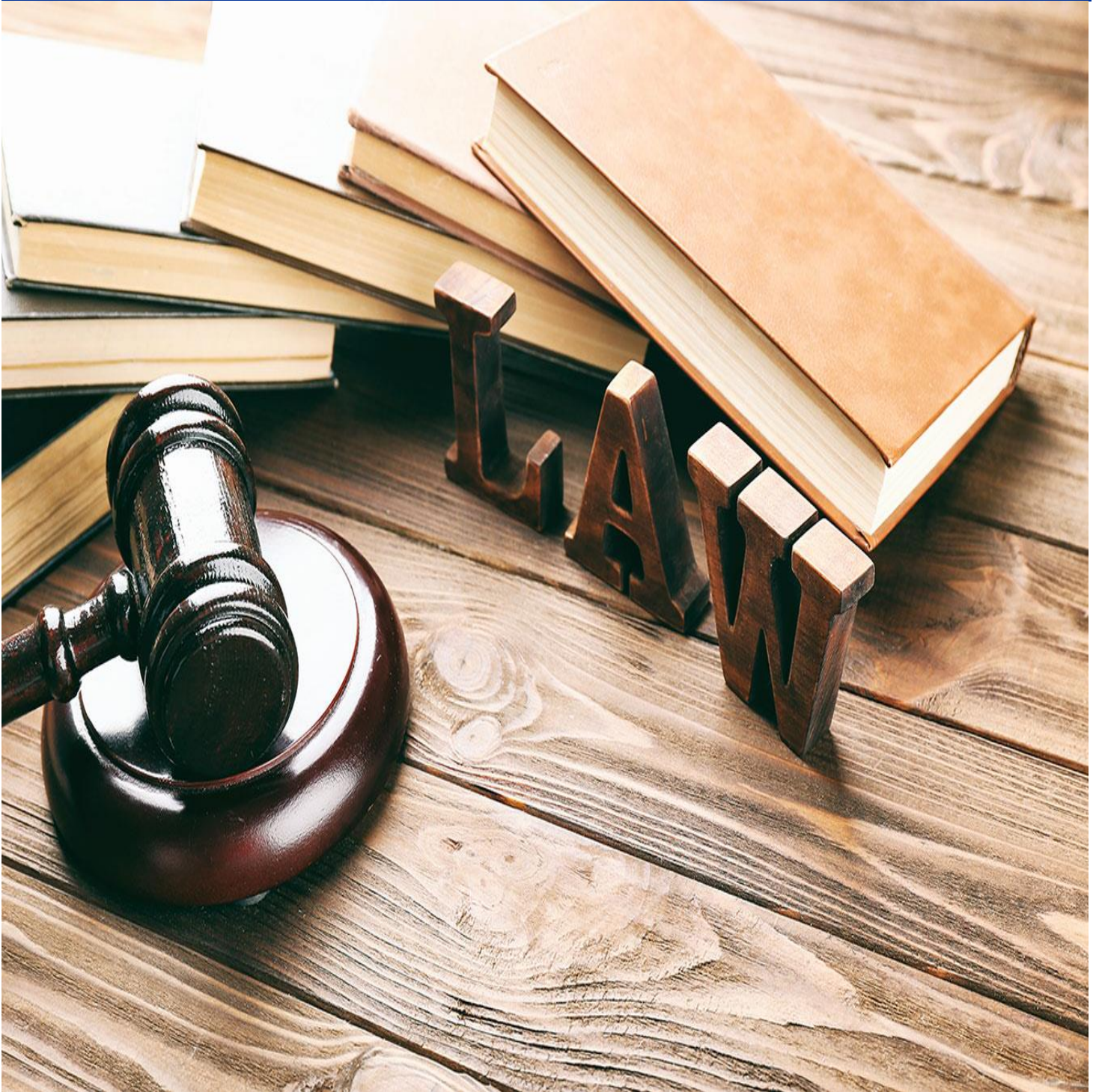


VAIBHAV  
GUPTA ASSOCIATES

# Newsletter

[www.vglaws.com](http://www.vglaws.com)

April & May, 2020



VAIBHAV  
GUPTA ASSOCIATES

**VAIBHAV GUPTA ASSOCIATES**

[www.vglaws.com](http://www.vglaws.com)

[vaibhavguptaassociates@vglaws.com](mailto:vaibhavguptaassociates@vglaws.com)

+91-9876929371

[facebook.com/vglaws](https://facebook.com/vglaws)

[linkedin.com/company/vglaws](https://linkedin.com/company/vglaws)

5783, Duplex, MHC, Manimajra,  
Chandigarh-160101



## MESSAGE FROM THE MANAGING PARTNER

[www.vglaws.com](http://www.vglaws.com)



### **SUCCESS IS NOTHING MORE THAN A FEW SIMPLE DISCIPLINES, PRACTICED EVERY DAY.**

Plenty of opinions are what one may get in the lifetime, when one tries to make on its own but what makes difference in the process is who is beside you, affirming your each step with caution and strength. And, here we are to join you in this process with our professional aide. We ensure our presence at each step that you take and every challenge that you undertake or might face, filling you with assurances that this guided platform may lead you towards.

The Coronavirus flare-up and across the country lockdown to control spreading of contaminations have altogether affected monetary exercises. Most organizations have seen their incomes evaporating for the time being, as money course has shrieked to a stop in the midst of the lockdown and difficulty on part of organizations to operationalize every tasks. Coronavirus has adversely impacted the economic, financial and revenue segment of the businesses across the world. It is for the most part accepted that the circumstance will have a drawn out effect on the reasonability of the organizations. Because of the phenomenal lockdown circumstance winning in the nation, government across the Centre and States have introduced various Ease of Doing Business Reforms as a part of the stimulus package. The legislature raised the edge for conjuring indebtedness under the IBC,2016 to Rs 1 crore from the present Rs 1 lakh so as to forestall activating of such procedures against little and medium undertakings that are confronting as of now the warmth of coronavirus pandemic. Also anytime soon an ordinance is also likely to be promulgated to suspend fresh filings under IBC,2016 up to an year and introduce a new regime of Insolvency for MSMEs.

*Vaibhav Gupta*

VAIBHAV GUPTA, ADVOCATE  
B.COM, ACS, LL.M  
MANAGING PARTNER  
VAIBHAV GUPTA ASSOCIATES

### Insolvency and Bankruptcy Code, 2016

- In exercise of the powers conferred under the IBC Code, 2016, The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 have been amended to exclude the period of lockdown imposed by the Central Government in wake of Covid-19 outbreak for the purpose of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process. The notification is as under:-

TO BE PUBLISHED IN THE GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, 17TH APRIL 2020  
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION  
New Delhi, the 17th April, 2020

Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020

No. IBBI/2020-21/GN/REG060.- In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020.  
(2) They shall come into force on the 17th April, 2020.
2. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, after regulation 47, the following regulation shall be inserted, namely: -

“Exclusion of period of lockdown. 47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.”.

(Dr. M. S. Sahoo)

Chairperson

[ADVT.- III/4/Exty./..../20]

- In exercise of powers conferred under IBC Code, 2016, IBBI has amended the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, thereby extending the last date of filing the forms required to be filed during the CIRP for making correction, updation or otherwise upto 30.10.2020. The Notification is as follows:-

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION  
New Delhi, the 20th April, 2020

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2020.

No. IBBI/2020-21/GN/REG056.—In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2020.  
(2) They shall be deemed to come into force on the 25th March, 2020.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in regulation 40B, for sub-regulation (4), the following sub-regulation shall be substituted, namely: -

“(4) The filing of a Form under this regulation after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

Example: A Form is required to be filed by 30th October, 2020. It shall be filed along with a fee as under:

If filed on	Fee (in Rupees)
29th October, 2020	0
30 th October, 2020	0
31st October, 2020	500
Any day in November, 2020	1000
Any day in December, 2020	1500”

Dr. M. S. SAHOO, Chairperson

[ADVT.-III/4/Exty./09/2020-21]

• **Announcement by the Ministry of Finance, Government of India**

1. Increase in minimum threshold limit to initiated Insolvency and Bankruptcy proceedings to has been increased to Rs. 1 crore.
2. Fresh IBC proceedings to be suspended for up to 1 year.
3. Special Insolvency resolution framework for MSMEs under Section 240A of the Code to be notified soon.
4. Debts related to the coronavirus pandemic will not be included within the ambit of ‘default’ under the IBC.

---

## Corporate Law-Updates

• **Holding of EGMs through Video Conferencing-08.04.2020**

Due to Covid-19 pandemic, MCA vide its Circular dated 08.04.2020 has issued procedural guidelines in respect of conduct of Extra Ordinary General Meetings through video conferencing or other audio visual means on or before 30.09.2020. In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website of the company (if any). Notice to members can be sent through emails, where same is available. In respect of members, whose email id is not available, in the advertisement, disclosures with regard to the VC, date and time, manner etc. should be mentioned. Rest of the provisions pertaining to the manner of conduct of the meeting, voting, posting questions are more or less the same as provided under the Companies Act, 2013.

• **Corporate Social Responsibility (CSR)**

Ministry of Corporate Affairs (MCA) has vide General Circular No. 15/2020 dated 10.04.2020 issued a series of FAQs on CSR specifically in context of spending of CSR on COVID-19 related activities, wherein on one hand MCA has showed generosity by allowing corporates to cover ex-gratia payments made to temporary/casual workers/ daily wagers over and above the disbursement of wages, specifically for the purpose of fighting Covid-19 under the CSR expenditure but on the other hand, has disallowed contributions made to the Chief Minister’s Relief Fund or the State Relief Fund for Covid-19 as CSR expenditure as it does not form part of the Schedule VII of the Companies Act.

• **Filings under Section 124 & 125 of the Companies Act**

In addition to the filing of forms in MCA21 registry without additional fees till 30.09.2020, the MCA has also allowed the filling of IEPF-1, IEPF-1A, IEPF-2 to IEPF 7 up till 30.09.2020 without any additional fees.

• **Relaxation in holding of AGMs by companies whose financial year ended on 31<sup>st</sup> December, 2019**

MCA has clarified that if the companies whose financial year (other than first financial year) has ended on 31.12.2019, can hold their AGM for such financial year within a period of 9 months form the closure of the F.Y. i.e. by 30.09.2020 and the same shall not eb viewed as violation.

- Relaxation of Timelines for Reserved Company/LLP Names**  
 The Registrar of Companies reserves the name for the company under incorporation for a period of 20 days and in case of change in name of the company the same is reserved for 60 days. Apart from this, in case of a LLP, the Registrar reserved the name for new LLP incorporation/change in name for a period of 90 days. In view of the difficulties to the stakeholders during the pandemic, named expiring any day between 15.03.2020 to 03.05.2020 would be extended by 20 days beyond 03.05.2020. Apart from this, SRNs where last date of Resubmission falls between the two dates mentioned above, additional 15 days beyond 03.05.2020 is allowed for such resubmissions.
- SEBI Relaxation for holding AGMs for listed companies**  
 In line with relaxation provided by MCA, even SEBI vide its circular dated 23.04.2020 has granted extension of 4 months for holding AGMs for listed companies whose F.Y. is ending on 31.12.2020.
- Last date for registration of Independent Director's extended**  
 MCA has extended the last date to register for existing Independent Director's with the data bank by upto 30.06.2020, previously it was 30.04.2020.
- NSE- Extension in timeline for payment of Annual Listing Fee**  
 NSE vide circular bearing ref. no. 09/2020 extended the due date of payment for the Annual Listing Fees for FY 2020-21 from 30.04.2020 to 30.06.2020.
- Procedural and Listing relaxation for Right Issue-SEBI**  
 SEBI vide its circular dated 06.05.2020 has granted relaxations relating to procedural matters for Rights Issue opening upto 31.07.2020. As per the Circular, service of the abridged letter of offer, application form and other issue material to shareholders may be undertaken by electronic transmission, provided such mechanism to be communicated to physical shareholders before opening of the issue. An optional mechanism to accept the applications of the shareholders can be instituted. The certifications /undertakings/ authentication can be done using DSC, whereas inspection of material documents are to be provided electronically.
- Announcements made by Ministry of Finance, Government of India**
  - In the first phase of decriminalization of Company Law defaults in 2018, 16 compoundable offences were shifted to an in-house adjudication & penalty mechanism. Majority of the compoundable offences sections to be shifted to internal adjudication mechanism and powers of RD for compounding enhances (58 Sections to be dealt with under IAM as compared to 18 earlier). 7 compoundable offences altogether dropped and 5 to be dealt with under alternative framework.
  - Integrated Web Based Incorporation Form with simplified proforma (SPICe+) introduced which extends 10 services of different Ministries and one State Government through a single form.
  - Databank of Independent Directors launched
  - Withdrawal of more than 14,000 prosecutions under the Companies Act, 2013
  - Rationalization of Related Party Transactions.

---

## Labor Laws

- Reduction of EPF Contribution announced by the Central Government under Atmanirbhar Bharat Package**  
 The statutory rate of EPF contribution of both employer and employee has been reduced to 10 % of basic wages and dearness allowances from existing rate of 12 % for all class of establishments covered under the EPF & MP Act, 1952. The statutory rate of contribution will be 10 % for wage months of May, 2020 to July 2020, issued vide notification SO 1513 (E) dated 18.05.2020. The said amendment is applicable to all class of establishments under the EPF & MP Act, 1952, except the establishments like Central and State Public Sector enterprises or any other establishment owned or controlled by or under control of the Central Govt. or State Govt. The reduced rate is also not applicable to establishments eligible for PMGKY benefits, since the entire employees' EPF contributions and employer's EPF & EPS contribution is being contributed by the Central Govt.
- Relief from levy of penal damages**  
 In view of the prolong lockdown announced by the Government, the establishments covered under RPF & MP Act, 1952 are distressed and not able to function normally. Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, relief has been provided to the effect that for any delay in payment of any contributions or administrative due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.



- **Government of pay EPF contribution**

Government of India will pay EPF contribution of both employer and employee (12 percent each) for the next three months so that nobody suffers due to loss of continuity in the EPFO contribution. This is for those establishments that have upto 100 employee and 90 percent of whom earn under Rs. 15,000 monthly wage.

- **UP Government suspends all labor laws except three**

Uttar Pradesh Government has given nod to the “Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020” which relaxes all labor laws in the state, except three, which are related to abolishment of bonded labor, ex gratia to workers in case of work-related diseases and disabilities and timely wage payments. The ordinance covers all the existing industries and manufacturing units as well as the new ones that are coming up in few years. All labor laws related to labor unions, settling work disputes, regulations for working conditions, contracts, among others shall be suspended for three years in Uttar Pradesh under this ordinance. This includes- The Minimum Wages Act, The Maternity Benefit act, The Equal Remuneration Act, The Trade Unions Act, The Industrial Employment Act, The Industrial Disputes Act, The Factories Act.

---

## Taxation

### DIRECT TAX

- **Ordinance for relaxation of certain provisions**

On 31 March 2020, the President promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, to provide relaxation of certain provisions. Direct tax related reliefs are summarized as follows:

-Under ‘Vivaad Se Vishwas Scheme’, the time limit for making payment to avail the scheme without any additional amount has been extended from 31 March to 30 June 2020.

-Where any time limit specified under the Income-tax Act, 1961 (the Act) falls during the period from 20 March to 29 June 2020, or such other date after 29 June 2020 as the government may notify, for the completion or compliance of the following actions:

- Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or Tribunal, by whatever name called.
- Filing of any appeal, reply or application or furnishing of any report, document, return, statement, or such other record, by whatever name called.
- In case where the specified Act is the Income-tax Act, making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, to claim any deduction, exemption or allowance under the following provisions:
  - Section 54 to 54GB; or
  - Chapter VI-A under the heading ‘B – Deductions in respect of certain payments’; or
  - Such other provisions of the Act as the government may notify.
- Beginning of manufacture or production of articles or things or providing any services referred to in Section 10AA, in a case where letter of approval, required to be issued in accordance with the provisions of the SEZ Act has been issued on or before the 31 March 2020 and where completion or compliance of such action has not been made within such time, then, the time limit for compliance or completion of such action has been extended to 30 June 2020 or such other date after 30 June 2020, as government may notify.
- Where any due date specified under the Act for payment of any amount towards tax or levy, by whatever name called, falls during the period from 20 March to 29 June 2020, or such other date after 29 June 2020 as the government may notify, and such amount has not been paid within such date, but has been paid on or before 30 June 2020 or such other date after 30 June 2020 as the government may notify, then:

The rate of interest payable for the period of delay i.e. period between the due date and the date of payment) shall not exceed 0.75 per cent for every month (9 per cent per annum). No penalty shall be levied and no prosecution shall be sanctioned. The term ‘Period of delay’ has been defined to mean the period between the due date and the date on which the amount has been paid. 100 per cent deduction to donation made to PM CARES Fund<sup>2</sup> under Section 80G of the Act. Further such income will be exempt in the hands of recipient under Section 10(23C) of the Act.

- **Expediting pending income-tax refunds**

To provide immediate relief, the government has given directions to immediately issue all the pending income tax-refunds of up to INR 0.5 million.

- **Relief in respect to residency conditions**

Conditions for determination of the residential status for previous year 2019-20 has been relaxed. Prolonged period stay, of individuals who have come to India on a visit, is to be excluded in certain situations. Further clarification excluding the period of stay of individuals up to the date of normalisation of international flight operations, for determination of the residential status for the previous year 2020-21 to be issued after the said normalisation.

## **INDIRECT TAX**

- **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019**

Amount payable under the scheme has been extended till 30.06.2020. Further, it may be noted that various timelines prescribed for issuance of the statement by the designated committee, have also been extended to 31.05.2020, except in cases where the amount estimated exceeds the amount declared by the declarant, in such cases.

- **Option to defer payment of tax and filing of GST**

As an immediate relief, Government has granted an option to the taxpayer to defer payment of tax and file GST return in Form GSTR-3B for the period February to April 2020 upto 24 June 2020 without payment of any late fee and penalty. As far as interest is concerned, a concessional interest @ 9 per cent p.a. (instead of 18% p.a.) is leviable only after 15 days from the end of the original due date. Similarly, monthly return of outward supplies in Form GSTR-1 which is generally due on 11th of next month has been extended upto 30 June 2020 for the months of Mar, April and May. Annual Return and GST Reconciliation Statement for FY 18-19 which was due by 31 March 2020 has been extended upto 30 September 2020.

- **Amendment to the Central Goods and Services Tax Act, 2017**

New Section 168A has been inserted in the Central Goods and Services Tax Act, 2017 to give powers to the Central Government, on the recommendations of the GST Council, to extend the time limit of compliances in case of 'force majeure' such as Covid-19.

- **Temporary suspension of provision restricting the claim of input tax credit for unreported transactions**

Currently, the taxpayer is allowed to avail Input Tax Credit (ITC) of the amount appearing in the Form GSTR-2A (i.e. invoices reported by the vendors in their returns). However, in respect of unmatched invoices, the ITC is restricted to 10% of matched invoices. Unmatched invoices are those invoices which have not been disclosed/uploaded by the supplier in their respective GST returns. With the aim to provide an immediate relief to the industry, the aforementioned restriction has been relaxed for the tax period February 2020 to August 2020. However, taxpayer would be required to make a cumulative adjustment for the aforementioned months in the GST return for the month of September 2020.

- **Electronic Way Bill (E-way bill)**

Amid current lock-down, the government has notified that where the validity period of an e-way bill expires between 20 March 2020 to 15 April 2020, the validity period of such e-way bill shall be deemed to have been extended till 31 May 2020.

- **Foreign Trade Policy 2015-20**

The Foreign Trade Policy 2015-20 which was valid till 31.03.2020 has been extended up to 31.03.2021. New Schemes namely, "Remission of Duties and Taxes on Exported Products" to replace the Merchandise Exports from India Scheme available to the exporters of goods. The benefit under the MEIS for any of the prescribed item/tariff line/HS code shall continue to be available till 31.12.2020. Prior to 31.12.2020, as and when an item/tariff line/HS Code is notified to be covered under the RodTEP Scheme, it would at the same be removed from coverage under MEIS.

### FOREIGN EXCHANGE REGULATION ACT, 1973

#### **UNION OF INDIA AND ANOTHER VS. U.A.E. EXCHANGE CENTRE, CIVIL APPEAL NO. 9775 OF 2011, D.O.D.- 24.04.2020**

Foreign Exchange Regulation Act, 1973 Section 29(1)(a) Income Tax Act, 1961 Sections 5 and 9 Liaison office - Permanent establishment in India - Respondent company incorporated in UAE - Engaged in offering remittance services for transferring amounts from UAE to various places in India - Activities carried on by respondent from liaison offices in India stated to be in conformity with terms and conditions prescribed by RBI - Expenses of liaison offices in India are met out of funds received from UAE through normal banking channels - Respondent was not carrying on any business activity in India as such, but only dispensing with remittances by downloading information from main server of respondent in UAE and printing cheques/drafts drawn on banks in India as per instructions given by NRI remitters in UAE - Cheques or draft couriered or dispatched to beneficiaries in India, in accordance with instructions of NRI remitter - While doing so, liaison office of respondent in India remains connected with its main server in UAE and information residing thereat is accessed by liaison office in India for purpose of remittance of funds to beneficiaries in India by the NRI remitters - Nature and character of stated activities carried on by liaison offices of respondent is of auxiliary character - Liaison offices not permanent establishment in India - Appeal dismissed.

### ARBITRATION AND CONCILIATION

#### **FIRM RAJASTHAN UDYOG & ORS. VS. HINDUSTAN ENGINEERING & INDUSTRIES LIMITED, CIVIL APPEAL NO. 2376 OF 2020, D.O.D.-24.04.2020**

A. Arbitration Act, 1940, Section 17 - Award of arbitrator fixing price of land - Maintainability of suit for specific performance - Agreement entered between parties for sale of land - Reference to Arbitrator was made only with regard to determination of price of land - Sole arbitrator was to declare price of land to be paid - Award passed by Arbitrator could not be independently executed, as same was only for fixation of price of land and not for enforcement of Agreement - Relief granted by Court below for execution of sale deed in terms of Award, thus outside realm of law, as Award did not contemplate transfer of land but only determined price of land.

B. Civil Procedure Code, 1908, Order 23, Rule 1 (4) - Withdrawal of suit - Execution of sale deed - Once vendee had given up its claim of execution of sale deed in terms of Agreement by withdrawing suit for specific performance of agreement which was permitted to be withdrawn unconditionally vendor had abandoned its claim for execution of sale deed - Vendee could not be permitted to achieve goal of execution of sale deed by indirectly claiming for execution of Award, when direct claim for execution of sale deed of Agreement had been abandoned by vendee.

### INSOLVENCY AND BANKRUPTCY CODE, 2016

#### **ELECTROSTEEL STEELS LIMITED VS. THE STATE OF JHARKHAND THROUGH COMMISSIONER OF STATE TAX, RACHI, W.P. 6324-27 OF 2019, D.O.D.- 2019, HON'BLE JHARKHAND HIGH COURT**

Section 31(1) of the Code, 2016 was amended vide IBC (Amendment) Act, 2019, to make the approved resolution plan binding on the Government Authorities in relation to the statutory dues. It is pursuant to this amendment that the rights of the Government Authorities for statutory dues were affected and such right was made subject to the approved resolution plan. The said amendment was made effective from 16.08.2019, which is prospective in nature, and no express retrospective effect was given to the said amendment. The said amendment takes away a substantive right of the Government Authorities in relation to the statutory dues and thus any interpretation, which shall give a retrospective effect to the said amendment, would be unreasonable and unjust.

Even though there is a resolution plan in favour of the petitioner Company, approved by the Adjudicating Authority, i.e., the NCLT, for the simple reason that it was never brought to the knowledge of the Commercial Tax authorities of the State of Jharkhand that the CIRP had been initiated against the petitioner Company, and no public announcement of the CIRP was made in the State of Jharkhand. Section 31 of the Code clearly lays down that the approved resolution plan shall be binding only on those stakeholders who were involved in the resolution plan. Admittedly, the State Government was never involved in the CIRP, and as such, the resolution plan cannot be said to be binding on it.



## INCOME TAX ACT

### UNION OF INDIA AND OTHERS VS. EXIDE INDUSTRIES LIMITED & ANOTHER, CIVIL APPEAL NO. 3545 OF 2009, D.O.D.- 24.04.2020

A. Constitution of India, 1950, Article 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Assessee being liable to pay income tax upon profits and gains of their business, found themselves aggrieved with inclusion of clause (f) in Section 43B - Section 43B bears heading "certain deductions to be only on actual payment" - Leave encashment scheme envisages payment of certain amount to employees in lieu of their unused paid leaves in year - Employer seeking deduction from tax liability in advance, in name of discharging liability of leave encashment, without actually extending such payment to employee as and when time for payment arises may lead to abhorrent consequences - When time for such payment arises upon retirement of employee, employer may simply refuse to pay - Concomitantly, it would entail in double benefit to employer - It is said mischief clause (f) seeks to subjugate - Thrust of provision is not to control timing of payment, rather, it is strictly targeted to control timing of claiming deduction in name of such liability - Clause f of Section 43B constitutionally valid.

B. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - In testing constitutional validity of provision Court is to inspect existence of enacting power - Once such power is found to be present, next examination is to ascertain whether enacted provision impinges upon any right enshrined in Part III of Constitution - Process of examining validity of duly enacted provision, as envisaged under Article 13 of Constitution, is premised on these two steps.

C. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Nondisclosure of objects and reasons per se - Not to impinge upon constitutionality of provision unless provision is ambiguous and possible interpretation violate Part III of Constitution - In absence of any finding of any constitutional infirmity in provision, Court not empowered to invalidate provision - To hold provision as violative of Constitution on account of failure of legislature to state objects and reasons would amount to indirect scrutiny of motives of legislature behind enactment.

D. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Merely because liability has been held to be present liability qualifying for instant deduction in terms of applicable provisions at relevant time - Does not ipso facto signify that deduction against such liability cannot be regulated by law made by Parliament prospectively - In matter of statutory deductions, it is open to legislature to withdraw same prospectively - Once Finance Act, 2001 was duly passed by Parliament inserting clause (f) in Section 43B with prospective effect, deduction against liability of leave encashment stood regulated in manner so prescribed - Liability of leave encashment continues to be present liability as per mercantile system of accounting.

### NEW DELHI TELEVISION LTD. VS. DEPUTY COMMISSIONER OF INCOME TAX, CIVIL APPEAL NO. 1008 OF 2020, D.O.D.- 03.04.2020

A. Income Tax Act, 1961 Section 143 - Undisclosed income - Reopening of assessment - Reason to believe - At stage of issuance of notice for reopening assessment, assessing officer is to only form prima facie view that certain income has escaped assessment - Material disclosed in assessment proceedings for subsequent years sufficient to form such view.

B. Income Tax Act, 1961 Sections 143 and 147 - Undisclosed income - Reopening of assessment - Non-disclosure of material facts by assessee - Before original assessment order was passed assessing officer was aware of entities which had subscribed to convertible bonds - Assessee disclosed all primary facts necessary for assessment of its case to assessing officer and it was not required to give any further assistance to assessing officer by disclosure of other facts - Revenue could take benefit of extended period of limitation of 6 years for initiating proceedings only be done if revenue could show that assessee had failed to disclose fully and truly all material facts necessary for its assessment.

C. Income Tax Act, 1961 Sections 148 and 149 - Reopening of assessment - Notice - Opportunity of hearing - Reasons communicated to assessee mention 'reason to believe' and non-disclosure of material facts by assessee - No case set up in relation to second proviso of Section 147 either in notice or even in reasons supplied with regard to notice - It is only while rejecting objections of assessee that reference has been made to second proviso in order of disposal of objections - If revenue is to rely upon second proviso and wanted to urge that limitation of 16 years would apply, then in notice or at least in reasons in support of notice, assessee should have been put to notice that revenue relies upon second proviso - Assessee could not be taken by surprise at stage of rejection of its objections - Appeal allowed.

## CONSUMER PROTECTION ACT

### BAJAJ ALLIANCE GENERAL INSURANCE CO. LTD. VS. THE STATE OF MADHYA PRADESH, CIVIL APPEAL NO. 2366-67 OF 2020, D.O.D.- 24.04.2020

A. Consumer Protection Act, 1986, Section 23 - Transit Marine Insurance Policy - Deficiency in service - Respondent purchased "Transit Marine Insurance Policy" from appellant to cover transportation of Helicopter from Langley, Canada to Bhopal, India - Helicopter reached Delhi - Helicopter was transported in knocked down state by air - It cleared customs and on same day, respondent after taking possession of cargo shifted it to hangar at New Delhi - At time of customs clearance, no damage was reported - It was when helicopter was inspected by representative of manufacturer damage was reported to window of crew door of helicopter - No other damage was evident - Specific act of unpacking cargo at New Delhi in furtherance of purpose of assembling it for flight to Bhopal indicated that transportation of cargo in knocked down state had come to end - Act of unpacking helicopter for purpose of assembling it is unrelated to usual or ordinary method of pursuing transportation of cargo insured - Policy covered only those risks that were associated with transportation of helicopter - Damage occurred to tail boom in hangar not covered by policy.

B. "In the ordinary course of transit" - Meaning of expression - In context of policy, words "in transit" do not require transportation of consignment in single trip from commencement to final destination - It includes those interruptions in motion that are incidental to or in furtherance of conveyance or transportation of consignment - Words of policy ought to be construed so as to conform to usual and ordinary method of pursuing venture or operation - Question of what does and does not constitute deviation in furtherance of conveyance of goods is question of fact that must be determined by both intent of policy and actions of parties - Words used in policy must be construed in their commercial setting having regard to purpose of policy.

## LABOUR LAWS

### SUSHILABEN INDRAVANDA GANDHI AND ANOTHER VS. THE NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS, CIVIL APPEAL NO. 2235 OF 2020, D.O.D.-15.04.2020

A. Workmen's Compensation Act, 1923, Section 2(s) - Contract of service and contract for service - Test - In contract for service master can order or require what is to be done - In case of contract of service, master can not only order or require what is to be done, but also how it shall be done - Master had right to control method of doing work - Factors which make contract one for service outweigh factors which would point in opposite direction - Intention of parties is to be gathered from terms of contract.

B. Workmen's Compensation Act, 1923, Section 2(s) - Employment - Test - Control of employer' test in sense of controlling not just work that is given but manner in which it is to be done - Breaks down when it comes to professionals who may be employed.

---

#### **Disclaimer of Liability**

Every effort is made to provide accurate and complete information in Vaibhav Gupta Associates newsletters. However, the firm cannot guarantee that there will be no errors. Vaibhav Gupta Associates makes no claims, promises or guarantees about the accuracy, completeness, or adequacy of the contents of the newsletters and expressly disclaims liability for errors and omissions in the contents of this newsletters. Neither Vaibhav Gupta Associates, nor its employees and contractors make any warranty, expressed or implied or statutory, including but not limited to the warranties of noninfringement of third party rights, title, and the warranties of merchantability and fitness for a particular purpose with respect to content available from the newsletters. Neither does Vaibhav Gupta Associates assume any legal liability for any direct, indirect or any other loss or damage of any kind for the accuracy, completeness, or usefulness of any information, product, or process disclosed herein, and do not represent that use of such information, product, or process would not infringe on privately owned rights.

#### **Copyright Statement**

All content within the Vaibhav Gupta Associates newsletters is the property of Vaibhav Gupta Associates unless otherwise stated. All rights reserved. No part of the newsletters may be reproduced, transmitted or copied in any form or by any means without the prior written consent of Vaibhav Gupta Associates.

#### **Approved By:**

**Vaibhav Gupta, Advocate**  
**B.Com, ACS, LLM**  
**Managing Partner,**  
**Vaibhav Gupta Associates**

---