



# THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

**Insolvency Resolution –  
Business Revival and  
Lifeline Extended.**



# Invitation to Write Articles

Chartered Accountants and other subject experts, with academic passion and flair for writing, are invited to share their expertise through the ICAI Journal – *The Chartered Accountant*. The article may cover any topic relevant to the accounting world covering auditing, finance, laws, strategy, taxation, technology and so on. While submitting articles, please keep following aspects in mind:

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- ❖ Articles should be original in nature
- ❖ An executive summary of about 100 words should accompany the article.
- ❖ Articles should not have been published or sent for publishing in any other print or electronic media.

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**The Institute of Chartered Accountants of India**

# Insolvency Resolution – Business Revival and Lifeline Extended

In the present competitive and challenging environment, there are situations where businesses face difficulty in achieving their objectives, serve the stakeholders and even meet the financial obligations. In such times, these businesses need timely and orderly resolution of insolvency wherever possible and easy exit wherever required to salvage the position. In this direction, the year 2016 saw a codified legislation - The Insolvency and Bankruptcy Code, 2016 (IBC) – enacted with the objective of consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The purpose of the Code is maximisation of value of assets, promote entrepreneurship and balance the interests of all the stakeholders. Today, the Code has emerged as a key framework to resolve a number of insolvency cases.

Over the years, to address the issues arising from the functioning of the Code and to remain in sync with emerging development, six amendments have been brought out. The most recent amendment being the enactment of the Insolvency and Bankruptcy Code (Amendment) Act, 2021, which provides for Pre-packaged Insolvency Resolution Process for corporate debtors classified as micro, small and medium enterprises.

The Regulations under the Code were also amended regularly by Insolvency and Bankruptcy Board of India (IBBI) to take care of the implementation issues. Further developments in the insolvency regime that are expected include Cross Border, Individual and Group Insolvency Frameworks.

In the previous year, several pre-emptive actions were taken in the insolvency resolution process in the country due to the outbreak of COVID-19 pandemic to safeguard the people, business, stakeholders and to provide assistance and relief to the concerned. Important judicial, legislative and economic measures were initiated due to the unprecedented condition and financial distress on business. The notable amongst these measures were the notification dated 24<sup>th</sup> March 2020 by the Central Government whereby the minimum amount of default to trigger insolvency was revised to Rs. 1 crore instead of Rs. 1 lakh to help the MSME sector from being prevented to

being brought under insolvency proceedings as per IBC and the promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 for suspension of the initiation of Corporate Insolvency Resolution Process under IBC for any default arising on or after 25<sup>th</sup> March 2020 for a period of six months and which was eventually extended for one year from 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021.

The Code led to the emergence of professional opportunities in the form of Insolvency Professionals who are a key pillar upon which rests the effective and timely functioning of the entire mechanism of the insolvency resolution process. They are appointed as interim resolution professionals, resolution professionals, liquidators, bankruptcy trustees etc. at various stages of the insolvency proceedings. The Insolvency Professionals are regulated by Insolvency and Bankruptcy Board of India (IBBI) and the Insolvency Professional Agency (IPA) with whom they are enrolled.

With deep insights into the accounting and finance related functions and procedures of law, many chartered accountants have also become Insolvency Professionals. There are other professional opportunities as well besides Insolvency Professional under the Code, widening the scope for the Chartered Accountants services.

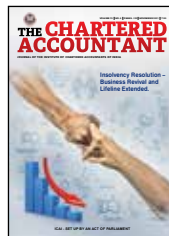
ICAI has taken several enabling measures and initiatives for the benefit of the members in the insolvency resolution area. ICAI has formed an Insolvency Professional Agency (IPA) – the Indian Institute of Insolvency Professionals of ICAI (IIPI), which is the first IPA registered in the country to enrol and regulate insolvency professionals as its members. ICAI is also taking various important steps to bring awareness and disseminate knowledge to facilitate members on the practical aspects and procedures under the Code.

The legal framework for resolving matters of insolvency towards revival of business and extension of lifeline could be implemented at a fast pace in the debt resolution space in the country because of the effective functioning of all the pillars under the Code, thereby establishing a win-win position for both businesses and creditors.

**–Editorial Board ICAI: Partner in Nation Building**

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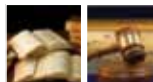
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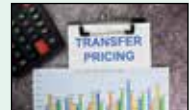
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# From the President



CA. Nihar N. Jambusaria  
President, ICAI

Dear Professional Colleagues,

India has achieved a major milestone with 100 Crore vaccines administered to the eligible population under the vaccination drive. Commendable efforts and kudos to all our COVID heroes for working tirelessly to achieve this milestone. This is indeed a testimony of our enterprise and collaborative spirit in the wake of challenging times. As a nation, all steps are being taken to regain lost ground and find the path of development and progress. It is heartening that the ICAI regional branches, chapters and many members have actively involved and contributed to this vaccination drive.

The International Monetary Fund acknowledged in its recent World Economic Outlook Report that the development of the COVID-19 vaccine in India was highly

encouraged by public support. Considering the large population, scaling up the manufacturing of COVID-19 vaccine, accelerated vaccination process, and increased focus on creating awareness, the Government has provided every possible support to keep the spirits high. During the process, India, believing in the saying "*Vasudhaiva Kutumbakam* – The World is One Family", also exported the vaccines to support other countries. The achievement signifies India's scientific prowess and its emergence as a potential manufacturing hub at the global forum.

The IMF also estimates India's gross domestic product (GDP) to rise at 9.5 per cent this year and at 8.5 per cent in the next financial year, indicating that India is moving in the right direction in terms of

financial standing and Government policy interventions to revive the economy. This boosts confidence of the domestic as well as international stakeholders, companies and investors in the fastest growing large economy of the world.

At a time when rapid environmental challenges are happening around us, we must take extra efforts to handle them effectively. Remember the words of **Dr. A.P.J. Abdul Kalam**, "*This is my belief: that through difficulties and problems God gives us the opportunity to grow. So when your hopes and dreams and goals are dashed, search among the wreckage, you may find a golden opportunity hidden in the ruins*".

In all these situations, the financial and allied matters are crucial and thus a quintessential role emerges for the accounting profession. Working on the mantra of sustainability, ethics and integrity, the Chartered

# From the President

Accountants fraternity with its professional commitment, is continuously working on the path of welfare of the society. Shri Lal Bahadur Shastri highlighting the importance of profession mentioned: *"I cannot conceive what would happen if there were no accountants and no auditors. Not only the mute shareholders in a private company but the industries and the economy of the country as a whole would suffer without your help and adequate guidance... Members of your Institute have a virtual monopoly in financial accounting and auditing work. They must therefore unreservedly accept their responsibility for creating and maintaining an atmosphere of confidence in so far as it lies in their power to do so. This can be done only if you take a positive view of your duties and responsibilities"*. Over the years the profession has developed much beyond the core areas to encompass and play a critical role in other critical aspects of business, industry and society. Our members are not limited to the core domain of accounting, auditing, taxation, etc. but are participating in social and national initiatives in large numbers.

## ICAI Pre-Budget Memorandum-2022

ICAI has always been at the forefront in rendering the best of its contribution in Indian policies and governance. The annual budget exercise is a key governmental activity where ICAI has been participating for many decades with success. The members of the Institute with their deep connectivity and involvement in business activities are always able to provide grassroot level insights that are collated, analysed and complimented with the experience of experts and then provided to Government. Many a time, the Indian budget includes suggestions made by the Institute. Continuing with the tradition, the institute this year also has invited suggestions related to widening the tax base and increasing

the tax revenue, to check tax avoidance, to reduce/minimize litigations and for removing administrative and procedural difficulties from the members. The suggestions so received are being collated and analysed for onward submission to the Government.

## Multipurpose Empanelment Form 2021-22

The accounting profession offers multiple professional opportunities that are expanding with the growth of the economy. The Institute on its part continually explores available and potential opportunities for Chartered Accountants whereby avenues for professional development and growth are increased and assured. The Institute has recently hosted the Multipurpose Empanelment Form (MEF) for the year 2021-22, which is available at <https://meficai.org/>. This year we have made the MEF application simpler and more user friendly. Users should be cautious to cross check and verify the authenticity of the data provided thereat. The data will be used by various organisations to provide professional opportunities.

## Show your mettle at the 15<sup>th</sup> ICAI Awards

The ICAI Awards were instituted to acknowledge the accomplishments and to recognise the members who have demonstrated excellence and portrayed an abiding commitment to achieve heights as CA professional. In the words of Peter Drucker, *'Effective leadership is not about making speeches or being liked; leadership is defined by results not attributes.'* With this spirit, I would like to inform you all that the 15<sup>th</sup> ICAI Awards and Leadership Summit, 2022 will be organised in January 2022. The awards would be presented under various categories based on the contribution and value additions made by member in a particular project. These

# From the President

Awards are being recognised as one of the most prestigious awards amongst the CA fraternity. More details about the eligibility, categories and criteria are available at <https://awards.icai.org/>.

## CRET: The way forward

As you would know, the Committee for Review of Education and Training (CRET) of ICAI has been constituted to examine the existing schema, curriculum, articleship training, specific skill development training programmes (ICITSS/AICITSS) and manner of assessment *vis a vis* leading accounting bodies, tenets of National Education Policy 2020 and paradigm shift due to disruptive technologies and emerging trends in global business, economy, and finance; thereafter, ideate and deliberate upon the critical realms to transform the current structure. As of now, vital aspects such as Academics, Practical Training, ICITSS / AICITSS (Training Programmes integrated into the curriculum) and Examination are being deliberated by various sub-groups. In due course, these sub-groups will provide their discrete recommendations to elicit suggestions from the stakeholders, discerning students, esteemed members and subject experts to critically analyse their feedback.

## Participate in Elections 2021

As Abraham Lincoln once said: '*Elections belong to the people. It's their decision.*' I would urge all my professional colleagues to exercise their right to vote with sincere responsibility towards the profession. As you all know, elections for 25<sup>th</sup> Central and 24<sup>th</sup> Regional Council will be held in December 2021, each member of the Institute whose name is in the List of Voters as on 1<sup>st</sup> April 2021 is entitled to cast their vote in the ensuing elections of the Institute.

This time, the amended rules provide that the voters, who are entitled to vote by poll shall have the option to choose for a polling booth in the same/different city within the same constituency or to a polling in another city outside one's own regional constituency due to change in the professional address or expected to be away from professional address on the day of polling. Since the success of any election depends on the turnout, I would appeal to all of you to come in large numbers and discharge your duty in the best interest of the profession.

## Concluding remarks

The Institute has completed more than seven successful decades as a professional body in performing its role in anchoring the country's investment climate and supporting the stakeholders for a holistic economic growth. Challenges are areas to build upon for the future and our profession will continue to raise the bar of its ethos to meet the expectations and aspirations of the stakeholders and society. We should be aware that in coming times, our role will be more challenging but we will always rise with our dedication and zeal for the service of the nation. As a professional, we all need to focus on our responsibilities towards the welfare of the society and I am confident that with our positive energy, hope and courage, we can continue to achieve our goals to make a great nation.

On the auspicious occasion of Diwali, I extend my heartiest greetings wishing that this festival of lights dispels the darkness and brings light and prosperity to the lives of all.

Stay safe, stay healthy. Best wishes.



**CA. Nihar N. Jambusaria**  
President, ICAI

New Delhi, 25<sup>th</sup> October, 2021



# Photographs



ICAI President CA. Nihar N. Jambusaria with Dr. Bhagwat Kishanrao Karad, Hon'ble Minister of State for Finance at the Interactive Meet organized by Professional Development Committee in Mumbai (08-10-2021).



ICAI President CA. Nihar N. Jambusaria with the delegation from ICA Nepal led by Shri Yuddha Raj Oli, President ICAN, members for ICAN and CA. Mudit Vashishtha, Secretary, International Affairs Committee at ICAI Head Office (30.09.2021).



ICAI President CA. Nihar N. Jambusaria with Dr. Bhagwat Kishanrao Karad, Hon'ble Minister of State for Finance at the Interactive Meet organized by Professional Development Committee, ICAI in the presence of CA. Babu Abraham Kallivayalil, Chairman, PDC, CA. M P Vijay Kumar, Shri Rajkiran Rai G, MD & CEO, Union Bank of India, Shri AS Rajeev, CMD Bank of Maharashtra and CA. Manish Gadia, Chairman, WIRC of ICAI in Mumbai (08-10-2021).



ICAI President CA. Nihar N. Jambusaria in a virtual meeting with Mr. Richard Bolwijn and Mr. Yoseph Asmelash from UNCTAD ISAR (12-10-2021).



ICAI President CA. Nihar N. Jambusaria at the felicitation of Newly Qualified Chartered Accountants at Vasai Branch. Also present were CA. Manish Gadia, Chairman, WIRC of ICAI and Managing Committee Members of Vasai Branch of WIRC of ICAI (25-09-2021).

# Photographs



ICAI President CA. Nihar N. Jambusaria inaugurating the prototype of Accountancy Museum in the presence of CA. Manish Gadia, Chairman, WIRC of ICAI, Achiever's College, Kalyan Mumbai (26.09.2021).



ICAI President CA. Nihar N. Jambusaria at the Felicitation Program of Senior Members (above 70 years) with CA. Manish Gadia, Chairman, WIRC of ICAI organized by WIRC of ICAI in Mumbai (09.10.2021).



ICAI President CA. Nihar N. Jambusaria with ICAI Past President CA. Prafulla P Chhajed, at a Seminar on Tax Audit organized by Tirupati Branch of SIRC of ICAI at Tirupati – (03.10.21)



ICAI President CA. Nihar N. Jambusaria at the 6<sup>th</sup> Annual International Conference of ICAI Tanzania (Dar es Salaam) Chapter in the presence of CA. Kapil Garg, Chairman ICAI Tanzania (Dar es Salaam) Chapter – (09.10.2021).



ICAI President CA. Nihar N. Jambusaria with CA. Jay Chhaura, Central Council Member visiting the Bhuj Branch of WIRC of ICAI. Also seen in the picture are CA. Manish Gadia, Chairman, WIRC of ICAI, CA. Ramesh Pindolia Chairman, Bhuj Branch and other Managing Committee Members of Bhuj Branch (20.10.2021).



ICAI President CA. Nihar N. Jambusaria visiting the Gandhidham Branch of WIRC of ICAI. Also seen in the picture are CA. Manish Gadia, Chairman, WIRC of ICAI and other Managing Committee Members of Gandhidham branch (19.10.2021).



## ICAI in Action

### Key Developments *vis-à-vis* accountancy profession for the information of members, students and other stakeholders

#### Exposure Drafts

The ICAI releases various exposure drafts soliciting public comment on proposed standards and guidance notes. Opinions and comments received from members and other interested persons are used in the finalisation of documents and minimises any unintended consequences before document is put into practice. Recently, ICAI has released **Exposure Drafts of Amendments to various Engagement and Quality Control Standards and Other Documents** - The Institute of Chartered Accountants of India (ICAI) has issued various Engagement and Quality Control Standards over the period of years. The Auditing and Assurance Standards Board (AASB) of ICAI has decided that in the present scenario, these standards require some amendments in the light of current prevailing provisions/references of relevant Acts, Rules, Regulations, Accounting Standards, and other Pronouncements issued by ICAI. Accordingly, AASB has made some amendments to these standards and has finalised the Exposure Drafts of these standards.

The Exposure Drafts of Amendments to various Engagement and Quality Control Standards and Other Documents have been issued for public comments.- <https://www.icai.org/post/ed-of-amendments-to-various-engagement-and-quality-control-standards-and-other-documents>

#### Request for Information: Post-implementation Review of IFRS 9 – Classification and Measurement

Indian Accounting Standards (Ind AS) are based on the IFRS Standards issued by the International Accounting Standards Board (IASB) of IFRS Foundation. IASB conducts Post-implementation Review (PIR) of already issued IFRS Standards to identify whether these Standards provide information that is useful to users of financial statements; whether there are requirements that are difficult to implement and may prevent the consistent implementation of the standards; and whether unexpected costs have arisen in connection with applying or enforcing the standards. The Accounting Standards Board (ASB) of ICAI with the aim to provide an opportunity to various stakeholders in India to participate in the International Standard-setting stage, invites comments on the consultative documents issued by the IASB. At present, **Request for Information: Post-implementation Review of IFRS 9**

– **Classification and Measurement** issued by IASB is open for comments.

In this regard, stakeholders are requested to provide the feedback about implementation of classification and measurement provisions of Ind AS 109 (corresponding to IFRS 9).- <https://www.icai.org/post/request-for-information-post-implementation-review-of-ifs9>

#### Extension of Last Date for payment of Membership /COP fee for the year 2021-22 extended to 31st December 2021

The Council of ICAI has *suo moto* decided to extend the last date for payment of Membership/ COP fee for the year 2021-22 from 30th September, 2021 to 31st December, 2021.

Members, who have not paid their fee, are requested to pay online through Self-Service Portal (SSP) at the link <https://eservices.icai.org/>

#### Advice to file Form NFRA-2 Annual Return for the reporting period 2018-2019 and also for the year ending 31/03/2019, if not filed already

As per Rule 5 of NFRA Rules 2018, it has been prescribed that the auditors of class of companies specified in Rule 3(1) are required to file an annual return with NFRA in the prescribed form (NFRA-2) on or before 30th November every year.

For the reporting period FY 2018-19, the Government had already allowed extension up to 4th September 2020.

An announcement dated 07th May 2021 and mails have already been served to the Practicing Members advising them to file the form NFRA-2 for the FY 2018-19 and FY 2019-20.

However, it has been reported to ICAI that at least 1011 auditors/audit firms have not yet filed form NFRA-2 for the reporting period 2018-19. The list is available at the link: [https://nfra.gov.in/sites/default/files/NFRA2\\_AuditFirm\\_Default\\_1011.pdf](https://nfra.gov.in/sites/default/files/NFRA2_AuditFirm_Default_1011.pdf)

In this regard, members are hereby advised again to file NFRA-2 for the reporting period 2018-2019 and also for the year ending 31/03/2020, immediately, without any delay, if not filed already to avoid penal consequences.

For more details, please visit <https://eformnfra2.nic.in/>

# Know Your Ethics



**Q. Can a Chartered Accountant in practice accept original professional work emanating from the client introduced to him by another member?**

**A.** No, Paragraph 2.14.1.6(iv)N under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, as appearing in Volume II of the Code of Ethics, prescribes that a member should not accept the original professional work emanating from a client introduced to him by another member. If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.

**Q. Whether a Chartered Accountant in practice can give public interviews and also whether he can furnish details about himself or his firm in such interviews?**

**A.** As per paragraph 2.14.1.6(iv)O under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, appearing in Volume-II of Code of Ethics, a Chartered Accountant in practice can give public interviews. While doing so, due care should be taken to ensure that such interviews or details about the members or their firms are not given in a manner highlighting their professional attainments. Any detail which is given must, in addition to meeting above requirements, be given only as a response to specific question, and of factual nature only.

**Q. Whether a member can appear on television, films, internet and broadcast in the Radio or give lectures at forums?**

**A.** Yes, Council direction under Paragraph 2.14.1.7(x) under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, as appearing in Volume-II of Code of Ethics prescribes that a member may appear on television, films and internet and agree to broadcast in the Radio or give lectures at forums and may give his name and describe himself as chartered accountant. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given. Firm name may also be mentioned, however, any exaggerated claim or any kind of comparison is not permissible. What he may say or write must not be promotional of him or his firm but must be an objective professional view of the topic under consideration.

**Q. A Chartered Accountant in practice during a TV interview, handed over a bio-data of his firm to the Chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in the country. The chairperson read out the said bio-data during the interview. Is it a professional misconduct?**

**A.** Yes, Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949

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# Know Your Ethics

prohibits solicitation of client or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means since it shall constitute professional misconduct. The member would be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 under the given circumstances.

**Q. Can a Chartered Accountant in practice/ Firm of Chartered Accountants post the particulars of himself/ itself on a website?**

- A. Yes, the Council has approved the detailed guidelines for posting the particulars on Website by Chartered Accountants in practice and firm(s) of Chartered Accountants in practice.

**Q. Whether the information contained in the website of the Chartered Accountants and/ or Chartered Accountants' firms can be circulated on their own or through e-mail or by any other mode or technique?**

- A. Paragraphs 3.3.3 and 3.3.4 of Council Guidelines for Advertisement, 2008, appearing in Volume-II of Code of Ethics, prescribe that the Chartered Accountants and/or Chartered Accountants' firms should ensure that none of the information contained in the website be circulated on their own or through e-mail or by any other mode or technique except on a specific "pull" request. The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.

**Q. Can a member put up his photograph on the website?**

- A. Yes, Paragraph 3.3.7 of Council Guidelines for Advertisement, 2008, appearing in Volume-II of Code of Ethics provides that display of passport style photograph is permitted.

**Q. Whether the names of clients or fees charged be mentioned on the website of a Chartered Accountant or Chartered Accountants Firm?**

- A. Names of clients and fee charged cannot be given. However, disclosure of names of clients and/or fees charged may be made on the website where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator and is made only till such period that the member works under the purview of such regulator/ such requirements of the regulator are in force. The fact that the disclosure is being made due to requirement of regulator has to be made below the disclosure itself.

**Q. Whether a Firm of Chartered Accountants can use catchwords / catchphrases on its website, Letter heads and visiting cards?**

- A. The mention of catchwords / catchphrases (for e.g., excellence in a particular area, firm having professionals of integrity etc.) on firm's website, letter heads and visiting cards is not permissible in view of the provisions of Clauses (6) and (7) of Part-I of the First Schedule to Chartered Accountants Act, 1949. It may be noted that the above catch words are only indicative and not exhaustive.

**Q. Whether a Firm of Chartered Accountants can provide facility to the client to access its documents through logging in on the Firm's website?**

- A. Paragraph 3.3.9 of the Council Guidelines for Advertisement, 2008, appearing in Volume-II of Code of Ethics permit chat rooms amongst members of the ICAI and between Firms and its clients, provided the confidentiality protocol is observed. Accordingly, it is permissible for the Firm of Chartered Accountants to provide document management facility to the client to get access copies of their documents on the Firm's website vide distinct log in and password.

**Q. Can a Chartered Accountant in practice advertise his professional attainments or services, or can he use any designation**

# Know Your Ethics

**or expression other than Chartered Accountants on professional documents, visiting cards, letter heads or sign boards, etc.?**

- A. No, as per Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant shall be deemed to be guilty of professional misconduct, if he advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council.

However, the member in practice may advertise through a write-up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.

**Q. Whether display of Sign Board mentioning the services of the Firm is permissible to be put in the premises of the Office of the said Firm?**

- A. Yes. As per provisions of Clause (7) of Part-I of First Schedule to The Chartered Accountants Act, 1949, a member cannot inter alia mention the services provided by the Firm on sign board of the Firm. However, mentioning services provided by the Firm can be put inside the premises of the Firm, since it will not be advertisement to the world at large, but only depiction of services provided by the Firm, and accessible only to the clients/persons who are already voluntarily present inside the premises of the Firm.

**Q. Whether a member in practice can do advertisement of a commodity without consideration on one-time basis, which involves visibility on hoardings and walls?**

- A. No, advertisement of a commodity is a business activity in terms of clause (11) of Part-I of First Schedule to the Chartered Accountants Act, 1949. Hence, it is not allowed, irrespective of whether or not it is a one-time activity.

**Q. Whether a Chartered Accountant in practice can use an expression like Income Tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant?**

- A. No, Council direction under Paragraph 2.14.1.7(ii) of Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 appearing in Volume II of the Code of Ethics prescribes that it is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant.

**Q. Can a Chartered Accountant in practice give the date of setting up the practice or date of establishment on the letterheads and other professional documents, etc.?**

- A. No, Council direction under Paragraph 2.14.1.7(iv) of Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, appearing in Volume-II of Code of Ethics prescribes that the date of setting up of the firm on the letterheads and the professional documents, etc. should not be mentioned. However, in the website, the year of establishment can be given.

**Q. Can a Chartered Accountant in practice also practice as an Advocate?**

- A. Yes, Council direction under Paragraph 2.14.1.7(v) under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, appearing in Volume-II of Code of Ethics prescribes that a Chartered Accountant in practice who is otherwise eligible may practice as an Advocate subject to the permission of the Bar Council but in such cases, he should not use designation 'Chartered Accountant' in respect of the matters involving the practice as an Advocate. In respect of other matters, he should use the designation 'Chartered Accountant' but he should not use the designation 'Chartered Accountant' and 'Advocate' simultaneously.

**Q. Whether a Chartered Accountant in practice can use the designation 'Corporate Lawyer'?**

- A. No, a Chartered Accountant in practice is not permitted to use the designation 'Corporate Lawyer'.

# Accounting treatment under Ind AS for Financial Year 2019-20 for research expenses in case of a new Company formed for setting up of new Urea Plant and is under construction phase

## A. Facts of the Case

1. A Company (hereinafter referred to as 'the Company') is a joint venture company promoted by A Ltd., B Ltd. and C Ltd. The Company was incorporated on 17<sup>th</sup> February, 2015 in terms of Government of India's mandate of setting up of new Gas based Ammonia-Urea Complex at the closed Ramagundam unit of C Ltd. in terms of nomination by the Cabinet Committee of Economic Affairs (CCEA), Government of India decision dated 4<sup>th</sup> August, 2011 for revival of closed fertilizers units of C Ltd., which includes Ramagundam.
2. As per the process of revival of closed Ramagundam unit of C Ltd., the old plant was dismantled and sold off by C Ltd. and the Company is setting up a new State of Art Gas based Ammonia-Urea Complex with production capacity of 2200 MTPD of Ammonia and 3850 MTPD of Urea (1.27 Million MT Urea Per Annum) at Fertilizer City Karimnagar, Ramagundam, Telangana.
3. For setting up Urea Plant, the Company opened its project office at New Delhi for execution of the project on 1<sup>st</sup> October, 2015 and subsequently with the commencement of constructions activities at Ramagundam, Site Office at Ramagundam was made operational.
4. Planned Shareholding of the Company is as under:

S. No.	Particulars	% of Shareholding
1.	A Ltd.	26
2.	B Ltd.	26
3.	C Ltd.(in lieu of land to the Company on leasehold basis and other usable assets)	11

4.	State Government of Telangana	11
5.	X Ltd.	14.30
6.	Y Consortium	11.70

5. Abridged Statement of Affairs as on 31<sup>st</sup> March '20

Particulars	Amount (INR) in crs.
Equity Share Capital	1299.12
Outstanding Term Loan from Consortium of Bank	3399.20
Capital Work In Progress	4017.78
Reserve & Surplus	(67.87)

6. The querist has informed that the project is being executed on Engineering Procurement & Construction Management (EPCM) route. The Company after entering into contracts with technology suppliers & licensors for Ammonia & Urea and engaging B Ltd. as EPCM Consultant, declared zero date of the project on 25<sup>th</sup> September, 2015 and the project is commissioned in March' 21. The total project cost envisaged is Rs. 5900 crores. Total debt has been lined up and loan agreement has been entered into with Consortium of 6 banks led by the State Bank of India.
7. Since the date of incorporation of the Company, i.e., 17<sup>th</sup> February 2015, its first annual accounts were prepared for the period of 17<sup>th</sup> February 2015 to 31<sup>st</sup> March 2016 as per Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI). All annual accounts for all the financial years (F.Y.) from F.Y. 2016-17 onwards were prepared in accordance with Indian Accounting Standards (Ind AS) in terms of Companies Act, 2013.

Annual accounts for the F.Y. 2019-20 (duly audited by statutory auditor appointed by the Comptroller and Auditor General (CAG)) have been prepared in terms of Ind ASs, which have been adopted and approved by the Board of Directors at its meeting held on 8<sup>th</sup> June 2020.

8. The querist has further informed that the audited accounts of the Company for the financial year 2019-20, were selected by Government audit for audit under section 143(6)(a) of the Companies Act, 2013 for supplementary audit. Government audit has raised comment -1 which is given below.

*(a) Government Audit's Provisional Comment:*

"Assets

Non Current Assets

Intangible Assets under development (Note 7):  
Rs. 2.83 lakh

The above does not include an amount of Rs. 18.90 lakh incurred on intangible assets under development (consultancy charges for project of ERP implementation). An amount of Rs. 20.31 lakh was incurred in 2018-19 out of which Rs. 18.90 lakh was charged to profit and loss account in the year of occurrence. Since this expenditure was incurred for an ERP implementation project which is an Intangible asset, consultancy charges should have been included in the Intangible assets under development instead of charging to Profit and Loss (P&L) Account.

This has resulted in understatement of Intangible assets under development by Rs. 18.90 lakh and overstatement of other expenses and loss for the year by the same amount."

*The Company's Management Reply to Provisional comment:*

In connection with Provisional Comment-1, it is submitted that:

- (i) The subject amount of Rs 18.90 lakh was paid to a Consultant during F.Y. 2018-19 and accounted for during that year. The expenditure being in the

nature of research, it was charged to P&L Account during F.Y. 2018-19. This accounting treatment was accepted by statutory as well as government auditors in that year.

- (ii) The amount was paid to Consultant for "ERP Strategy & Roadmap for conducting of ERP study of 'As is process' including preparation of specifications, selections of module of ERP, estimated cost of hardware, recurring annual expenses, benefit analysis including road map and assessment of IT infrastructure required for Data Center".
- (iii) It may be seen from (ii) above that fee was in respect of study, which is called as Research in Ind AS 38, 'Intangible Assets.' Relevant extracts of Ind AS 38 provide as follows:

**"Recognition of an expense**

**68 Expenditure on an intangible item shall be recognised as an expense when it is incurred unless:**

**(a) it forms part of the cost of an intangible asset that meets the recognition criteria (see paragraphs 18 to 67); or**

...

- 69 In some cases, expenditure is incurred to provide future economic benefits to an entity, but no intangible asset or other asset is acquired or created that can be recognised...In the case of supply of services, the entity recognises the expenditure as an expense when it receives the services. For example, expenditure on research is recognised as an expense when it is incurred (see paragraph 54)..."

- (iv) The relevant extracts of paragraphs 54 and 56 of Ind AS 38 are reproduced below:



**“54 No intangible asset arising from research (or from the research phase of an internal project) shall be recognised. Expenditure on research (or on the research phase of an internal project) shall be recognised as an expense when it is incurred.”**

**“56 Examples of research activities are:**

- (a) activities aimed at obtaining new knowledge;
- (b) the search for, evaluation and final selection of, applications of research findings or other knowledge;
- (c) the search for alternatives for materials, devices, products, processes, systems or services; and
- (d) the formulation, design, evaluation and final selection of possible alternatives for new or improved materials, devices, products, processes, systems or services.”

(Emphasis supplied by the querist.)

- (v) The payments made by the Company as mentioned in (ii) above, are squarely covered by definition of research as mentioned in paragraph 54 of Ind AS 38 i.e. for study (research), estimation and selection of available software/alternatives etc. in form of evaluation.
- (vi) Further to above, Appendix A, ‘Intangible Assets—Web Site Costs’ to Ind AS 38, refers to an issue at paragraph 2(a) as below:

“...

- (a) Planning – includes undertaking feasibility studies, defining objectives and specifications,

evaluating alternatives and selecting preferences.”

The accounting principle for above has been addressed at Appendix A to Ind AS 38 in paragraph 9(a) as given below:

“the Planning stage is similar in nature to the research phase in paragraphs 54-56 of Ind AS 38. Expenditure incurred in this stage shall be recognised as an expense when it is incurred.”

Since, expenditure of F.Y. 2018-19 was completely identical to research activity as defined in Ind AS, as mentioned above, it was correctly accounted for by charging to P&L Statement. In view of above, it was requested to drop provisional comment. Based on the reply of the Company and discussions held, government auditors did not agree with submissions and issued the same as a comment as stated below:

*(b) Government Audit Final Comment:*

“Govt. Audit observed that consultancy charges of Rs. 18.90 lakh for implementation of ERP accounted for during F.Y. 2018-19 should have been included in the ‘Intangible Assets under development’ instead of charging to Statement of Profit & Loss.”

*The Company’s Management Reply to Provisional comment:*

“The subject consultancy fee was incurred for feasibility study for implementation of ERP in the company particularly for benefit analysis, recurring annual expenses, assessment of IT infrastructure, estimated cost etc. As per Ind AS 38, these expenses are categorized as ‘Expenditure on Research’ and no intangible asset arising from expenditure on research can be recognised.

In view of difference arising in understanding and interpretation, the matter shall be reviewed in accounts of F.Y. 2020-21.”

## 9. *Nature of transaction related to Government Audit Comment*

The Company has awarded a contract to consultant for giving consultancy for ERP implementation assistance on 22<sup>nd</sup> May 2018 at a fee of Rs. 36.34 lakh (Cloud Based Solution Option-2). (A copy of Contract awarded to Consultant has been supplied separately by the querist for the perusal of the Committee.) The salient features of the Contract are as follows:

*Contract completion and eligible payment split into 3 milestones:*

- (1) Phase-I: ERP strategy and roadmap for implementation of ERP study of 'As is Process' including preparation of specifications, selection of modules of ERP, estimated cost of licensing, cost of hardware, recurring annual expenses benefit analysis including road map and assessment of IT infrastructure required for data center.

Milestone Payment of Rs. 17.80 Lakh + GST

- (2) Phase-II: Preparation of RFP for selection of implementation partner, preparation of evaluation document based on offers & finalization of purchase order on Implementation partner for both ERP & Data Centre.

Milestone Payment of Rs. 4.00 Lakh + GST

- (3) Phase-III: Program management for implementation of ERP including compliance review of Data Centre.

Milestone Payment of Rs. 9.00 Lakh + GST

*Contractual provision enables termination of Contract vide clause No. 10 (iii), which provides:*

"...in the event it is decided not to implement ERP solution after completion of phase-I of the scope of work, contract can be short closed...."

Recognition of payments under the contract in financial statements is as follows:

- (a) The Company has charged the expenses (inclusive of taxes) related to Phase I (considering as research phase) in the Statement of Profit & Loss Accounts totaling to Rs. 18.90 lakh in F.Y. 2018-19.
- (b) The payment of Rs. 2.83 lakh, related to Phase II, paid in 2 equal instalments during F.Y. 2018-19 & 2019-20, recognized as 'Intangible Asset under development'. Payment under Phase II (considered as development phase) and were released as implementation of ERP in the Company was found to be feasible.

## 10. The Company's submission on accounting treatment:

- i. The amount of Rs. 18.90 lakh was paid to Consultant for "ERP Strategy & Roadmap for conducting of ERP study of 'As is process' including preparation of specifications, selections of module of ERP, estimated cost of hardware, recurring annual expenses, benefit analysis including road map and assessment of IT infrastructure required for Data Center".
- ii. It may be seen from (i) above that fee was in respect of study, which is called as Research in Ind AS 38 relating to 'Intangible Assets'.
- iii. Relevant extracts of Ind AS 38 provide as follows:

### "Recognition of an expense

**68 Expenditure on an intangible item shall be recognised as an expense when it is incurred unless:**

- (a) it forms part of the cost of an intangible asset that meets the recognition criteria (see paragraphs 18-67); or

..."

"69 In some cases, expenditure is incurred to provide future economic benefits to an entity, but no intangible asset or other asset is acquired or created that

can be recognised....In the case of supply of services, the entity recognises the expenditure as an expense when it receives the services. For example, expenditure on research is recognised as an expense when it is incurred (see paragraph 54) ...”

- iv. The relevant extract of paragraph 54 is reproduced below:

**“54 No intangible asset arising from research (or from the research phase of an internal project) shall be recognised. Expenditure on research (or on the research phase of an internal project) shall be recognised as an expense when it is incurred.”**

“56 Examples of research activities are:

- (a) activities aimed at obtaining new knowledge;
- (b) the search for, evaluation and final selection of, applications of research findings or other knowledge;
- (c) the search for alternatives for materials, devices, products, processes, systems or services; and
- (d) the formulation, design, evaluation and final selection of possible alternatives for new or improved materials, devices, products, processes, systems or services....”

(Emphasis supplied by the querist.)

- v. Further to above, Appendix A to Ind AS 38, refers to an issue in paragraph 2(a) as below:

“Planning—includes undertaking feasibility studies, defining objectives and specifications, evaluating alternatives and selecting preferences.”

The accounting principle for above issue in paragraph 2(a) has been addressed in paragraph 9(a) as given below:

“the Planning stage is similar in nature to the research phase in paragraphs 54-56 of Ind AS 38. Expenditure incurred in this

stage shall be recognised as an expense when it is incurred.”

- vi. The payment made by Company as mentioned in paragraph 9(1) above, is squarely covered by definition of research, as mentioned in paragraph 54 of Ind AS 38, i.e., for study (research), estimation and selection of available software / alternatives etc. in form of evaluation and was completely identical to research activity as defined in Ind AS mentioned above; therefore, it was accounted for by charging to P&L Statement.

## B. Query

11. In view of the above, the querist has sought the opinion of the Expert Advisory Committee as to whether expenses on account of Phase-I of Contract (considered as Research Phase) and expensed off by the Company during F.Y. 2018-19 are eligible for capitalisation by way of ‘Intangible Asset under development’.

## C. Points considered by the Committee

12. The Committee notes that the basic issue raised in the query relates to accounting treatment under Ind AS 38 for expenses incurred by the Company during Phase I of the Consultancy Contract for ERP implementation assistance. The Committee has, therefore, considered only this issue and has not examined any other issue(s) that may arise from the Facts of the Case, such as, accounting for the revival of the closed unit including selling off the old plant, accounting for any other expense incurred during any other phase of the contract (Phase II or Phase III), Accounting for debt and the loan taken from consortium of banks, accounting under the previous GAAP, etc. Further, the opinion, expressed hereinafter is purely from accounting perspective and not from the legal perspective of interpretation of the consultancy contracts. The Committee wishes to point out that the Indian Accounting Standards referred to in the opinion are the Standards notified by the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time.
13. At the outset, the Committee notes from the Facts of the Case that the Consultancy Contract terms the Phase I for which the issue has been raised as “ERP strategy and roadmap

for implementation of ERP study of 'As is Process' including preparation of specifications, selection of modules of ERP, estimated cost of licensing, cost of hardware, recurring annual expenses benefit analysis including road map and assessment of IT infrastructure required for data center". With regard to accounting treatment of the above-mentioned expenditure, the Committee notes the following paragraphs of Ind AS 38, 'Intangible Assets':

**"21 An intangible asset shall be recognised if, and only if:**

- (a) it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and**
- (b) the cost of the asset can be measured reliably."**

"53 If an entity cannot distinguish the research phase from the development phase of an internal project to create an intangible asset, the entity treats the expenditure on that project as if it were incurred in the research phase only.

## Research phase

**54 No intangible asset arising from research (or from the research phase of an internal project) shall be recognised. Expenditure on research (or on the research phase of an internal project) shall be recognised as an expense when it is incurred.**

55 In the research phase of an internal project, an entity cannot demonstrate that an intangible asset exists that will generate probable future economic benefits. Therefore, this expenditure is recognised as an expense when it is incurred.

56 Examples of research activities are:

- (a) activities aimed at obtaining new knowledge;
- (b) the search for, evaluation and final selection of, applications of research findings or other knowledge;

(c) the *search for alternatives* for materials, devices, products, processes, systems or services; and

(d) the formulation, design, *evaluation and final selection of possible alternatives* for new or improved materials, devices, products, processes, systems or services.

## Development phase

**57 An intangible asset arising from development (or from the development phase of an internal project) shall be recognised if, and only if, an entity can demonstrate all of the following:**

- (a) the technical feasibility of completing the intangible asset so that it will be available for use or sale.
- (b) its intention to complete the intangible asset and use or sell it.
- (c) its ability to use or sell the intangible asset.
- (d) how the intangible asset will generate probable future economic benefits. Among other things, the entity can demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it is to be used internally, the usefulness of the intangible asset.
- (e) the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset.
- (f) its ability to measure reliably the expenditure attributable to the intangible asset during its development.

58 In the development phase of an internal project, an entity can, in some instances, identify an intangible asset and demonstrate that the asset will generate probable future



economic benefits. This is because the development phase of a project is further advanced than the research phase.

59 Examples of development activities are:

- (a) the design, construction and testing of pre-production or pre-use prototypes and models;
- (b) the design of tools, jigs, moulds and dies involving new technology;
- (c) the design, construction and operation of a pilot plant that is not of a scale economically feasible for commercial production; and
- (d) *the design, construction and testing of a chosen alternative for new or improved materials, devices, products, processes, systems or services.*

(Emphasis supplied by the Committee.)

From the above, the Committee is of the view that the expenses incurred on research activities (or on the research phase of an internal project) should be recognised as an expense when it is incurred. However, the expenses incurred on development activities (or during development phase of an internal project) should be recognised as an intangible asset if, and only if, an enterprise can demonstrate that all the conditions mentioned in paragraph 57 of Ind AS 38 above are fulfilled.

14. With regard to the nature of activities being performed under Phase I of the Consultancy Contract in the extant case, the Committee notes that the contract, inter alia, states under the Broad Framework under the Scope of Work that the Consultant shall prepare an approach document for ERP & Data Center at the Company including selection of modules of ERP and other identified applications, *assessment of IT infrastructure required for Data Center, estimated cost of licensing, suggest on Premises hosting/cloud hosting, cost of hardware, recurring annual expenses on ERP/ data center maintenance & cost benefit analysis.* The Committee also notes that the Contract provides for the schedule of rates for two options/models for implementation the Project, viz., On-premise data Centre and Cloud based solution and states as follows:

“1. ...

- The decision for the On-premise data Centre or Cloud based solution would be taken on the basis of cost benefit analysis to be

submitted by ‘the Consultant’ during first phase of the project. In case it is decided to opt for cloud based solution, total fee shall be Rs. XX plus GST and in case it is decided to opt for On-premise Data Centre, total fee shall be Rs. YY plus GST.”

Further, the Committee notes the following clauses from the Contract between the Company and the Consultant:

**“I. SCOPE OF PHASE-I: ERP Strategy & Roadmap for implementation of ERP**

- (a) Consultant shall make an assessment of ‘As is Processes’, the current state of applications in various business domains, hardware infrastructure, risk and continuity, security and scalability.
- (b) Consultant shall make a detailed functional requirement specification after studying the prevailing processes for various business domains viz. Finance, Human resource, Production, Planning, Marketing, Materials, logistics. Suggest, “to be process” with incorporation of mobile based front-ends. In this regard, consultant shall have to visit the Company’s site at Ramagundam & Corporate Office at New Delhi.
- (c) Consultant shall make a requirement study indicating expected business domains to be covered under ERP and highlight the potential benefits that the Company can derive on the implementation of ERP.
- ...
- (f) Consultant shall also indicate various potential ERP systems which can be considered for implementation and identify options available to the Company which suit the prevailing business domains of the Company in particular and Fertilizer industry in general. A list of fertilizer manufacturers along with ERP system implemented by them may be provided.
- (g) Consultant shall suggest various modules of ERP which are advisable to be implemented for the Company.
- (h) Consultant shall prepare a cost breakup of implementation of an ERP system

covering hardware, license, Annual technical support, implementation and support costs for a period of 3 years after warranty period.

- (i) Consultant shall also work out the cost-benefit analysis on implementation of ERP.
- (j) Consultant shall also suggest implementation of ERP at the Company with in-premises hosting model/ cloud based hosting model."

## "10. GENERAL AND COMMERCIAL TERMS AND CONDITIONS

...

- iii. **Activities of Phase-II** and subsequent activities shall be started on getting specific advice from the Company in writing. In the event it is decided not to implement ERP solution after completion of phase-I of the scope of work, contract can be short closed on mutual agreed terms and conditions for payment in r/o deliverables".

From the above, the Committee notes that during Phase I, the Consultant is required to make assessment of 'as is processes', make a detailed functional requirement specification after studying prevailing processes and make a requirement study indicating expected business domains to be covered under ERP. The scope of Contract also includes to indicate various potential ERP systems which can be considered for implementation and identify options available to the Company which suit its prevailing business domains. Consultant is also required to prepare a cost break-up, to work out the cost-benefit analysis on implementation of ERP and also suggest implementation of ERP at the Company with in-premises hosting model/ cloud based hosting model. Thus, during Phase I, even the ERP system to be implemented, various modules of ERP, hosting model, etc. are yet to be decided and only study is to be made to choose the best alternative for taking the decision about the implementation of the Project. Further, the activities performed during the Phase I are in the nature of analysis and study, which appear to be similar to the kind of activities undertaken in research phase as per the examples of research activities given in paragraph 56 of Ind AS 38, reproduced above. Moreover, as per the Contract with the Consultant, in the event it is decided not to implement ERP solution after completion of Phase I of the scope of work,

Contract can be short closed, which further indicates that during Phase I, the usefulness of the output under the Contract is not established as the decision to continue with further stages of the Contract will be undertaken based on the result of the Phase I and therefore, how the intangible asset (if any) developed under the Contract will generate probable future economic benefits cannot be demonstrated as per paragraph 57 of Ind AS 38, reproduced above. Thus, the activities under Phase I do not give rise to any intangible asset that will generate probable future economic benefits.

Accordingly, the Committee is of the view that the expenses incurred during Phase I of the Contract in the extant case are for research activities and should be recognised as an expense, as and when incurred.

## D. Opinion

- 15. On the basis of the above, the Committee is of the opinion that expenses incurred during Phase I of the Consultancy Contract fall under the category of research phase as mentioned in Ind AS 38 and should be recognised as an expense as and when incurred, as discussed in paragraphs 13 and 14 above.

1.	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2.	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on July 22, 2021. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3.	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in forty volumes. This is available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4.	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5.	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to <a href="mailto:eac@icai.in">eac@icai.in</a> .

# IBC: A Dynamic Framework, Now Shaping for Version 2

*The Insolvency and Bankruptcy Code (IBC) 2016 has recently completed five years amidst multiple and varied commentaries in media and otherwise as to whether IBC has been successful or not. While the criticism of IBC seems to be pointing towards its deficiencies, the alternative narrative seems to suggest that critics have not been able to appreciate the IBC's performance from the right prism. A holistic view is needed to appreciate the salutary aspects of IBC regime in the direction of making it more robust in its next iteration or version 2.0. Read on...*



**Dr Ashok Haldia**

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## IBC - A Showcase Legislation

IBC has been considered as showcase legislation and a major economic reform in India, hailed, among others, by the World Bank as reflected in improvement in India's 'Ease of Doing Business' ranking. The founding principle of IBC is to rescue ailing businesses as going concern rather than simply recovering dues through liquidation. The promise of IBC framework is reflected in the fact that since inception, realization by Financial Creditors under

resolution plans in comparison to liquidation value, is 174%, while the realization by them in comparison to their claims is 39%, much better than that in earlier regime. The recent data show that by the end of June 2021, total 4,541 CIRP cases were initiated out of which 2,859 were closed while the rest are pending in courts. Further analysis reveals that ~39 % of cases were either withdrawn or closed on appeal or review or settled. So far, 396 business have been rescued through resolution plans from which ₹ 2.54 lakh crore have been realized. This amount is 174% of



value of these companies at the time of initiation of the CIRP i.e., liquidation value amounting ₹ 1.46 lakh crore. Furthermore, 254 companies which were liquidated, have yielded ₹1,207 crore against their asset value of ₹1,195 crore. While these numbers are impressive, the contribution of IBC in bringing about qualitative changes in the industry ecosystem and in particular, relationship between a company and its financial and operational creditors have been enormous and long-lasting.

## IBC - Evolved and Further Evolving

In the initial couple of years, the jurisprudence got settled particularly through judgments bringing clarity on constitutionality of law, roles/responsibilities of different pillars in ecosystem, and primacy of COC's commercial wisdom. This was aided by timely amendments in the form of, inter alia, (i) Section 29A debarring existing management to participate in resolution process as applicant (ii) allowing allottees in real-estate project, to participate in resolution process as financial creditors. The former amendment proved to be a significant deterrent in altering the psychology of borrowers away from hitherto divine right to continue in the saddle of a distressed corporate. And this behavioural change in fact has resulted in large number of prospective insolvency cases being withdrawn or settled out of court. The latter amendment on the other hand,

was an embodiment of public interest being promoted by the economic legislation like IBC in an unprecedented way. During about five years' period since inception, six amendments in IBC have been promulgated, which indicates complexities involved in implementation of IBC in Indian context on one hand and alacrity of the regulator in squarely responding to those, on the other. The momentum for IBC to adapt to newer emerging realities, is expected to continue in future as well.

## COVID-19 A Black Swan Event as a catalyst in shaping IBC

Having begun on a positive note, the IBC regime in India had been gearing up for the next phase comprising cross-border, pre-pack, Individual and group insolvency framework(s) amongst others, when the covid pandemic struck the economy hard as a black swan event, one wave after another and more deadlier. The covid pandemic crippled most businesses resulting in shutdowns, job losses, and labour-migratory challenges. This halted the Indian economy in its tracks, adversely affecting several development agenda of the Government. The recent data of the Ministry of Statistics and Program Implementation reveals that the country's GDP shrunk by 7.3% in 2020-21. The estimates suggest that about 10 million skilled and non-skilled workers migrated from metros and urban areas to villages.

In the context of insolvency regime, these developments meant impending surge of distressed businesses on one hand and least probability of finding a suitor or rescuer as resolution applicant, given the uncertainty and priority for remaining liquid. As an unintended outcome of said predicament, this also meant that more businesses would be pushed into liquidation as against the preferred course of resolution. The small and medium business segment was even more vulnerable in this context. As per an initial estimate the NPAs in Indian banks were likely to nearly double from ~7.5% of gross bank advances in Sept.'20 to ~13.5% in Sept.'21, stung by the twin balance sheet problems, not to talk of consequent cascading impacts. The financial meltdown seemed imminent and drastic efforts were need of the hour.

## Resilient Response by Stakeholders

Upon onslaught by first covid wave and amid the country-wide lockdown, the Government and regulatory bodies launched many counter-offensive measures. Within insolvency resolution ecosystem, the stakeholders tried best to come to terms with harsh reality marred by lack of technological solutions.

The Ministry of Corporate Affairs (MCA), through a notification, in March 2020, increased the minimum default from ₹ 1 lakh to ₹ 1



crore for filing the insolvency cases. Furthermore, with the promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 filing of fresh insolvency cases on account of default due to Covid was prohibited, by suspending Section 7, 9, and 10 of the IBC for a period of six months w.e.f. March 25, 2020. However, the suspension continued till March 24, 2021, through two consecutive extensions. Any default occurring during the said Covid period on or after March 25, 2020 was deemed to be Covid-induced and hence was made ineligible for initiating insolvency during such period. IBBI also came out with clarification in the regulations for excluding Covid period from the mandated timelines under the IBC framework.

Leading from the front, Hon'ble Supreme Court started virtual hearing of the cases from March



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2020 through videoconferencing and took up about 7,000 cases till June'20. As the pendency of insolvency cases initiated earlier under IBC, came across as main concern, Hon'ble National Company Appellate Tribunal (NCLAT) started virtual hearing from June 01, 2020, of all urgent cases and came out with detailed Standard Operating Procedures (SOP) for filing the matter before it for online hearing. Subsequently, NCLT benches too resorted to online mode of hearing. The Ministry of Corporate Affairs (MCA) took up project for implementation of e-courts in all 16 benches of NCLT. Government relaxed the timelines and manners for various compliances under the Companies Act and other corporate laws. Besides, IBBI provided the professionals the facility to file and view regulatory forms, virtually.

To ease the distress in economy and unburden IBC regime, Reserve Bank of India (RBI) rolled out 'Resolution Framework for COVID 19-related Stress – Financial Parameters'. During second covid wave, RBI further announced Resolution Framework 2.0 in May 2021, expanding the scope further to small businesses after the government decided not to extend the suspension of IBC beyond March 24, 2021. These apart, RBI took series of fiscal measures to ease the liquidity in economy and facilitate lending to businesses - small, medium, and large.

Amidst highly challenging and uncertain environment wherein businesses were facing stress due to Covid-19 and increasingly grim prospects of resolution of corporate stress, in April 2021, the Government focused on alternative mechanisms. There



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was a sense of urgency to release the pressure on IBC and preserve and enhance the value of existing and potential corporate debtors. The IBC was amended through an ordinance introducing a new regime, Pre-Packaged Insolvency Resolution Process (PPIRP) providing for a quicker, more cost-effective, and less invasive insolvency regime for MSMEs. The amendment offers MSMEs the option to resolve financial stress through a semi-formal regime which allows for out-of-court resolution to some extent, while preserving the sanctity of a formal insolvency process under law. To be able to trigger the PPIRP by any MSME, the minimum threshold for default has been announced at ₹10 lacs as compared to ₹1 crore under CIRP.

Amid second wave, during first quarter of Fiscal 2021-22, and aggravating stress in banking and



NCLT has embarked on a major initiative to digitize its services, notably e-filing and virtual hearings. As this is work in progress and should continue even during post-Covid period, the template-based application and orders would be the way to go.

financial sector, Government launched National Asset Reconstruction Company Limited (NARCL) or Bad Bank. It is expected that upon resuming regular operations during the current year, 22 stressed loans amounting to over ₹80,000 crore shall be transferred from various banks to NARCL for resolution through a focused approach including via IBC framework. This has a potential of upending the manner of managing and resolving stressed assets and is certainly a positive step forward.

## The Paradigm Shift towards IBC 2.0

Amidst the chaotic environment triggered by covid waves, a paradigm shift had been playing out without probably attracting much attention. The public interest is the soul or underlying theme of insolvency law that can be served through ethical conduct of its stakeholders. The pandemic has heightened the imperativeness of public interest and ethics in the minds of stakeholders across the insolvency ecosystem.

Moreover, as a parallel narrative,

as stated elsewhere, stakeholders across the board including courts, regulators, lenders, professionals, and others resorted to technology as an enabler and a force multiplier, in unimaginably swifter ways. The usage of these solutions though available even earlier, has been advanced by constraints posed by the pandemic. IBC now is poised towards its version 2, having established foothold as per its initial design and made salutary impact both in quantitative and qualitative terms.

- NCLT has embarked on a major initiative to digitize its services, notably e-filing and virtual hearings. As this is work in progress and should continue even during post-Covid period, the template-based application and orders would be the way to go.
- IPs started using 'platform for distressed assets' (PDA), for instance, created by Information Utility, NeSL. Such technological solution can be viewed as an enabler to access and manage record of default or ROD, end-to-end case management, virtual data room or VDR, e-Voting, platform for e-auction covering expression of interest and even interim finance.
- Development of market for distressed assets in India by providing information portal, for instance, Investment Grid platform by Govt. of India, newer/innovative financing products and institutional structures compatible with financing stressed assets. The announcement regarding creation of NARCL or Bad bank, as mentioned previously, is another significant development in

this regard.

- Virtual meetings by lenders as COC members, allowing senior officials from remote locations, to participate effectively, thereby enhancing the quality and pace of decisions. The ease of data storage and retrieval solutions aligned with regulatory requirement for document retention, is another progressive development in this context.
- The IBC seems to be well in place to catapult into next phase marked by individual insolvency, group, and cross-border insolvency features in a comprehensive manner. As a matter of fact, committee(s) constituted by Government, are currently examining various procedural and substantive aspects of group and cross-border insolvency, keeping in view the international experience before inducting these frameworks formally under IBC. Individual insolvency is touted to be next big development, providing significant 'ease of exit' and creating professional



The Indian Institute of Insolvency Professionals of ICAI (IIPI) as front-line regulator and the largest IPA in India, has aligned its strategy and work-plans with the changing paradigm, and has now been recognized as a valued partner in IBC framework.

opportunities.

- Mediation and arbitration in a far more expeditious and transparent manner, may in near future, become first and preferred option for resolution of stress particularly for MSMEs. With experience of pre-pack framework in the MSME environment, it is expected to be even made applicable to larger corporate segment. As originally envisaged, corporate insolvency resolution process (CIRP) was meant to be a last resort option. However, given the shape of Indian ecosystem, CIRP came about as a first preference. In this context, the pre-pack framework, negotiated settlement, and mediation, could be seen as preferred routes over CIRP towards a transparent and out-of-court settlement.
- In pursuance of the principles of value maximization and timeliness as the key objectives of IBC, apart from recent regulatory amendments, a code of conduct for COC members is also expected soon. This would also lend trust and confidence in processes in and around COC which enjoys supremacy in commercial matters like consideration and finalization of resolution plans.

## IIIP of ICAI - a Prominent Player in Shaping of IBC

The Indian Institute of Insolvency Professionals of ICAI (IIPI) as front-line regulator and the largest IPA in India, has aligned its strategy and work-plans with the changing paradigm, and has now been recognized as a valued partner in IBC framework. IIPI

focused on being a think tank for policy and implementation measures, towards strengthening of IBC and IPs, formulating best practices, apart from capacity building measures including webinars, virtually trainings, web-based discussion forum for members, e-publications, publishing a high-quality quarterly journal, and covid helplines for members. In this direction, very recently, IIPI presented a report of a roundtable, to IBBI, in respect of 'Impact of covid Resurgence on Insolvency Regime'.

As a body representing more than 60% of IPs having role in managing 75% of the CIRPs so far in the country, IIPI is cognizant of and is gearing up well to play its developmental role as a front-line regulator and quasi-judicial body in ensuring holistic development of insolvency profession as is reflected in its vision statement viz. "to be a leading institution for development of an independent, ethical, and world-class insolvency profession responding to needs and expectations of the stakeholders". IIPI too is bracing for IBC version 2.0 with many aces up its sleeves including research initiatives with the research fund being set up, development of best practices to strengthen the insolvency ecosystem and measures for building capacity of IP members and other stakeholders.

## Summing up

In nutshell, IBC has not only been a revolutionary step, but it has revolutionized the entire industrial ecosystem. IBC has virtually become a model law for the world. It is an evolutionary and transformational law as it brings the regime in a phased manner, keeping in view the



IBC has not only been a revolutionary step, but it has revolutionized the entire industrial ecosystem. IBC has virtually become a model law for the world.

ground realities and complexities of the Indian economic, industrial, political, and social systems and is poised for next stage of evolution. Expanding the adoption of technological solutions as such, besides keeping impact of any more Covid waves at bay, could go a long way in improving the dispensation, efficiently and effectively even during post-covid period. Of course, much depends upon the stakeholders and the pillars of IBC, including regulatory bodies and judiciary to take the legacy forward.

As acknowledged in the recently released report by parliamentary committee, by allowing closure of non-viable firms, wherever required, the Code enables an entrepreneur to get in and get out of business with ease, undeterred by failure (honest failure for business reasons). In the final analysis and drawing the analogy for IBC's achievement of its intended objectives, it is neither a glass half full nor half empty, it is in fact a glass which is filled and is filling up. The stakeholders would need to increasingly focus on entire value chain beginning from healthy investment decisions avoiding sickness at the conception stage, to identifying incipient sickness and finally on resolution of distress in a commercial manner under a credible and legally sustainable framework. ■■■

## Good Governance - A *sine qua non* in any Corporate Setup (especially under bankruptcy)

*By its very nature, the purpose of a Company is to survive, generate business, and distribute the value for its stakeholders. An important aspect of survival in the corporate ecosystem is "governance".*

*Simply put – governance means the way in which a person/group of person does things. Naturally, what follows is the meaning of good governance, i.e., a manner in which a person/group does things and which is beneficial for all. Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Read on...*

Corporate Governance refers to the way in which companies are governed and to what purpose. It identifies who has power and accountability, and who makes decisions. Companies with strong corporate governance practices are able to maintain high levels of trust and satisfaction amongst its stakeholders – be it customers, suppliers, creditors, investors etc. A good corporate governance



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framework is anchored on competent leadership, effective internal controls, a strong risk management culture, and accountability to stakeholders. The management of the Company plays a key role in setting governance standard and the leadership team is required to ensure an appropriate balance of power, accountability, and independence of decision-making across the group. Good corporate governance ensures that the business is conducted in a fair and ethical manner, considering the interests of all our stakeholders to achieve long-term and sustainable growth. It also entails effective risk management, which is more relevant than ever in an age of digitalisation as issues related to data protection and cybersecurity come to the fore.

In a bankruptcy process, this becomes particularly important because more often than not, a default by a Corporate in its run up to bankruptcy is associated with poor business practices and failed governance framework. Of course, there are far and few exceptions of genuine business failures – but having a strong governance framework in the Company never really harmed anyone. While a usual Corporate set-up is governed by the Board of Directors vested with general powers to manage the operations of the corporate entity; however, their powers are subject to the limitations as envisaged by the shareholders, the constitutional documents, and the various rules that are applicable to the entity. As long as the company is doing well, the governance of





the entity is carried by the board of directors. However, as things go south and the company starts defaulting on dues and fails to meet continuing obligations, the control changes under the scheme of bankruptcy law. Thus, the Indian bankruptcy law envisages the design of ‘creditor-in-possession’. The Bankruptcy Law Reforms Committee (BLRC) observes:

“The limited liability company is a contract between equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default takes place, control is supposed to transfer to the creditors; equity owners have no say.”

A large part of governance requirement comes from the regulatory and compliance requirements that are required to be adhered to by the Corporates in India – the things/actions that a Corporate undertakes beyond this to have good governance practices is what really separates the good from the better.

### The Art of Balance

The simplest and the most fundamental principles of maintaining a robust governance framework is separating the doer from the beneficiary of the doer’s actions. This can be achieved in many ways – some of them including having an authority matrix for every critical decision, having committee structure for key financial decisions (collective wisdom is always superior than individual wisdom), regular maker-checker processes across functions, surprise internal audits to identify control gaps, continuous review of policies and processes of the Corporate and most importantly - ingraining

a culture of good governance amongst the employees of the Corporate.

While in a bankruptcy process, it is equally important that the Resolution professional does not just function as a “Compliance manager” and has to devote his time for the most important task that he has been entrusted to do i.e., the resolution of the Corporate – a control over the governance practices of the Corporate go hand in hand with a successful resolution.

The most visible change that comes with the start of the bankruptcy proceeding is the suspension of powers of the Board of Directors; with this the various rights and responsibilities associated with the Board of the Corporate, its committees, now vest in the Resolution Professional. It then becomes a Resolution Professional’s job to ensure that a structure is created within the Corporate which akin to a Board governed committee structure wherein there is a divided responsibility, and enough checks and balances are built in making decisions related to financial, risk and operational aspects.

### Life in default

A default by the Company in its run of bankruptcy usually marks a starting point for falling house of cards. It is this period where, in the anxiety to overcome the problems, more often than that processes are given a go-by. This is a very natural phenomenon that when the going gets tough – compliance and processes usually assume a lesser priority than the business survival. The possibility of the Corporate and its officers enter into illicit transactions during this period is also the maximum – the intention

naturally is to avoid a failure, a default – a possible corporate death.

The Code and its accompanying regulations enable the Resolution Professional to ensure that the Company during its bankruptcy period is being run on strong governance principles. To this extent, the regulations empower the Resolution Professional to make changes to the management of the Corporate, establish his control over the assets and financials, change the directors of the subsidiaries of the Corporate (with due approval from the Committee of creditors) and most importantly, they require the Resolution Professional to ensure that all the laws of the land are adhered to during the bankruptcy process. It infact, goes a step ahead, and casts this responsibility on the Resolution Professional, failing which, the penalty/costs due to such non-compliances are to the account of the Resolution Professional. Some of the provisions of the Code which reflect the need for the Resolution Professional to ensure that the Company is run on good governance principles are:

- Sec. 17(1) (d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional - with power comes great responsibilities – *the Resolution Professional has to ensure that the financial decision of the Corporate during bankruptcy are taken in a prudent manner ensuring that there is*

*no loss to its creditors*

- Sec. 17(2)(b) The interim resolution professional vested with the management of the corporate debtor, shall take such actions, in the manner and subject to such restrictions, as may be specified by the Board – *while the Resolution Professional is vested with the management of the Corporate, the overseeing authority (IBBI) has the right to restrict the Resolution Professional for taking certain actions*
- Sec. 17(2) (e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor – *perhaps the most important part of governance that is compliance is made the responsibility of the Resolution Professional – you either comply or pay up!*
- Sec. 21 (2) The committee of creditors shall comprise all financial creditors of the corporate debtor: Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors. – *by keeping the related parties out of the proceedings of the CoC, the Code ensures that the proceedings are not prejudiced by biases and run on arms-length principles*
- Sec. 28 of the Code, which requires the Resolution

Professional to take certain decisions only with the prior approval of the Committee of Creditors. Additionally, the Resolution Professional is also given powers u/s 43, 45, 50, 66 etc. to identify and file for avoidance transactions with the Hon'ble NCLT seeking a reversal of such transactions which have affected the Corporate Debtors or its creditors – *unlimited power corrupts the possessor (q. William Pitt). The Code does the right thing by ensuring there is a curb on unrestricted powers of the Resolution Professional, thus requiring him to seek approval of the Creditors for certain actions.*

It is also required that contemporaneous records for the Corporate Insolvency Resolution Process (CIRP) period related actions are maintained by the Resolution Professional so as to sufficiently enable a reasonable person to take a view on the appropriateness of these actions/decisions.

Now, think about a scenario where an investor is bidding for the asset under bankruptcy knowing that there are non-compliances and governance lapses – the investors in such cases will be tempted to ascribe discount such entities/platforms with the calculation that the investor after taking over has to make good of such losses/potential actions. In stark contrast, is a situation, where during the bankruptcy period, a Company was being run on a robust governance framework, had processes which enabled risk identification and mitigation.

The 'going concern' and value maximisation of value of the

Company is also very well dependent on the kind of governance framework the Company adopts during its bankruptcy period. This is more so required in cases, where there is an external regulatory oversight e.g. Financial Service Providers (FSPs); since various licence conditions are dependent on timely compliance. One such other area is public confidence. In Corporates which deal with public money – a strong governance during bankruptcy process becomes a cornerstone of the success of the bankruptcy process – not just for the creditors but also for the public and market sentiment; after all the Company after being rescued has to function in the same ecosystem where it had previously failed.

Similarly, the Code and the accompanying eco-system encourages transparency in the affairs of the Corporate during its bankruptcy – a strong governance framework thus, becomes imperative for the Resolution Professional to showcase the strength of the Company to the incoming bidders.

## Conclusion

In summary, the Code enables the Resolution Professional to steer the governance framework of the corporate during bankruptcy and it then becomes the skill of the Resolution Professional in turn to respond to this in a manner which will lead to a transparent and effective Resolution Process. A tad more compliance never affected anyone – infact, it only creates an ecosystem where culturally the stakeholders get habituated to follow the principles of good governance.



## MSME: Prepack Insolvency a New Avenue

*The pre-packaged insolvency is an arrangement where the resolution of a company's business is negotiated with a buyer before the appointment of insolvency professional. The Pre-packaged Insolvency Resolution Process, referred herein as PIRP, is an alternative available to the Corporate Insolvency Resolution Process, available under Insolvency and Bankruptcy Code, 2016. It was introduced by the Insolvency and Bankruptcy Code (Amendment) Ordinance 2021 for the Micro, Small and Medium Enterprises, referred to as MSME's. This is an alternative process available only to MSME's, instead of the Corporate Insolvency Resolution Process, which can be financially draining, extremely time consuming along with litigation involved. This particular structure has been*



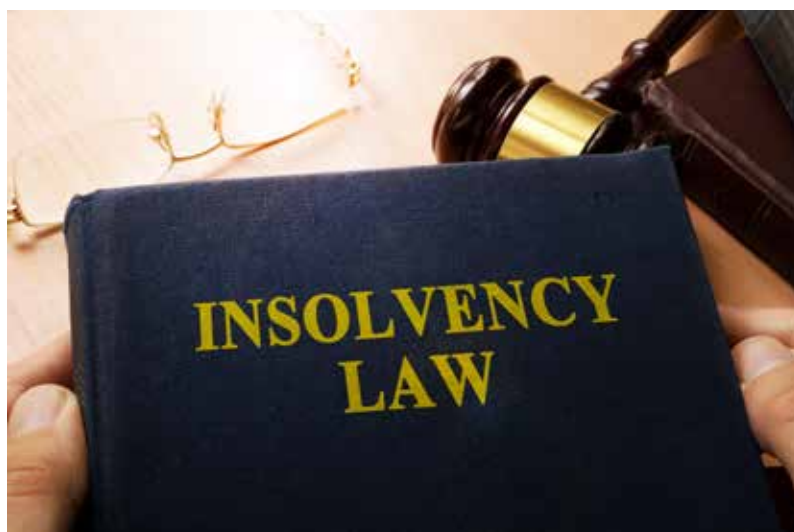
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*devised primarily for the MSME's for providing financial relief, it is also quicker, and more economical, considering the limited time available for completing the entirety of the process. Also, the business is not disrupted to a great extent under this process. Read on...*

### CIRP v. PIRP

CIRP cannot be filed in a case where the company is going through the PIRP process. The financial creditors or the operational creditors can't file PIRP. The ordinance has provided that no PIRP can be initiated within a period of 3 years of undergoing one PIRP. Even in the case where a CIRP has been completed, PIRP cannot be initiated within 3 years. Therefore, the corporate Debtor is to cautiously use the opportunity to file PIRP, only in cases where relief in financial stress of the Company is required. This protection was provided to avoid repeated attempts of initiating PIRP by the corporate Debtor/ promoter.



If any PIRP application is pending, no application for initiating CIRP can be accepted by the adjudicating authority. If a CIRP application is pending, within 14 days PIRP application can be filed and will get preference. And if the CIRP application is pending and PIRP application is filed after 14 days, then application for initiating CIRP will be attended and disposed off prior to the other application being taken up.

## Application and PIRP process

### 1. Eligibility criteria for application of PIRP

In order to make an application for PIRP, the CD ought to fulfil the requirements laid down in Section 54A of the Code. These criteria inter alia include no prior CIRP or liquidation should be admitted against the CD; Financial Creditors (not being related party of the CD) not having less than 66% of the financial debt of the CD have accepted the proposal of an Insolvency Professional to be appointed as the Resolution Professional for PIRP and a specific declaration from the directors/ partners of the CD declaring the CD's intention to initiate PIRP.

The Resolution Professional has to file a report confirming that the CD has fulfilled the requirements under Section 54A of the Code. Declaration, special resolution, base resolution plan must be provided to financial creditors before taking their approval. In addition minimum amount of default is ten lakhs which can be raised to one crore by the central government.

### 2. Requirement to file an application before adjudicating authority

- The Corporate Debtor must

meet the requirement under Section 54A **thereafter it becomes a Corporate Applicant** and approach Adjudicating Authority for initiation of PIRP.

- The Corporate Applicant shall along with application furnish; declaration, special resolution or resolution and the approval of financial creditors; name and written consent of the IP proposed to be appointed as RP as approved under Section 54A (2)(e) and his report under Section 54B(1) (a); Declaration regarding existence of any avoidance transactions falling under Chapter III (Preferential, undervalued and extortionate transactions) or fraudulent or wrongful trading under Chapter VI; information relating to books of account of the corporate debtor and such other documents relating to such period.

**The adjudicating authority must decide the application of PIRP within 14 days of receipt of application.**

### 3. Completion of PIRP Process

- The pre-packaged insolvency resolution process shall be completed within a period of **one hundred and twenty days** from the pre-packaged insolvency commencement date.
- The resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of **ninety days** from the pre-packaged insolvency commencement date.
- Where no resolution plan



**CIRP cannot be filed in a case where the company is going through the PIRP process. The financial creditors or the operational creditors can't file PIRP.**

is approved by the CoC within the prescribed period the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

### 4. PIRP Process

- The moratorium shall be applicable *mutatis mutandis* as per Section 14(3) of the IB Code, 2016 till the end of PIRP. The Adjudicating Authority shall appoint RP as named in the application or recommend the name from IBBI panel.
- The Adjudicating Authority shall cause public announcement of the PIRP of the Corporate Debtor and the RP shall make public announcement within 2 days of initiation of PIRP.
- Essential goods and services shall mean electricity, water, telecommunication services and information technology services to the extent these are not a direct input to the output produced or supplied by the corporate debtor.
- The corporate debtor shall, within two days of the pre-packaged insolvency



commencement date, submit to the resolution professional submit a list of claims along with details of the respective creditors, their security interests and guarantees and a preliminary information memorandum containing information relevant for formulating a resolution plan and the management of affairs of the Corporate Debtor shall vest with Board of Directors or the partners and such persons shall keep the operations of Corporate Debtor as going concern along with discharging their statutory or contractual rights and obligations in relation to Corporate Debtor. **(Section 54H)**

- The Resolution Professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F and the provision of Section 21 except sub section (1) shall *mutatis mutandis* apply.

## Duties and Role of RP

**Following are the duties of RP during PIRP:**

- It is the duty of RP to confirm the list of claims submitted



The Corporate Debtor must meet the requirement under Section 54A thereafter it becomes a Corporate Applicant and approach Adjudicating Authority for initiation of PIRP.

by the corporate debtor under section 54G and inform creditors regarding their claims as confirmed along with maintaining an updated list of claims.

- RP is required to monitor management of the affairs of the corporate debtor and constitute the committee of creditors and convene and attend all its meetings.
- RP has obligation to prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information and file applications for avoidance of transactions (if any) under Chapter III or fraudulent or wrongful trading under Chapter VI.
- The resolution professional shall ascertain class(es) of creditors, if any for representation of creditors in a class ascertained under sub-regulation (1) of Regulation 15 in the committee, identify three insolvency professionals who are not relatives or related parties of the applicant or the resolution professional having their addresses, as registered with the Board, in the State or Union territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor.

**Following are powers of RP during PIRP:**

- RP has access to all books of account, records and information available with the corporate debtor along with electronic records of the corporate debtor from an information utility having financial information of the corporate debtor.

- RP has access to the books of account, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants.
- RP has power to attend meetings of members, Board of Directors and committee of directors, or partners and appoint accountants, legal or other professionals. RP is empowered to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI.
- Financial institutions are obligated to supply relevant documents to RP and seek cooperation from its promoters and any other person associated with the management of the corporate debtor and for such purpose sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings.
- Management can be vested with RP in cases where Adjudicating Authority is of the view that the affairs of the Corporate Debtor have been conducted in a fraudulent manner or/and there is gross mismanagement of the affairs of the Corporate Debtor. The CoC must approve the same with voting of 66%.

## Role of CoC

- The RP shall convene meetings of the financial creditors, who are not related parties of the corporate



It is the duty of RP to confirm the list of claims submitted by the corporate debtor under section 54G and inform creditors regarding their claims as confirmed along with maintaining an updated list of claims.

debtor and financial creditors who are not related parties of the corporate debtor and have not less than ten percent of the value of the total financial debt of such creditors may propose names of insolvency professionals for the purposes of clause (e) of sub-section (2) of section 54A.

- ii. Where the corporate debtor has only creditors in a class and no other financial creditor who are not related parties of the corporate debtor, the committee shall consist of only the authorised representative(s).
- iii. Where the corporate debtor has no financial debt or all financial creditors are related parties, the committee shall consist of operational creditors, being not related to the corporate debtor as ten largest operational creditors by value. It should also consist of one representative elected by all workmen and one representative elected by all employees.
- iv. Meeting of the committee shall quorate if members of the committee representing at least thirty three percent of the voting share are present

either in person or by video conferencing or other audio and visual means. The meeting can be conducted through video conferencing as well.

## Valuation

Valuation of Corporate Debtor is based on Fair Value and Liquidation Value which must be in accordance with internationally accepted valuation standards after physical verification of the inventory and fixed assets of the Corporate Debtor. The average of the value determined by the two registered valuers shall be considered the fair value or the liquidation value.

The resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person.

## Approval of Plan, Termination, Migration to CIRP

### • Base resolution submitted by Corporate Debtor

Corporate Debtor shall submit base resolution plan within two days of PIRP commencement date and RP must present the same to the CoC. CoC may consider base resolution plan or invite prospective resolution applicants. Corporate Debtor may file plan individually or jointly with any other person.

While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by

the corporate debtor provides for impairment of claim of operational creditors owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor.

While the above stated dilution is preferable, the same is not mandatory. If plan does not provide for such dilution the CoC must record reasons for the same. Claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.

### • Process for prospective resolution applicants

The resolution applicants submitting resolution plans pursuant to invitation, shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor.

The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 along with Section 29 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

Where CoC decides that the resolution plan is better than the base resolution plan,



RP has access to all books of account, records and information available with the corporate debtor along with electronic records of the corporate debtor from an information utility having financial information of the corporate debtor.

the same shall be subject to approval of CoC and Adjudicating Authority. The plan must be approved by requisite 66% voting.

It is a mandate upon CoC to look into feasibility and viability, the manner of

distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor.

The resolution professional shall require the resolution applicant, in case its resolution plan is approved under subsection (13) of section 54K, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

The resolution plan must comply with Regulation 44 and Regulation 45 of PIRP Regulations.

### Role of adjudicating authority (AA) while approving resolution plan

- The AA shall decide upon the resolution plan application within 30 days of receipt of resolution plan.
- The AA must satisfy itself that the plan has effective provision for its effective implementation.
- The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.
- Where the Adjudicating Authority is satisfied that the resolution plan does not

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Valuation of Corporate Debtor is based on Fair Value and Liquidation Value which must be in accordance with internationally accepted valuation standards after physical verification of the inventory and fixed assets of the Corporate Debtor.

conform to the requirements referred to in sub-section (1) of Section 54L, it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under Section 54N

- Where plan of Corporate Debtor is approved but affairs of the Corporate Debtor has been handed over to RP vide order of AA under Section 54J, AA is required to ensure that the management has been changed by way of plan to a person who was not promoter of the Corporate Debtor.

### Termination of PIRP

Where the resolution plan selected for approval under sub-section (11) of Section 54K is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process.

The Adjudicating Authority shall, within thirty days of the date of such application, by an order;

- terminate the pre-packaged insolvency resolution process; and

- provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

### Initiation of CIRP

CoC may after the initiation of PIRP but before approval of resolution plan by a vote of not less than sixty-six per cent of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect

of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

RP must intimate AA of the decision of CoC and AA must within 30 days pass an order to terminate the PIRP and initiate CIRP against Corporate Debtor and appoint IRP as under Section 54E (1) (b). The PIRP cost shall be made part of the CIRP cost. Initiation of CIRP shall be deemed to be an order of admission under Section of the IB Code, 2016.

### FORMS

Filing of Application	Form-1 along with a fee of ₹15,000
Written consent of RP	Form P1
List of Creditors	Form P2
Approval of terms of appointment of RP	Form P3
Approval for initiating PIRP	Form P4
Authorised representative representing class of creditors	Form P5
Declaration under 54A(2)(f)	Form P6
Declaration under 54C(3)(c)	Form P7
Report prepared by RP	Form P8
Public Announcement	Form P9
Corporate Debtor to submit list of claims	Form P10
Brief particulars of resolution plan	Form P11
Compliance Certificate	Form P12
Application for termination of PIRP	Form P13
Application for vesting management with Corporate Debtor	Form P14

### Conclusion

Pre-packs offer a middle way alternative, as a unique mechanism which seeks to combine benefits of informal workouts and legal recognition. Essentially, pre-packs are hybrid mechanisms allowing out-of-court resolutions to be recognised under insolvency law with appropriate safeguards for all stakeholders. PIRP is more beneficial for eligible MSME vis-a-vis CIRP as the objective of maximisation of assets or revival of the Corporate Debtor was getting marred due to limited takers. The hurdle of disqualification under Section 29A of the IB Code, 2016 is relaxed by way of PIRP and therefore giving opportunity to the existing management to revive the Corporate Debtor. ■■■



# Do Transactions with Related Parties influence Firm Value and Firm Continuity: Four Case Studies of Large Listed Entities in India

*The last two decades have seen several large corporate entities internationally as well as in India, failing unsuspecting non-promoter stakeholders, taking them completely by surprise. On investigations, it was most often found that corporate governance had failed. In most cases, especially in India, expropriations were alleged through a network of related parties, going undetected because of poor corporate governance practices. This article studies whether transactions with related parties could impact firm values and firm continuity. The four cases of leading corporates studied here do reveal an inverse relationship between volume of related party transactions and firm value and firm continuity. Read on...*

## Introduction

This is a study on the effects of the volume of transactions with related parties on firm value and firm continuity and it arises from the need to understand various corporate insolvencies and reasons thereof. We examined the multitude of corporate failures from 2001 till last year and we found a great deal of commonality, in all these cases in terms of probable reasons of failure and poor corporate governance practices was the evident reason. The element of surprise to shareholders and investors was more pronounced than ever.

While in the West, Companies that failed, did so mainly due to reasons of window dressing



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of financials, unapproved loans, unapproved insider trading and sale of toxic assets to banks at sub-prime rates, the Indian Companies here, as investigations revealed, succumbed more to expropriation, through instruments such as tunnelling and siphoning off of funds through a maze of related parties by mechanisms like round tripping and teeming and lading, ever greening of inter-corporate dues and ultimate mergers, write offs of aged inter-company balances, fake capital and revenue expenditures, wrong classification of expenditure, obtaining loans against fake Letter of Undertakings (LUs) without underlying assets and loans against overleveraging and consequent diversion of funds to non-core losing businesses.

Very rightly therefore, unlike in the UK Code for Corporate Governance, the Indian Code for Corporate Governance for listed entities, laid down in the Listing Obligations and Disclosures Requirements Regulations, 2015, the Companies



## Related Party Transactions

Act 2013 itself, as also in the Indian Accountings Standards 2015, a great deal of focus on reporting, disclosure, regulations and audit of transactions with related parties.

Related Parties are entities which are able to influence business decisions of a company by nature of their structural relationship with that company e.g., relatives and associates, key managerial personnel, holding or subsidiary companies, persons with significant beneficial ownership and the like.

## Objectives

The objectives of this study were:

1. To examine whether high volumes of transactions with related parties should be dealt with in greater scrutiny as they could potentially be used as vehicles for actions detrimental to best-practices of corporate governance and therefore could go against Firm Value and Firm Continuity causing severe losses to non-promoter stakeholders. Firm Value here, is measured by Market Capitalisation-to-Book Value in relative terms (P:B), Book Value of Equity in Absolute terms and Firm Continuity is measured by Altman's Zed Score (Altman, EI: 2018).
2. To examine whether there could be a difference, arising from the style and structure of the organisation e.g., promoter-driven vis-a-vis professional-driven companies.

## Methodology

We selected two large-cap companies from the Bombay Stock Exchange BSE100. One, a promoter family-driven company and the other a professional-controlled company, and two large companies showing defaults. They have assets worth more than Rs 20 billion and turnover of more than Rs 50 billion a year, having significant network of related parties. We studied their related party transactions that is commercial, financial and intangibles related. The data we used are all from their annual reports, their filings, and their published rating rationales, available in the public domain. However, for the sake of ethical privacy we do not name these companies.

Market Capitalisation (M-Cap) is derived from the average of each month's closing market price, the Book Value (BV) is the total of free reserves and the paid-up value of tradable equity shares. We have also referred to Enterprise Values (EV) and their movements during the periods of study.

The drivers in Altman's Zed score (Zeta) are the same as in Edward Altman's definition – the weighted combination of five parameters of financial discipline and operational efficiency. The measurements are:

$$\text{Zeta} = 1.2 \times X_1 + 1.4 \times X_2 + 3.3 \times X_3 + 0.6 \times X_4 + 0.999 \times X_5.$$

where,  $X_1$  = Working Capital / Total Assets

$X_2$  = Retained Earnings / Total Assets

$X_3$  = Earnings Before Interest and Taxes / Total Assets

$X_4$  = Market Value of Equity / Total Liabilities

$X_5$  = Net Sales / Total Assets

The Interpretation of the Z-Score Model by Altman was:

Z score > 2.99 means "Safe" Zones

>1.81 Z score < 2.99 means "Grey" Zones

Z score < 1.81 means "Distress" Zones.

We categorize the Companies in three categories-

**Category A:** Companies where family promoters are in significant control of business decisions and these companies are in defaults.

**Category B:** Companies where family promoters are in significant control of business decisions and these companies have no default history.

**Category C:** Companies without promoter-families, run completely by professionals.

### Company - A1

Company A1, in Category A, used to be one of the large new-age players in the modern basic manufacturing industry. Its turnover was around Rs 13,000 crores and it had a CAGR of around 10.3% (against an industry average in that period of 5.2% (IBEF). The market for the automobiles sector (to whom this company used to primarily cater) was positive. Yet in 2017-18 when its assets were valued, an impairment of Rs 22,380 crore had taken place as per the Annual Report for 2017-18. Banks however, went on advancing fresh credits of Rs 18,000 crores even on the face of defaults of around Rs 6,000 crores. Creditors filed for recovery of dues through the National Company Law Tribunal (NCLT) in 2016. In 2017, it was taken over by another group through the NCLT Ruling under the Insolvency and Bankruptcy Code 2016.

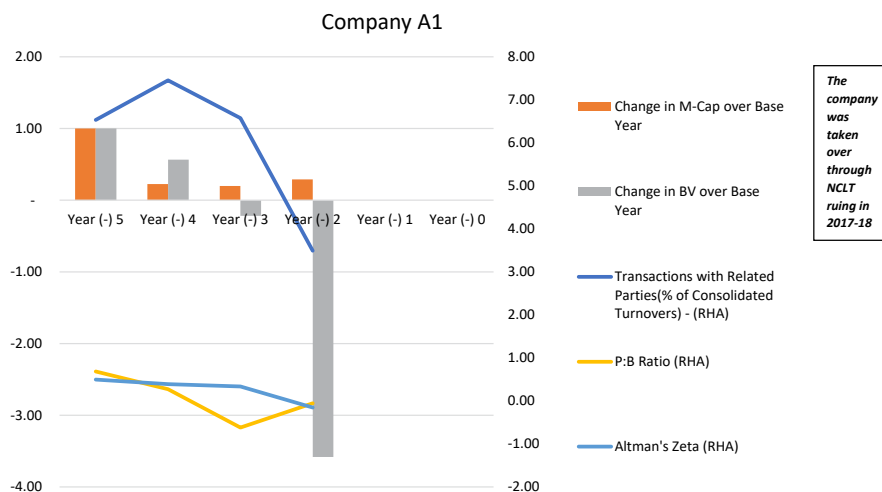
Table 1.1

	Company	Year	Related Party Transactions as % of Consolidated Turnover	Defaults	Enterprise Value (EV) .. Rs Crores	M-Cap Rs Crores	BV	M-Cap/ BV Ratio	Altman's z Score ..... ZETA=
					Stand Alone				
1	Company A1	2014-15	6.5%	3.2%	45,828	5,125	7,378	0.69	0.50
		2015-16	7.5%	5.0%	48,234	1,133	4,171	0.27	0.39
		2016-17	6.6%	11.3%	57,791	1,000	-1,616	-0.62	0.34
	# Taken Over through NCLT defaults cleared by buyer	2017-18#	3.5%	#	64,957	1,466	-26,432	-0.06	-0.15

### Observations

1. We see a steady rise in volumes of transactions with subsidiary or associate companies “related parties”. 6.5% to 7.5% of consolidated turnovers. The reductions in the last year do not evidence planned control on volume of transactions with related parties – they are apparently parts of clean-ups post take-over.
2. Transactions with related parties: In just 2 years from 2014-15 purchases from related parties jumped 65% and advances given to related parties were Rs. 240 crores in one year where total cash generation from operations itself is Rs. 752 Crores as per the Cash Flow Statement.
3. We see defaults rise from 3% of gross debts in 2014-15 to 11.3% in 2016-17.

**Figure A.1 (Bars refer to the Left-Hand Axis and the Lines Refer to the Right-Hand Axis (RHA). (Figures are in percentages. P:B and Altman's score are indices)**



4. The EV increases mainly because of the increase in debts, where the M-Cap comes down 70%. The Rs 7,300 crores Book Value turns (-) Rs 26,000 crores.
5. The related party transactions apparently yielded no positive results to the subsidiaries either as seen in the consolidated financials from Table 1.2.

# Insolvency

**Table 1.2**

	Company	Year	EV.. Rs Crores	BV	M-Cap/BV Ratio	Altman's z Score..... ZETA=
<b>Consolidated</b>						
1	Company A1	2014-15	45,926	7,049	0.73	0.52
		2015-16	48,544	3,847	0.29	0.54
		2016-17	57,604	-1,573	-0.64	0.44
	# Taken Over through NCLT defaults cleared by buyer	2017-18#	64,952	-26,079	-0.06	-1.96

## Company – B.1

This Company (Category B) is India's largest integrated manufacturing company in the segment they operate. It had a stand-alone turnover of around Rs 43,000 crores in the last audited year. But like Company A1, Company B1 also has over one hundred related parties, subsidiaries, joint ventures and associates. Over the years, the transactions with these companies are also on the increase.

**Table – 2.1**

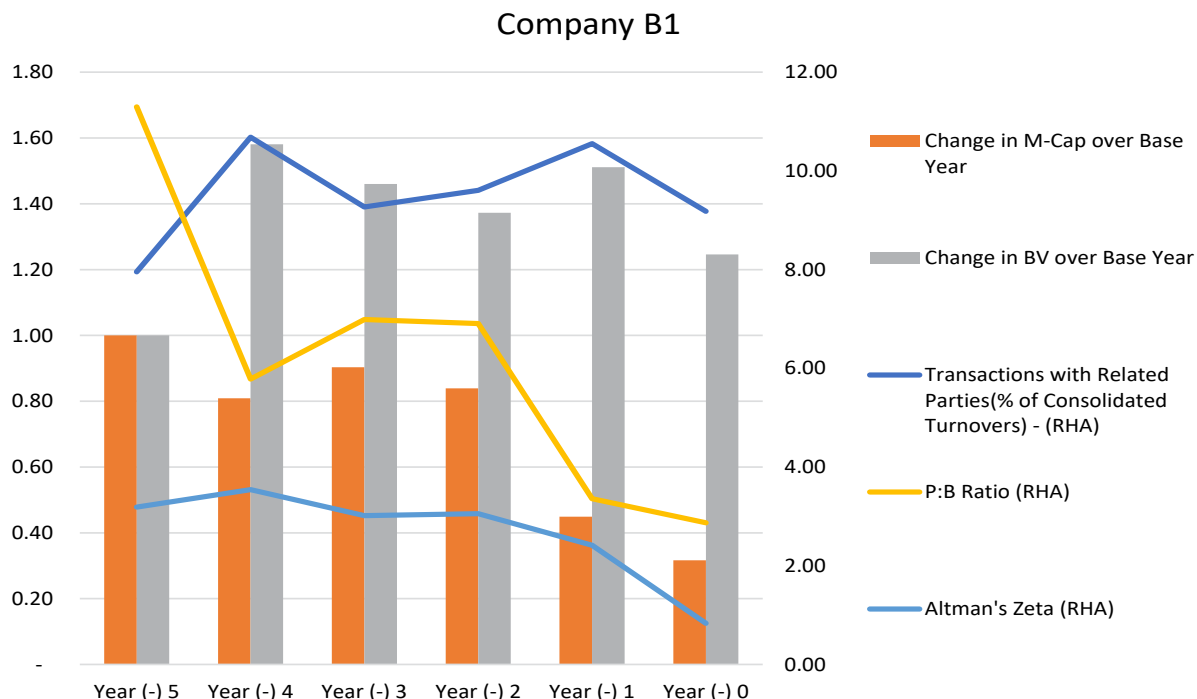
	Company	Year	Related Party Transactions as % of Consolidated Turnover	Defaults	EV..Rs Crores	M-Cap Rs Crores	BV	M-Cap/BV Ratio	Altman's z Score..... ZETA=
2	Company B1	2015-16	8.0%	0.0%	1,84,097	1,62,710	14,402	11.30	3.19
		2016-17	10.7%	0.0%	1,47,259	1,31,651	22,767	5.78	3.54
		2017-18	9.3%	0.0%	1,65,757	1,46,962	21,027	6.99	3.02
		2018-19	9.6%	0.0%	1,53,989	1,36,547	19,769	6.91	3.06
		2018-19	10.6%	0.0%	90,861	73,104	21,761	3.36	2.41
		2019-20	9.2%	0.0%	74,316	51,503	17,946	2.87	0.84

## Observations

1. We see a consistently high volume of transactions with related parties sometimes more than 10% of consolidated turnover. The EV is seen coming down primarily because of diminishing profitability. It is quite an irony as the auto market in India was under booming conditions from 2014 till 2018.
2. The Book Value, the M-Cap and the EV are all seeing consistent falls as also the P:B.
3. The Altman's Zeta predicts insolvency from the last years' index, and this is in fact before the COVID-19 disruptions.



Figure B.1



4. To elucidate further, the volume of transactions with related parties significantly going up in fact seems to have quite a contrary effect on both these two measurements on the consolidated numbers i.e., firm value and firm continuity. There is a steady decline in the P:B Ratio and the Altman's Z Score goes much below the thresholds of 1.8. Refer to Table 2.2.

Table 2.2

	Company	Year	EV..Rs Crores	BV	M-Cap/BV Ratio	Altman's z Score..... ZETA=
			<b>Consolidated</b>			
2	Company B1	2015-16	2,32,632	54,251	3.00	1.85
		2016-17	1,99,078	78,699	1.67	1.58
		2017-18	2,42,057	56,767	2.59	1.71
		2018-19	2,19,775	94,262	1.45	1.47
		2018-19	2,07,826	62,163	1.18	0.95
		2019-20	2,18,260	59,060	0.87	1.04

### Company – C1

This company(Category C), is one of Asia's largest vertically integrated E&C conglomerates, with a strong market position across segments such as infrastructure, heavy engineering, construction, defence, material handling machinery and industrial products. Its last audited annual turnover was around Rs 82,000 crores on an asset base of Rs 1,41,000 crores.

C1 also has an impressive net of over 140 Related Parties. Our findings are-

# Insolvency

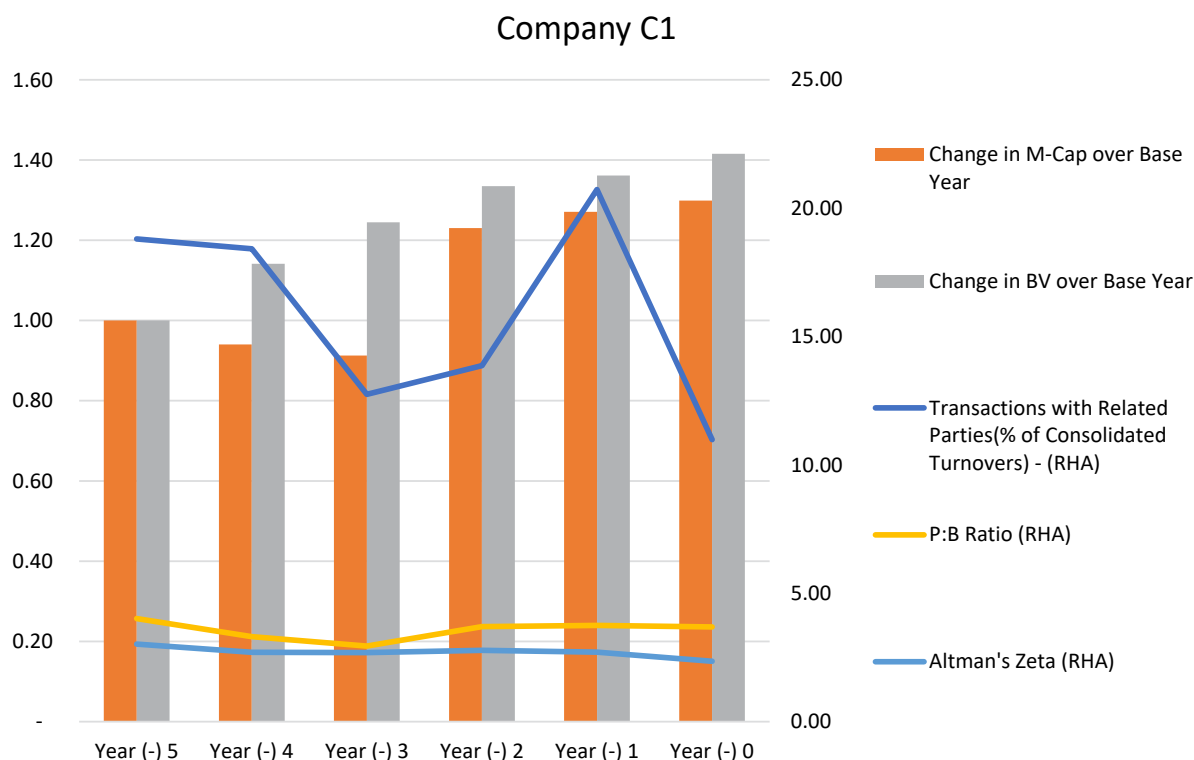
Table 3.1

	Company	Year	Related Party Transactions as % of Consolidated Turnover	Defaults	EV..Rs Crores	M-Cap Rs Crores	BV	M-Cap/ BV Ratio	Altman's z Score..... ZETA=
					Stand Alone				
3	Company C1	2015-16	18.8%	0.0%	1,57,694	1,46,191	36,404	4.02	3.01
		2016-17	18.4%	0.0%	1,49,510	1,37,462	41,559	3.31	2.70
		2017-18	12.7%	0.0%	1,42,040	1,33,420	45,313	2.94	2.69
		2018-19	13.9%	0.0%	1,87,235	1,79,862	48,600	3.70	2.78
		2018-19	20.7%	0.0%	1,95,087	1,85,821	49,561	3.75	2.71
		2019-20	11.0%	0.0%	2,12,501	1,89,903	51,528	3.69	2.35

## Observations

The subsidiaries most of which operate in the group's core area of operations viz., construction, infrastructure, and engineering have requirements of high working capital intensity but seem to offer lower returns in their initial years. It is more about volumes and size and price competitiveness. With the decrease in transactions with related parties – the market capitalisation improves by nearly 30% in 6 years, but the P:B ratio and the Altman's Zeta are on a downward movement primarily because of profitability constraints.

Figure C.1



1. This company has strategic investments through transactions with related parties where gestation is significantly higher, but outlooks are rated high.

Table 3.2

	Company	Year	Related Party Transactions as % of Consolidated Turnover	EV..Rs Crores	BV	M-Cap/BV Ratio	Altman's z Score..... ZETA=
				Consolidated			
3	C1	2014-15	18.8%	2,63,187	37,449	3.90	1.49
		2015-16	18.4%	2,78,184	40,012	3.44	1.32
		2016-17	12.7%	2,28,900	50,299	2.65	1.60
		2017-18	13.9%	2,85,752	57,185	3.15	1.64
		2018-19	20.7%	3,05,219	65,804	2.82	1.64
		2019-20	11.0%	3,21,227	63,723	2.98	1.55

### Company – A.2

Company A2, (Category A), used to be a blue-chip domestic carrier, market leaders at one point of time flying around 400 flights a day to 70 destinations – a total revenue of Rs 23,000 crores on an asset base of Rs 12,000 crores. The company started defaulting and currently it has 82% of its debts in default. In 2018, its creditors referred the company to the insolvency and bankruptcy regulatory body and in October 2020, a resolution is said to be arrived at.

Table 4.1

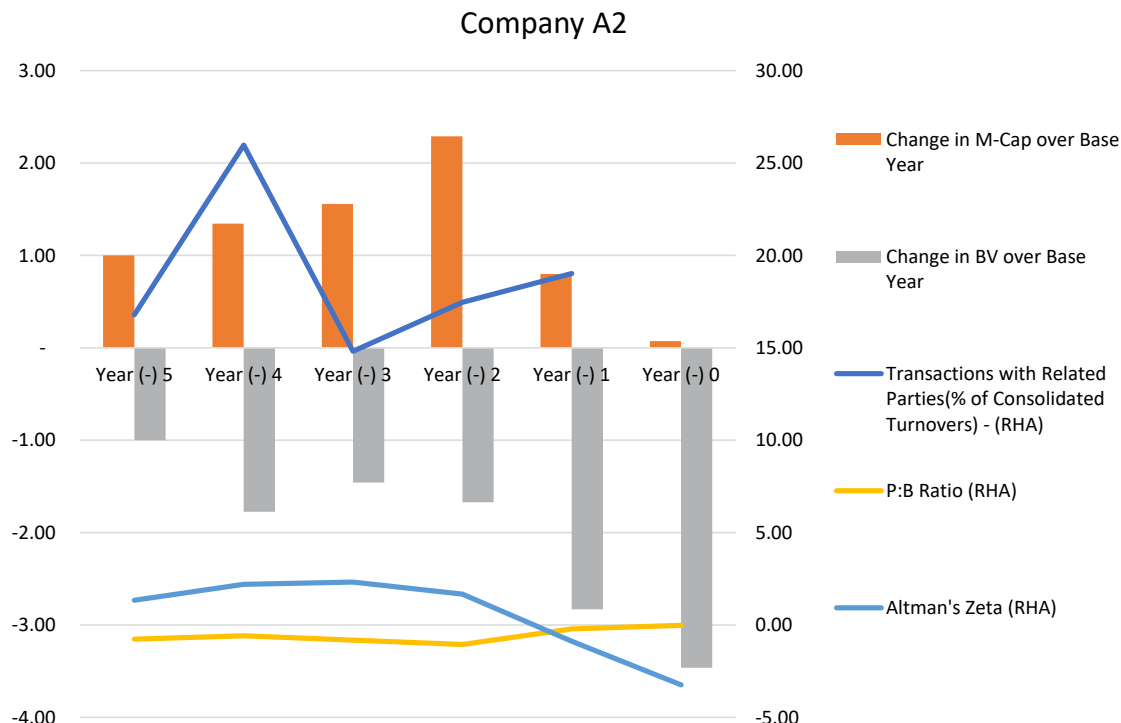
	Company	Year	Related Party Transactions as % of Consolidated Turnover	Defaults	EV..Rs Crores	M-Cap Rs Crores	BV	M-Cap/BV Ratio	Altman's z Score..... ZETA=
					Stand Alone				
4	Company A2	2014-15	16.8%	0.9%	14,434	3,469	-4,514	-0.77	1.34
		2015-16	26.0%	0.0%	15,184	4,664	-8,015	-0.58	2.20
		2016-17	14.8%	0.0%	13,871	5,398	-6,584	-0.82	2.33
		2017-18	17.5%	0.0%	16,112	7,938	-7,550	-1.05	1.67
		2018-19	19.0%	16.6%	10,482	2,774	-12,773	-0.22	-0.88
	##Operations suspended	2019-20	136.1%	82.6%	9,164	249	-15,636	-0.02	-3.24

### Observations

1. The company has a consistently high volume of transactions with related parties. With the median values at 17.5% it is significantly higher than the recommended 10% cap in the corporate governance codes. From 14.8% 2016-17, it increased to 19% in just 2 years.
2. The P:B ratio records a constant fall, excepting for the outlier year 2017-18, when the joint operations with an international airline had completely stabilised.
3. The company's procedures at the NCLT are nearly complete and it is in the process of acquisition by another consortium.

# Insolvency

**Figure A.2**



4. The financial management reflects in the P:B Ratio with a steady decline inversely proportional to the volumes of transactions with related parties but there is no trend visible in the Altman's Zed Score mainly on account of consolidation of its Subsidiary in Low Cost Carrier business' Turnovers and Results.

**Table 4.2**

	Company	Year	Related Party Transactions as % of Consolidated Turnover	EV..Rs Crores	BV	M-Cap/ BV Ratio	Altman's z Score..... ZETA=
				Consolidated			
4	Company A2	2014-15	16.8%	15,070	-6,379	-0.54	1.24
		2015-16	26.0%	14,514	-8,055	-0.58	2.12
		2016-17	14.8%	15,084	-6,613	-0.82	2.77
		2017-18	17.5%	16,131	-7,212	-1.10	2.34
		2018-19	19.0%		Consolidated Financials not published		
	##Operations suspended	2019-20	136.1%		Consolidated Financials not published		



## What was common to these cases?

In all four cases, when we correlate them to the objectives of our study we find-

1. In all cases in these companies, volumes of related party transactions are up in general over the retrospective period of six last years – they increase faster than increase in activities in Company excepting for Company C1.
2. We do not see corresponding increase in consolidated activities as well – so we cannot say that the transactions with related parties helped in growing the activities of the group overall.
3. There is steady rise in defaults in two of the three family-controlled companies A1 and A2. The one family-controlled company which still has no default (B1), has despite a negative cash flow from operations of Rs 1,455 crores, a negative cash flow from investing activities of Rs 4,718 crores, which therefore means the debts (Rs 25,000 crores) are not sustainable at these levels of activities.

So, in the context of our study,

4. Measurements of firm value in Absolute Terms:
  - a. Book Value (BV): again, in all three family-controlled companies the BV consistently comes down – when the volumes of related party transactions increase.
  - b. Company C1 shows a healthy progress in both parameters.
5. Measurements of firm value in relative terms: P: B Ratio: In all four cases as stated in the objectives we find that the volume of related party transactions have had an adverse relationship with the P:B Ratio which as contended, is a conclusive measure of firm value.
6. Measurement of Firm Continuity: In all three cases of family-controlled companies, the Altman's Zed Score diminishes – even in the



Family-controlled companies have generally high levels of related party transactions, which when they increase disproportionately over a given period, can cause unsustainable financial health – in case of weaker ones, (with negative book values of equity) can result in even defaults and insolvency.



It is ultimately firm value and firm continuity that a company works towards to sustain itself in the long run and it is important that it does so within proper and adequate corporate governance framework.

best of the three (B1), settles at less than 1.81 the threshold for prediction of possible bankruptcy, In case of the professionally managed company (C1) in its stand-alone position the Zed Score is down – but it improves in the consolidated activities, showing thereby – that fundamentally the group as a whole is operationally well under control and there are therefore possibilities of better firm values in future as well.

## Conclusions

1. It's therefore clear in these four cases that family-controlled companies have generally high levels of related party transactions, which when they increase disproportionately over a given period, can cause unsustainable financial health – in case of weaker ones, (with negative book values of equity) can result in even defaults and insolvency.
2. It is also true in a minority incidence of cases, (we saw just one in three), family or group companies can draw benefits from its group-entities or related parties in the short run, e.g., in terms of finances like we saw in Company B1 – the important thing is, it will come inevitably at costs, the business must increase its firm values and firm continuity to sustain in the long run – like again in the same company B1 the measurements in Altman's Zed Score clearly shows up.
3. The difference between the volume of transactions with related parties in C1, is the quality of the related party concerned, their synergic relations with one another and their core competence and central priorities within the structure. Whereas in case of Company B1, most of the transactions are with companies where the promoter aspires away from its core segments of business, in Company C1, the transactions are more with SPVs where the group have core interest and proven competence in growth but with larger gestation periods.
4. It is ultimately firm value and firm continuity that a company works towards to sustain itself in the long run and it is important that it does so within proper and adequate corporate governance framework, particularly one of its most important drivers – that of transactions with related parties. ■■■

# All You Need to Know About Section 206AB and 206CCA

*The objective behind this article is to discuss the two newly inserted sections 206AB and 206CCA of the Income-tax Act 1961 vide Finance Act, 2021. Out of the several proposals at the presentation of Budget 2021, the amendment which caught special attention was the proposal of the insertion of a new Section 206AB and Section 206CCA i.e., TDS/TCS at higher rates in case of non-filers of Income Tax Returns. The motive behind introducing these two sections is to ensure the filing of return of income by those persons who have suffered a reasonable amount of TDS/TCS. This amendment will take effect from 1<sup>st</sup> July 2021. This article presents detailed discussions with examples to get a clear understanding of these new sections. Read on...*



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## Introduction

The finance budget was presented on 1<sup>st</sup> February 2021 by our Honourable Finance Minister, and several amendments in various sections of the Income Tax legislation were proposed. Out of the several proposals at the time of the presentation of the Budget 2021, the amendment which caught special attention was the proposal for the insertion of a new section 206AB and section 206CCA i.e., TDS/TCS at higher rates in case of non-filers of Income Tax Returns.

At present, Section 206AA of the Income-tax Act, 1961, already provides for a higher rate of TDS for not furnishing PAN details. Similarly, section 206CC of the

Income-tax Act, 1961 provides for a higher rate of TCS for not furnishing PAN information.

The motive behind introducing these two sections is to ensure the filing of return of income by those persons who have suffered a reasonable amount of TDS/TCS. This section provides for the higher rate of TDS and TCS respectively for those deductees, who had not filed their Income Tax Returns for both assessment years, i.e., relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected.

This amendment will take effect from 1<sup>st</sup> July 2021.



### Section 206AB and 206CCA: Special provision for deduction of tax at source for non-filers of the income tax return Text of Section 206AB

- (1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than sections 192, 192A, 194B, 194BB, 194LBC, or 194N on any sum or income or the amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:
  - (i) at twice the rate specified in the relevant provision of the Act; or
  - (ii) at twice the rate or rates in force; or
  - (iii) at the rate of five percent.
- (2) If the provisions of Section 206AA are applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and Section 206AA.
- (3) For this section “specified person” means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately before the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of

tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident, who does not have a permanent establishment (PE) in India.

Explanation: For this sub-section, the expression “permanent establishment” includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

### Text of Section 206CCA

- (1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:
  - (i) at twice the rate specified in the relevant provision of the Act; or
  - (ii) at the rate of five percent.
- (2) If the provisions of Section 206CC apply to a specified person, in addition to the provisions of this section, the tax shall be collected at the higher one of the two rates provided in this section and Section 206CC.
- (3) For this section, “specified person” means a person who has not filed the returns of income for both of the two assessment years relevant

to the two previous years immediately before the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of Section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years: Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

### Analysis of Section 206AB and 206CCA

This section proposes to penalize a person for not filing a return of income. It provides that, if an assessee fails to file his return of income for a specified period, the tax will be deductible or collected at higher rates. Income-tax Act already contains two similar provisions—Section 206AA and Section 206CC. As per these provisions, if the deductee or collectee fails to provide his Permanent Account Number (PAN), then tax at the higher rate of 20% will be deducted or collected.

As per the memorandum of the Finance Bill 2021, explaining the provisions, has stated that as the provisions of Section 206AA and 206CC have served their purpose in ensuring obtaining and furnishing of PAN by the various persons. Therefore, there is a need to have similar provisions to ensure the filing of return of income by that person who has incurred a reasonable amount of TDS/TCS.

Consequent upon which, the Finance Act 2021, has proposed to insert two sections 206AB and 206CCA, with effect from

01.07.2021. These sections provide for deduction or collection of tax at higher rates in the case of non-filers of Income-tax Return.

Now, to find out the relevant rate of TDS or TCS, it will be likely to solve the complex theorems of TDS/TCS.

### Who is a specified person?

This provision applies to a specified person only. The Section 206AB(3) provides the following conditions to classify a recipient as a 'specified person':

- The person who has not filed his return of income for 2 assessment years relevant to the previous years immediately prior to the previous year in which tax is required to be deducted;
- The due date to file such return of income, as prescribed under Section 139(1), has expired; and
- The aggregate amount of tax deducted and collected at source is Rs. 50,000 or more in each of these 2 previous years.



Income-tax Act already contains two similar provisions—Section 206AA and Section 206CC. As per these provisions, if the deductee or collectee fails to provide his Permanent Account Number (PAN), then tax at the higher rate of 20% will be deducted or collected.

This provision is applicable from 01-07-2021. As a result of which any payment made after this date shall go through the testing process of Section 206AB. And for any payment on or after the 01.07.2021 but before 31-03-2022, the deductor shall be under an obligation to check whether the deductee has filed his return of income of the last two assessment years 2020-21 and 2019-20 (previous years 2019-20 and 2018-19).

### Which sum or income is liable for a higher rate of TDS?

These provisions shall apply in respect of every sum or income or amount from which tax is deductible under any provision of Chapter XVII-B *except* those specified under Section 206AB, namely:

- Section 192: TDS on Salary;
- Section 192A: TDS on withdrawal from EPF;
- Section 194B: TDS on winning from lotteries, crossword puzzles, etc.
- Section 194BB: TDS on winning from racehorses;
- Section 194LBC: TDS on income in respect of investment in Securitization Trust;
- Section 194N: TDS on cash withdrawal.

All other payments shall be going through the test of Section 206AB, even if they are not considered as income in the hands of the assessee. However, this provision shall not apply to such sum (or income or amount) paid (or payable or credited) to a non-resident who does not have a permanent establishment (PE) in India.



The Finance Act 2021, has proposed to insert two sections 206AB and 206CCA, with effect from 01.07.2021. These sections provide for deduction or collection of tax at higher rates in the case of non-filers of Income-tax Return.

### Non-obstante clause

The Section 206AB, overrides all other provisions of the Income-tax Act. This means that the provisions shall apply even, if the assessee has nil TDS certificate or he has filed a declaration under Section 197A for non-deduction of tax or he is otherwise not liable to file the return of income.

### What if the recipient is 'not liable' to file the return?

No exception is given in these provisions even to the recipient who are not liable to file the return of income. One of the conditions to invoke these provisions is non-filing of return of income by the recipient. The provision does not carve out an exception in favour of the recipient who was otherwise not liable to file the return. This section provides for deduction of tax at higher rates if the deductee has not furnished the return of income of the specified period, irrespective of the fact that whether he was required to furnish it or not. This may invite troubles for the non-residents who are having a permanent establishment in India but otherwise not liable to file the



return of income because of the exemption extended by Section 115A(5). The super senior citizens will also face the heat if the tax was deducted from their income yet they did not file the return of income.

*For Example*, Mr. Naresh (85 Years) earned an interest income of Rs. 5,00,000 in both the preceding years. TDS of Rs. 50,000 has been deducted under Section 194A each year. As his income was below the maximum exemption limit, he was neither liable nor furnished the return of income of the relevant period. But, after insertion of this new section, now the tax will be deducted at the higher rates prescribed under Section 206AB.

*For Example-* Mr. Ram is going abroad for higher studies for a period of two years. He buys foreign currency for an amount equivalent to Rs. 20 lakhs each in the next two financial years. The authorized dealer will collect a tax of Rs. 65,000 from such amount under Section 206C(1G) (a). As Mr. Ram will not have any income, he will not file the



The Section 206AB, overrides all other provisions of the Income-tax Act. This means that the provisions shall apply even, if the assessee has nil TDS certificate or he has filed a declaration under Section 197A for non-deduction of tax or he is otherwise not liable to file the return of income.

return of income for both the previous years. When he returns to India after completion of his studies, his income (other than the excluded one) shall be subject to TDS at a higher rate due to the operation of Section 206CCA at least for one year.

### Prospective scenario

These provisions apply only if the deductee or collectee has not furnished the return of income for the specified period. And after insertion of section 206AB it will be mandatory for the deductor to verify the return filing status of every deductee or collectee. It will now be a yearly exercise to verify the ITR status of the deductee and collectee. Therefore, a tool is made available by the government to check the ITR filing status. Circular No.11 dated 21.06.2021 is also issued regarding the use of functionalities u/s 206AB and 206CCA.

### Significant amendment to section 194-IB

As per section 194-IB- "Every Individual or HUF shall be required to deduct tax at source on any sum payable by way of rent, if his gross receipts or turnover in the financial year immediately preceding the financial year, in which rent is paid or credited, does not exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of a profession".

Now, as per the existing provisions, if a recipient fails to furnish his PAN, tax is required to be deducted at the higher rates as prescribed under Section 206AA. However, as per section 194IB, if the deductee does not furnish his PAN to the deductor, the tax shall be deducted at the rate prescribed under Section 206AA, subject to the condition that the amount of TDS cannot exceed the amount of rent payable for the last month of



Since Section 206AB is similar to Section 206AA, an amendment has been made to Section 194-IB also, to provide that in case the tax is required to be deducted at the higher rates as prescribed in Section 206AB, the amount of TDS cannot exceed the amount of rent payable for the last month of the year or the last month of the tenancy, as the case may be.

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Since Section 206AB is similar to Section 206AA, an amendment has been made to Section 194-IB also, to provide that in case the tax is required to be deducted at the higher rates as prescribed in Section 206AB, the amount of TDS cannot exceed the amount of rent payable for the last month of the year or the last month of the tenancy, as the case may be.

### Conclusion

From the above analysis, it is clear that the above two sections are inserted to keep a check on the persons who are not filing their Income Tax Return and to ensure that such persons file their return of Income within the stipulated time. It is expected that these two sections will also serve the purpose as the sections 206AA and 206CC have done. ■■■

## Robust Transfer Pricing Documentation: Can Recharacterization Be Avoided?

*There is an increased focus on the commercial rationality of an international transaction which needs the support of a robust transfer pricing document, particularly in these times of low profits during COVID-19. With the ever-growing emphasis on 'substance over form' and 'commercial rationality' globally, there is an increased focus on analysis of functions performed, assets utilised, and risk assumed. The principle of substance over form typically allows tax authorities to disregard the written contractual terms between parties and consider the actual substance to recharacterize/disregard a transaction. In the light of this, it is imperative to support the international transactions with well-drafted transfer pricing documentation, agreements, and transfer pricing policies. Read on...*



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Transfer Pricing rules were enacted in the Indian Income Tax Act in 2001. Over the years there have been substantial developments in the jurisprudence of transfer pricing. With thousands of court rulings on varied issues, transfer pricing legislature has truly evolved.

With the Base Erosion and Profit Shifting ("BEPS") guidelines, evolution of e-commerce and globalisation of companies the significance of transfer pricing cannot be stressed enough.

The article discusses the elementary issue of preparing

a robust transfer pricing documentation. With the ever-growing emphasis on 'substance over form' and 'commercial rationality' globally, there is an increased focus on the functional asset and risk analysis. Transfer Pricing as a subject is not merely a mechanical exercise, it involves knowledge of economics, business, and industry in which both the company and its comparables operate.

**Background :** Transfer pricing (TP) documentation consists of analysis of functions performed, assets utilised, and risks assumed (FAR analysis) as well as an economic analysis.





Every transfer pricing report is unique to each international transaction. The comparables must be similar in all material aspects and be compared based on products/services, characteristics, functions undertaken, assets used, and risks assumed.

The functional asset and risk analysis documents the actual conduct of the related parties in an international transaction and provides insight into the functions and risks they undertake. On the other hand, economic analysis aims to establish the arm's length nature of an international transaction. Therefore, before commencing the economic analysis, one first needs to do a functional and risk analysis of the tested party and thereafter identify comparables that closely match the tested party's functional profile.

The Indian TP law and the Institute of Chartered Accountants of India (ICAI) guidance note on transfer pricing provide that the documentation on economic analysis shall provide for the details of the “*data used and data rejected with reasons thereof. Also, different*

*companies follow different accounting policies. There may be differences in terms of sale, etc. These variations call for certain adjustments in the financials to make the data comparable. The reasons and the adjustments so made should also be recorded.”*

Every transfer pricing report is unique to each international transaction. The comparables must be similar in all material aspects and be compared based on products/services, characteristics, functions undertaken, assets used, and risks assumed. Merely because a certain comparable has been upheld for its exclusion/inclusion by various decisions should **not necessarily** lead to exclusion/inclusion in other cases as well. Therefore, exclusion/inclusion of any comparable must strictly be based on **functional, asset and risk (FAR) analysis**, which is in accordance with Rule 10 B (2) of the Income Tax Rules.

Various Court rulings reinforce the importance of robust FAR analysis in the transfer pricing documentation. There have been multiple rulings across the globe that re-emphasize the need to document the actual conduct of the parties<sup>1</sup>.

### Increased Focus on ‘Commercial Rationality’ of an International Transaction

The Indian Tax Tribunals and courts have increased

focus on the substance of the transaction and analysing the parties' conduct before delivering a judgment. The Bangalore Income Tax Appellate Tribunals (“ITAT”) in the case of Google India noted that characterisation of functions cannot be based on merely terms of contract or description of the services given by the assessee-company. It must be determined with regard to the actual conduct of the parties<sup>2</sup>.

To justify the actual functions a well-maintained TP, documentation is a must. In cases where there is inaccurate or lack of documentation, it can even give rise to complete disregard or recharacterization of a transaction.

On the issue of recharacterization in one of the ITAT rulings it was held, “*that tax authorities can recharacterize the transaction in accordance with its substance only when 1. the economic substance of the transaction differs from its form and 2. the form and substance are the same but the arrangement, in totality, differs from that which would have been adopted by the independent enterprise behaving in a commercially rational manner*”<sup>3</sup>.

The principle of ‘substance over form’ typically allows tax authorities to disregard the written contractual terms between parties and

1. *Netherlands vs Zinc Smelter B.V.*, March 2020, Court of Appeal; *-Denmark vs. Software A/S*, September 2020, Tax Court; *-France vs. Piaggio*, July 2020, Administrative Court of Appeal;

2. *Google India Private Limited* [TS-335-ITAT-2018(Bang)-TP]

3. *Roche Products (India) Private Limited* [TS-154-ITAT-2016(Mum)-TP]

consider the actual substance to recharacterize/disregard a transaction. The principle may seem relevant in cases where tax authorities are doubtful as to whether the legal form of transaction varies from its actual substance. The issue has been gaining popularity in the recent years given the recommendations arising from the BEPS project of the OECD.

While the intercompany agreements are the first step to understand the legal form of a transaction, the parties' actual conduct should reasonably reflect in the functional analysis (analysis of functions performed, risk undertaken, and assets employed). Any inconsistency between the two often leads to disputes in the Indian context. The discrepancies may at times be only optical yet can trigger the tax authorities to ignore the contractual arrangement and recharacterize the transaction keeping in view the substance,



To justify the actual functions a well-maintained TP, documentation is a must. In cases where there is inaccurate or lack of documentation, it can even give rise to complete disregard or recharacterization of a transaction.

or the conduct as may reflect based on FAR analysis and other supporting facts. Over the last many years, various Courts and ITAT in India and worldwide have examined the issue of recharacterisation in the context of transfer pricing. Some of these cases are summarized below.

## Indian Case Laws

In the case of **EKL Appliances Ltd** [TS-206-HC-2012(DEL)-TP], the Delhi High Court referring to the 2010 TP OECD guidelines, has stated that *"the significance of the guidelines mentioned above lies in the fact that they recognise that barring exceptional cases, the tax administration should not disregard the actual transaction or substitute other transactions for them and the examination of a controlled transaction should ordinarily be based on the transaction as it has been actually undertaken and structured by the associated enterprises. It is of further significance that the guidelines discourage restructuring of legitimate business transactions. As provided in the OECD guidelines, he is expected to examine the international transaction as he actually finds the same and then make suitable adjustments but a wholesale disallowance of the expenditure, particularly on the grounds which have been given by the TPO is not contemplated or authorised"*.

Further, in cases of **Itochu India Private Ltd** [TS-428-HC-2019(DEL)-TP] and

**Aegis Limited** [TS-65-HC-2019(BOM)-TP] the High Courts have upheld the ITAT's view that TPO had wrongly recharacterized the international transactions and opined that that nothing was brought on record by Revenue that the transaction was a sham. However, in **McKinsey Knowledge Centre India Pvt Ltd** [TS-49-SC-2019-TP] the Supreme Court ("SC") dismissed McKinsey India's SLP against HC-order. The HC had upheld ITAT's characterization of research and information services rendered by McKinsey India to its AE as high-end knowledge-based research services (KPO), noting that the services rendered by assessee were "specialized and require specific skill-based analysis and research that is beyond the more rudimentary nature of services rendered by a BPO", HC had concluded that "it would be incorrect to slot the services provided by the Assessee into that of a BPO, when it is more akin to a KPO".

In **Sony Pictures Networks India Private Limited** (Successor of MSM Discovery Private Limited) [TS-508-ITAT-2020(Mum)-TP] issue related to recharacterization of distribution fee paid by assessee (distributor of channels) to its AE as 'Royalty'. Relying on assessee's submission that it only acted as an intermediary between Broadcaster and the ultimate customer who views the channel and neither held any right in the content broadcasted over the channel nor any right



to make any changes thereto, ITAT had held that distribution fee paid by assessee to its AE is not 'Royalty'.

## International Case laws

### **Canada vs Cameco Corp., February 2021, Supreme Court, Case No 39368-**

This was the first-ever case where recharacterisation provision under the Canadian transfer pricing rule was interpreted. The Federal Court of Canada ("FCA") has provided textual, contextual and purposive interpretation of recharacterisation which may have a high precedential value not only from a Canadian transfer pricing litigation perspective but may also be considered while interpreting principles of recharacterisation across jurisdictions, subject to differences in the text of transfer pricing provisions of respective jurisdictions dealing with recharacterisation. In the case of **Australia vs Glencore, May 2021, High Court, Case No [2021] HCATrans 098** it was held that the transaction should be restructured only if the economic substance of the transaction differs from its form or even though the form and substance of the transaction are the same, the arrangements made in relation to the transaction differ significantly from those which would have been adopted by independent enterprises behaving in a commercially rational manner.

### **In the case of 'A' Group Finland, Supreme Administrative Court (SAC)**

rejected recharacterization of intra-group financial restructuring sans tax avoidance allegation. Similar to the EKL case of Delhi HC (*supra*), the SAC referred to OECD guidelines, 2010 which observes that administration should not disregard actual transactions or replace them with other transactions unless in exceptional circumstances. The SAC also observed that the tax authorities have not alleged in the case that A Oyj and A Finance NV have reorganized the Group's financial operations for the purpose of tax avoidance, thus the adjustment made has no valid grounds. The **Zambian Court in Nestle Zambia Trading Limited** upheld recharacterization by the tax authority as Limited Risk Distributor. The same was upheld based on the analysis of the actual functions performed by Nestle Zambia.

As can be seen from the above rulings, while non-recognition in transfer pricing is a common approach adopted by the first level tax authorities across the world, complete disregard of a transaction is not very common. In the Indian context, non-recognition is discouraged by the ITATs and the HCs if done without any prudent reasoning. However, General Anti Avoidance Rules (GAAR) empowers the revenue to deal effectively with and guard against schemes that are designed for tax avoidance. It gives them extensive powers to disregard or recharacterize transactions and re-determine

the resultant tax consequences if the assessee fails to prove the commercial rationality of the arrangement and that tax avoidance was not the main purpose.

## **BEPS Action 13**

In 2016, the BEPS Action 13 was adopted by the Indian Tax law and included the preparation of Master File and Country by Country (CBC) reporting in the transfer pricing compliance requirements. If applicable, preparation of Master file and CBC is quite an extensive exercise, requiring detailed disclosures by the companies.

Further, BEPS Action 8 provides a framework for identifying the members of the multinational Group that contribute in the creation of valuable intangibles and determining the 'arm's length' remuneration based on their contribution in the entire value chain. Final report on OECD's BEPS Action 8-10 released in October 2015, has inter alia provided guidance on applying 'arm's length principle on intangibles, focusing on economic substance, risks/control and corresponding rewards than merely focusing on the **legal ownership**. It provides guidelines that the entity which creates the value should be entitled to commensurate returns. Therefore, it has become important to determine and establish which entity performs the Development, Enhancement, Maintenance, Protection and Exploitation ("DEMPE") functions. The



**BEPS Action 8 provides a framework for identifying the members of the multinational Group that contribute in the creation of valuable intangibles and determining the 'arm's length' remuneration based on their contribution in the entire value chain.**

rewards earned by an entity will change depending on this analysis. This further brought to light the importance of a detailed documentation.

In line with the provisions of BEPS action 8-10 as well as OECD TP Guidelines 2017 on business restructuring and non-recognition, increasing emphasis is being placed by various judicial decisions<sup>4</sup> globally on the economic substance and commercial rationality of the transaction.

Much before the BEPS project of the OECD on DEMPE guidelines, the Central Board of Direct Taxes had vide Circular 6/2013 given a preview into the DEMPE functions and had laid importance on the parties' actual functions and actual conduct over the contractual arrangements. This was a revolutionary change in the way the international transactions would be viewed going forward.

## Group Transfer Pricing Policy

While it is essential to undertake the annual TP compliances, it is also imperative to document the group Transfer Pricing Policy, which highlights the pricing policy and the flow of the international transactions between the various entities of a multinational group. Hence, it is important to have a robust transfer pricing policy which, inter alia, lists the group structure; the functions undertaken by each entity globally; the IPs owned and the pricing for inter-group transactions.

It is also advisable that periodic internal transfer pricing reviews be undertaken to ensure that the TP policies are adhered to. Let's take a simple example to emphasise this further. The TP policy may say that the factory should charge cost plus 5% for the goods produced and transferred to its group company for further sale. However, it would become pertinent to undertake regular TP reviews to assess whether the factory has considered the costs as have been defined in the TP policy or not. This is because there might be a disconnect between the documents and the actual practices which need to be corrected.

## Impact of Covid-19

COVID-19 has impacted businesses and governments

across the world. Enterprises are transitioning into digital integration. The biggest challenge is to manage profitability and the disrupted supply chains. During the COVID-19 crisis, we would expect companies to record results that differ significantly from normal levels and are also likely to incur operating losses. While tax authorities appreciate that losses can be incurred in independent situations due to unfavourable economic conditions or other legitimate business factors, it remains to be seen how these factors can be identified and quantified for transfer pricing purposes.

From a benchmarking perspective, the search for comparables may entail inherent challenges particularly for FY 2020-21. At the time of preparing contemporaneous



**Since impact on profitability will be visible for taxpayers and comparables in FY 2020-21 margins, taxpayers would have to take steps to mitigate potential risk appropriately. It would be imperative for the tax authorities to undertake audit considering the current economic conditions.**

<sup>4</sup> *Commissioner of Taxation v Glencore Investment Pty Ltd* [2020];  
-*Her Majesty The Queen Vs Cameco Corporation* (2020 FCA 112);

documentation, the availability of data may practically get limited to two financial years (FY 2018-19 and FY 2019-20), both of which are not impacted by any COVID-19 downturn. Since impact on profitability will be visible for taxpayers and comparables in FY 2020-21 margins, taxpayers would have to take steps to mitigate potential risk appropriately. It would be imperative for the tax authorities to undertake audit considering the current economic conditions. The detailed TP documentation and economic analysis will have to factor in the changes as per each industry right up to the company level. Within the same industry, certain companies would be earning profits while others would be closing operations.

## Concluding Remarks

I would like to conclude by saying that transfer pricing as a practise has gradually evolved over the last couple of decades. There is an increased focus on whether the actual transaction possesses the 'commercial rationality' of arrangements that would be agreed between unrelated parties under comparable economic circumstances. The same is in line with para 1.122 of the OECD Transfer Pricing Guidelines 2017.

From an Indian as well as a global perspective, there has been an increased focus on the substance and the commercial rationale of a transaction. Many corporates have undertaken restructuring of their businesses considering the

ongoing COVID-19 pandemic. From a business perspective, restructuring is considered a favourable business decision to help companies grow or sustain. Tax saving may not necessarily be the only driving force behind a restructuring; however, it attracts extra scrutiny from the tax authorities worldwide under transfer pricing tax laws. Therefore, robust TP documentation, well-drafted intra-group agreements, and a commercial rationale driving the transformation are essential in reducing the risk of potential tax audits and consequent adjustments. The functional analysis forms the basis of decision-making for the courts and helps them to assess the facts. Hence, it becomes important to document our transactions and their functional and economic analysis properly. ■■■



## RoDTEP: Remission of Duties and Taxes on Export Products

*With the withdrawal of existing MEIS export promotion scheme, the RoDTEP (Remission of Duties and Taxes on Export Products) scheme comes as a huge relief to the exporters. The scheme will cover around 8,555 tariff items with rebate in the range of 0.5% to 4.3% with ceiling limits. The aim of the scheme is to refund currently unrefunded duties/taxes/levies charged indirectly in the production of export products. This will help in cost reduction and improved competitiveness of products over a long-time horizon. The scheme covers most of the sectors except steel, organic and inorganic chemicals, pharmaceuticals. The scheme will play a key role in fulfilling exports obligations and helping India embark on its 'Aatmanirbhar Bharat' journey at lightning speed. Read on...*



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**Preamble:** The scheme's aim is to refund, currently unrefunded duties/taxes/levies, at the Central, State, and local level, borne on exported products consisting of prior stage cumulative indirect taxes on goods and services utilized in the making of the exported product and such indirect duties/taxes/levies towards the distribution of export.

**Need for Introduction of the RoDTEP scheme:** The RoDTEP Scheme came into existence because USA filed a complaint against India at the World Trade Organization (WTO) claiming the existing scheme harms the American workers. USA argued that export subsidies like the MEIS scheme (The Merchandise Exports from India Scheme) given by GOI distorted trade by providing direct

subsidies to Indian exporters and is against the WTO rules. A dispute panel in the WTO ruled against India, stating that the export subsidy scheme that was provided by Government of India violated the provisions of WTO's norms. Hence, the Finance Minister announced this scheme in replacement of the MEIS scheme. The scheme was approved by the Union cabinet and came into effect from 1<sup>st</sup> January 2021 and will be until 2025. The Ministry of Commerce and Industry notified about the RoDTEP scheme on 17<sup>th</sup> August 2021. This is a much-awaited scheme notified by the GOI after phasing out the MEIS scheme.

### Features of the scheme

- The scheme will cover 8555 export products (*Notification No. 19/2015-2020, Dated 17<sup>th</sup> August 2021*).





- All the eligible products with the benefit rates given under Appendix 4R of Notification.
- The tax refund rates range from 0.5 percent to 4.3 percent for different sectors. Rebates under the scheme shall not be available in respect of duties and taxes already exempted or deposited or credited.
- The scheme would operate in a budgetary framework for each financial year and a Rs. 19,400 crore outlay has been announced for the FY 2021-22 under the RoDTEP Scheme and RoSCTL scheme (Rebate of State and Central Taxes and Levies) where RoDTEP scheme's budget would be Rs. 12,454 crores and the remaining Rs. 6,946 crores is for RoSCTL.
- Currently, three sectors – steel, chemicals and pharmaceuticals would not get the benefit of RoDTEP.
- The RoDTEP scheme is primarily a replacement of MEIS scheme.
- The scheme covers export areas which are relatively lower in volume.
- The automated refund system in the form of transferable duty credit/electronic scrips, which will be maintained in an electronic ledger.

**Refunds of embedded duties and taxes:** Under the scheme, various central and state duties, taxes, and levies imposed on input products such as duty levied by the state on electricity used for manufacturing, VAT on fuel in transportation, farm sector, captive power generation, Mandi tax, stamp duty and central excise duty on fuel used in transportation, among others, would be refunded to exporters as a percentage of F.O.B Value of exports. The scheme will ensure that our export products do not contain any incidence of taxes and duties, and exporters only export goods and services, and the scheme would cover all indirect Central and State taxes that are not reimbursed/collected.

### Sectors that will get the benefits

Employment-oriented sectors such as marine, agriculture, leather, gems and jewellery are covered under the scheme. Other sectors such as automobile, plastics, electronics, among others will also be covered. Besides, the entire value chain of the textile sector will get covered through the RoDTEP and RoSCTL schemes.

### Sectors not covered under the benefits

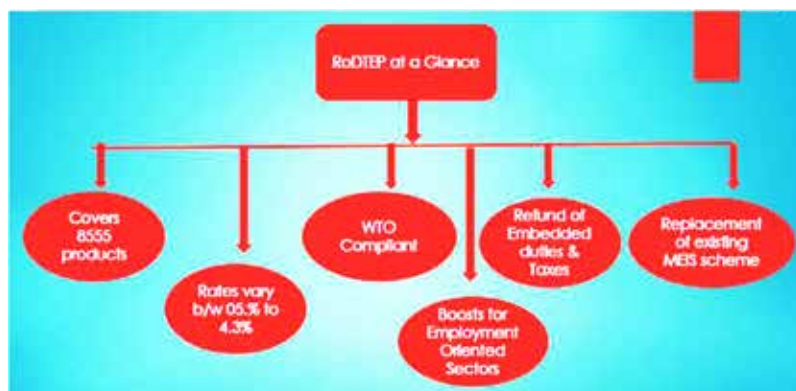
Sectors such as steel, organic and inorganic chemicals, pharmaceuticals have been

kept outside the scope of the new scheme. Further, Special Economic Zones (SEZ), Export-Oriented Units (EOUs), Advance Authorization holders, Operators under MOOWR schemes, etc. are excluded from the scheme benefits.

### Ineligible supplies/Items/ Categories under the scheme

The transactions mentioned as not eligible for the RoDTEP scheme through the DGFT Notification are listed below. The mentioned class of exports or exporters will not be liable for the levied benefit of the RoDTEP scheme.

1. Export of imported goods included under paragraph 2.46 of FTP.
2. The exports via trans-shipment, direct that the exports which are introduced in the 3<sup>rd</sup> country are shipped from India.
3. The export product is subjected to a minimum export price or export tax.
4. The product gets restricted for the export beneath "Schedule-2 of Export Policy in ITC (HS)".
5. Products that are banned for export beneath "Schedule-2 of Export Policy in ITC (HS)".
6. "Deemed Exports".
7. Supplies of products manufactured through DTA units to SEZ/FTWZ units.
8. "Products manufactured in EHTP and BTP".
9. "Products manufactured partly or wholly in a warehouse beneath section 65 of the Customs Act, 1962 (52 of 1962)".
10. The products made or exported to realize the



# Indirect Taxes

obligation with respect to the advance Authorization or tax-free Import Authorization or Special Advance Authorization circulated beneath a duty privilege policy of concern Foreign Trade Policy.

11. Under the provisions of the foreign trade policy the product made or exported through the unit licensed as a hundred per cent export-oriented unit (EOU).
12. The products made or exported through any of the units held "in Free Trade Zones or Export Processing Zones or Special Economic Zones".
13. The products built or exported claiming the advantage of the *Notification No. 32/1997- Customs dated 1<sup>st</sup> April 1997*.
14. The exports for which the electronic documentation in ICEGATE EDI is not to be made or exports from non-EDI ports.
15. Post to produce the goods is used.

## Technologically Advanced scheme

Government has introduced various digital platforms to implement different export promotion schemes. As per the government notification, an IT-based risk management system would be introduced under the RoDTEP Scheme which will help in smoother and faster processing and enhance the ease of doing business. The policy will be executed via the digitization of issuance of the levy amount in the form of the transferable tax credit/electronic scrip (e-scrip), which is to be maintained in the electronic ledger through the

Central Board of Indirect Taxes and Customs (CBIC).

## How to avail the benefits under the scheme?

The steps to avail the benefits under RoDTEP Scheme are as follows -

### Step1: Claim in the Shipping Bills

With effect from 01.01.2021, it is mandatory for the exporters to indicate in their Shipping Bill whether or not they intend to claim RoDTEP on the export items. This claim is mandatory for the items (RITC codes) notified under the new scheme. This declaration has been made mandatory for all items in the Shipping Bill starting from 01.01.2021. Unlike Drawback, there will be no need to declare any separate code or schedule serial number for RoDTEP.

The exporter will have to make following declarations in the SW\_INFO\_TYPE Table of the Shipping Bill for each item

INFO TYPE	DTY
INFO QFR	RDT
INFO CODE	RODTEPY- If RoDTEP is availed RODTEPN- If not availed
INFO MSR	Quantity of the items in Statistical UQC as per the Customs Tariff Act for that item RITC
INFO UQC	UQC for the Quantity indicated in INFO_MSR

### Step2: Processing of the claim

Based on the information provided in Step 1, system will process the eligible RoDTEP.

**Step3: Generation of Scroll** Once the scroll is generated, the amounts would be available with the exporter as credits on the ICEGATE portal.

### Step4: Claiming of Credit and generation of Credit Scrip

Once the scroll is generated, the exporter can log into their ICEGATE portal and convert them into credit scripts. The exporter will be able to club the credits allowed for any number of Shipping Bills at a port and generate credit scrip for the same on ICEGATE portal (the same can be done by login to ICEGATE website <https://www.icegate.gov.in/> using class 3 Digital signature certificate).

### Step5: Utilization of the Scrips

These scrips can be used for the payment of import duties as would be notified by CBIC. The exporter can transfer the scrip to any other IEC holder who will be able to use this scrip in the bill of entry by giving the license details.

Note: The RoDTEP Credit Ledger can be used by the Importer/ Exporter/CHA only after creating a successful credit ledger account at ICEGATE. The following information would be available in the ledger account -



Employment-oriented sectors such as marine, agriculture, leather, gems and jewellery are covered under the scheme. Other sectors such as automobile, plastics, electronics, among others will also be covered.

- Scroll Details
- Scrip Details
- Transaction Details
- Transfer Scrips
- Approved Scrips Transfer
- Mechanism of Issuance of Rebate
- Under the scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8-digit HS code. Rate of rebate/value cap per unit under RoDTEP is notified in Appendix 4R.
- The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which, such rebate shall be deemed never to have been allowed.
- The scheme would be implemented through end-to-end digitization of issuance of rebate amount in the form of a transferable duty credit/electronic scrip (e-scrip).



Government has introduced various digital platforms to implement different export promotion schemes. As per the government notification, an IT-based risk management system would be introduced under the RoDTEP Scheme which will help in smoother and faster processing and enhance the ease of doing business.

## Monitoring, Audit and Risk Management System

Exporters would be required to keep records substantiating claims made under the scheme.

For the purpose of audit and verification, a monitoring and audit mechanism with an IT based Risk Management system (RMS) would be put in place by the CBIC, Department of Revenue to physically verify the records of the exporters on sample basis. Sample cases for physical verification will be drawn objectively by the RMS, based on risk and other relevant parameters.

## Is there any budget constraint for the scheme?

As per the notification, the scheme will operate in a Budgetary framework for each financial year and necessary calibrations and revisions shall be made to the scheme benefits, as and when required, so that the projected remissions for each financial year are managed within the approved budget of the scheme. No provision for remission of arrears or contingent liabilities is permissible under the scheme to be carried over to the next financial year.

## Comparison between MEIS and RoDTEP

Detail	MEIS	RoDTEP
<b>Incentive scheme</b>	Incentive on exports of goods in form of transferable scrips	Refund of Indirect taxes on Inputs used in the manufacture of exported product which is not being currently reimbursed by any other existing schemes
<b>WTO Compliance</b>	Non-Compliant with WTO trade norms	Compliant with WTO trade norms
<b>Incentive Percentage</b>	2% to 5% of FOB value of Exports	Product-based %
<b>Mode of Issuance</b>	Issuance in the form of transferable scrips (Hard copy/ downloadable)	Issuance in the form of transferable duty credit/ electronic scrip which will be maintained in electronic ledger



For the purpose of audit and verification, a monitoring and audit mechanism with an IT based Risk Management system (RMS) would be put in place by the CBIC, Department of Revenue to physically verify the records of the exporters on sample basis.

## Conclusion

The scheme will play an important role in making internationally competitive goods originating from India. These much-awaited rates will help in easing the liquidity of the exporters, ensuring predictability and stability thus helping competitiveness of exports over a long-time horizon. The scheme will boost Indian exports by providing a level playing field to the domestic industry aboard. The industry can hope for a seamless transition into the scheme with equitable benefit.

## References:

1. Notification No. 19/2015-2020, Dated 17<sup>th</sup> August 2021
2. News articles



## GST and Corporate Social Responsibility: Provisions and Challenges

*This article discusses the impact of GST law on the mutlifold modes of CSR activities. Further, the question “whether Input Tax Credit (ITC) is admissible on expenditure incurred by a company towards CSR activities as per the provisions of Companies Act, 2013” has been a constant issue of confusion and ambiguity. With the adverse impact of the COVID-19 pandemic, where a lot of organizations are incurring CSR expenditure to fight against the pandemic, the matter has become more problematic across the nation since the GST law does not specifically speak on this issue and the government has not come out with any clarification thereon. Read on...*



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### 1. Introduction to Corporate Social Responsibility

The concept of Corporate Social Responsibility (CSR) is well known throughout the business world. It not only speaks of contributions made towards the benefit of the less privileged but also calls for making oneself accountable to the society. Many think that CSR is a new concept. However, in our country, kings have been practicing CSR for thousands of years. Even Kautilya's Arthashastra speaks about this:

*“Shrestha Dharma- the better off one is in the society, the*

*higher should be one's sense of responsibility”*

In India, with the enactment of the Companies Act, 2013, it has now become mandatory for Companies to take up CSR projects on social welfare activities. In the present times, the ambit of CSR activities has grown manifold and is playing an important part in achieving the sustainable development goals and private-public partnership in nation building. CSR has also played a very important role in supporting the social and economic development of the country during the COVID-19 pandemic.





## 2. GST implications on the modes of discharging Corporate Social Responsibility

The implications of GST on the various modes which may be adopted by any corporate to discharge its Corporate Social Responsibility u/s 135 of Companies Act, 2013 read with Schedule VII are depicted below

- a. Direct Contributions to various funds such as Swatch Bharat Kosh, PM Cares Fund etc. The contributions to such funds are made in form of monetary donations. GST is not applicable on such monetary contributions as Section 2(52) & Section 2(102) of CGST Act, 2017 specifically excludes money from the definition of Goods as well as Services respectively.
- b. Providing funds to any registered trust or society or to a company registered u/s 8 of Companies Act, 2013. Usually, under this scenario,

a MOU is entered into between the company and recipient trust or society. By implementing such a MOU, the corporate discharges its CSR requirement. Although the corporate is not directly performing any CSR activity and such activities are provided by the trust or society to the ultimate beneficiaries, but still the trust or society may need to charge GST on the funds received by it.

The Authority for Advance Ruling, New Delhi in the case of *Indian Institute of Corporate Affairs* [(2019) 107 taxmann.com 413] ruled that the amount paid by the companies to external agencies for CSR activities to undertake specified projects would be considered as 'Consideration' and therefore, executing CSR activities as per company's direction would be interpreted as Supply and GST would be applicable on the same.

Hence, drafting the terms and clauses of MOU plays a pivotal role in such cases. Any direct nexus between the amount paid and the supply of taxable service towards a specified project would make the activity leviable to GST.

- c. Discharging CSR activities by providing manufactured/traded goods or services directly to the beneficiaries. Under this



To explore the GST implications on supply of goods given free of cost for CSR activities, it is important to examine Schedule I as per Section 7(1)(c) of the CGST Act, which mentions the activities that would be treated as supply even if made without a consideration.

mode, companies provide their own manufactured or purchased goods such as masks, sanitizers, PPE, food products etc. to the beneficiaries to discharge its Corporate Social Responsibility. Alternatively, services such as providing temporary shelter, COVID-19 education or awareness programme etc. may also be provided by the company to discharge its CSR.

### GST on supply of goods for CSR activities

To explore the GST implications on supply of goods given free of cost for CSR activities, it is important to examine Schedule I as per Section 7(1)(c) of the CGST Act, which mentions the activities that would be treated as supply even if made without a consideration.



In the present times, the ambit of CSR activities has grown manifold and is playing an important part in achieving the sustainable development goals and private-public partnership in nation building.

# Indirect Taxes

Entry No. 1 of Schedule I of the CGST Act, would be relevant in the current scenario, i.e., *“Permanent transfer or disposal of business assets where input tax credit has been availed on such assets”*. Since the registered person's own products, viz. manufactured or traded goods, are being distributed free of cost for CSR activities, these would be “finished goods” in the business of the registered person, hence they can be called as business assets. The ITC availability on such goods have been discussed later in this article.

Hence, if the registered person has availed ITC on the said goods (business assets), the permanent transfer of these goods would amount to supply, even though it is given without any consideration, thereby attracting GST.

## GST on supply of services for CSR activities

Services supplied free of cost for CSR activities would not be covered under any entry of Schedule I to the CGST Act. Entry 1 on *“Permanent transfer or disposal of business assets”* particularly covers goods i.e., business assets but not services. Entry No. 2 *“Supply of goods or services between related persons or between distinct persons”* would also not be applicable, as the services provided under CSR must not be towards any related persons or distinct persons.

Hence, any services provided without any consideration for

CSR activities would not be a supply, thereby not attracting GST. On the contrary, CSR activities done through other agencies to undertake specific projects for consideration may get covered under the scope of supply and would be liable for GST as pointed out in Para 2.2 above. However, if the said service is specifically exempt under Notification No. 12/2017-Central Tax (Rate) as amended, then there would be no GST payable.

## Input Tax credit on supply of goods or services for CSR activities

Since all such goods and services are provided without charging any monetary or non-monetary consideration, a moot question that pops up every now and then is **whether GST paid on the goods and services used for CSR activities will be available as input tax credit (ITC)?** Let us discuss the provisions and challenges.

### 3. Relevant Provisions

- a. Section 16(1) of the CGST Act, 2017 defines the eligibility for taking input tax credit:

*“16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of***

*his business and the said amount shall be credited to the electronic credit ledger of such person”*

- b. Section 2(17) of the CGST Act, 2017 defines Business as:

*“2. (17) Business includes –*

- a. *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- b. *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- c. *.....”*

- c. Relevant extracts of Section 135 of the Companies Act, 2013 that deals with CSR:

*“135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.*

*.....*

- (5) *The Board of every company referred to in sub-section*

(1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

.....

- (7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.”

**4. Does CSR activities pass the Business Test? Can it be considered to be “used or intended to be used in**

**the course or furtherance of business”?**

As per the GST law, to avail input tax credit it is *sine qua non* for the goods / service to be used in the course or furtherance of business. Considering the wide definition of the term ‘business’ under the GST law, there is no requirement to establish a direct one to one linkage in order to avail ITC. Even incidental / ancillary activities can be treated as ‘in the course of business’ and procurements made for undertaking such activities are eligible for ITC. The first test of ITC eligibility is for it to be considered ‘used or intended to be used in the course or furtherance of business’.

- a. It has been held by the Hon’ble CESTAT Mumbai, in the case of ***Essel Propack Ltd. v. Commissioner of CGST* [[2020] 117 taxmann.com 409]** that **CSR is not a charity any more since it has got a direct bearing on the manufacturing activity of the company** which is largely dependent on smooth supply of raw materials and the same also augments the credit rating of the company as well as its standing in the corporate world. Therefore, **sustainability is dependent on CSR without which companies cannot operate smoothly for a long period** as they are dependent on various stakeholders to conduct business in

an economically, socially and environmentally sustainable manner. It was further observed that CSR, which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and **unless the same is treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake.**

- b. Further, Hon’ble High Court of Karnataka in the case of ***CCE v. Millipore India (P) Ltd.* [[2011] 16 taxmann.com 363]** observed that the concept of corporate social responsibility is to discharge a statutory obligation. It further observed that when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. It upheld the Tribunal’s decision that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.
- c. It is pretty evident, as has been laid down in various pronouncements, that a Company is compulsorily required to undertake CSR activities in order to run its business. ‘In the course or furtherance of business’ includes all activities which are incidental / ancillary

to the business which are incurred during the course of business. As a result, **CSR activities is an essential part of the business process as a whole and thus can be construed to be incurred 'in the course or furtherance of business'**. Hence, this clears the first test of ITC eligibility. Let's move to the next one.

## 5. Can ITC of CSR activities be restricted u/s 17(5)(h) by treating them as gifts?

- a. Section 17(5)(h) of the CGST Act, 2017 states:

*"17(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*.....*

*(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;*

*....."*

- b. The Authority for Advance Ruling, Kerala denied ITC on CSR expenses by considering them as 'disposal by way of gift' in the case of **Polycab Wires Private Limited [2019 (24) G.S.T.L. 103 (A.A.R. - GST)]**. In the said case, the applicant had distributed electrical goods to people affected by flood in Kerala against discharge of its CSR obligations. The Kerala AAR held that the applicant distributed electrical items on free basis without collecting any money and for these transactions input tax credit would not be available

as per Section 17(5)(h) of the KSGST Act and CGST Act.

However, in the above ruling, the Hon'ble AAR has not discussed the matter in detail and simply ruled that ITC would not be available on goods distributed free of cost as CSR expenditure without extending any plausible reasoning. To begin with, it may be necessary to dwell on the concept of gift.

### c. What is the meaning of the term 'Gift'?

The term 'Gift' has not been defined under the GST law, however in common parlance, gift is provided to someone occasionally, without consideration and which is voluntary in nature. The **Gift Tax Act (18 of 1958)** had defined the word gift to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth.

- i. **Black's Law Dictionary (Fourth Edition)** defines gift as:

*"A voluntary transfer of personal property without consideration. A parting by owner with property without pecuniary consideration. A voluntary conveyance of land, or transfer of goods, from one person to another made gratuitously, and not upon any consideration of blood or money."*

- ii. A similar definition has been given in **Webster's Third New International Dictionary (Unabridged)**



The term 'Gift' has not been defined under the GST law, however in common parlance, gift is provided to someone occasionally, without consideration and which is voluntary in nature.

where the author defines gift as:

*"Something that is voluntarily transferred by one person to another without compensation; a voluntary transfer of real or personal property without any consideration or without a valuable consideration distinguished from sale."*

- iii. Further, the Hon'ble Supreme Court of India, in the case of **Ku. Sonia Bhatia v. State of UP [AIR 1981 SC 1274]**, cited the definition of 'gift' from *Corpus Juris Secundum*, Volume 38 in the following words:

*"A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor. A 'gift' is a gratuity and an act of generosity and not only does not require a consideration, but there can be none."*

- d. Additionally, it has been held by the Authority for Advance Ruling, UP in the case of **Dwarikesh Sugar Industries Ltd [(2021) 125 taxmann. com 329]**:



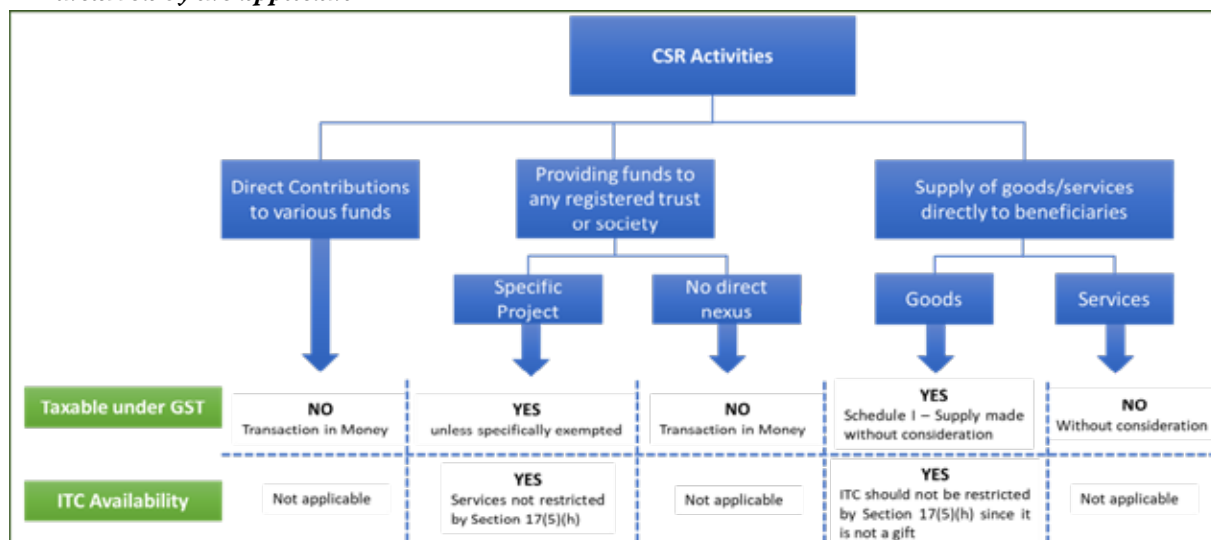
*“...we are in unison with the applicant that a clear distinction needs to be drawn between goods given as ‘gift’ and those provided/supplied as a part of CSR activities.*

*While the former is voluntary and occasional, the latter is obligatory and regular in nature. CSR expenses incurred by the applicant*

can only be termed as ‘gifts’. However, when a company spends on CSR activities, it is mandatorily required by Section 135 of the Companies Act to do so. Failing to comply with the same leads to penal actions which might jeopardize the sustainability of the company. The same principle has been laid down in multiple cases including

is no scope for intendment where the words used by the legislature are clear and unambiguous. Therefore, this reduces the disputable position of ITC availability on CSR expenses with respect to services and ITC would be available on services used for CSR activities.

To summarize the above discussion,



*have been mandated under the Companies Act, 2013. It is the applicant's obligation to incur such expenses in order to be in compliant with the law. Since CSR expenses are not incurred voluntarily, accordingly, we are of the opinion that they do not qualify as ‘gifts’ and therefore its credit is not restricted under section 17(5) of the CGST Act, 2017”*

*Essel Propack Ltd (supra) among others. Hence, it should be within the accepted bounds of law to construe that CSR expenses cannot be termed as gifts and ITC on the same cannot be restricted u/s 17(5)(h) of the CGST Act.*

## Availability of ITC on services used for CSR activities

A deeper observation of Section 17(5)(h) brings out that no restriction is placed on free distribution of services. Section 17(5)(h) only restricts ITC on free distribution of goods by way of gifts or free samples. Hence, even if services are given free of cost for such activities, ITC on the same would not be restricted. It is a well-settled principle that there

## Concluding Remarks

The provision for availing Input Tax Credit has been the peacemaker amidst the chaos subsequent to the introduction of GST. So far, the seamless procedure for utilizing input credit has been commendable, however, it is not free of its own entanglements and there is still a lot of ambiguity. In these times of adversity, where a lot of organizations are incurring CSR expenditure to fight against the pandemic, it is the need of the hour for CBIC to come up with some positive clarifications to clear the sky relating to such confusions on the availability of ITC. This will ensure the active participation of trade and industry to further strengthen the fight against this pandemic. ■■■

- e. In view of the above, for a supply to be considered as a gift, the supply must be made without any contractual obligation and should be voluntary in nature. Supplies made out of love and affection or such other non-legal considerations

# LIBOR – Rest In Peace, What Next

*Globally LIBOR is considered as the Benchmark for several International Foreign Exchange transactions based on Interest Rates. The LIBOR which has been in existence for over six decades is being eased out by the end of December 2021. All the transactions so far entered and outstanding beyond December 2021 need to be renegotiated with Alternate Reference Rates. Globally the Bank regulators, financial institutions and government lending bodies have set the ball rolling to shift to the rates devised by them. Read on...*



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Reserve Bank of India also set up committee and entrusted the job to Indian Banks Association to evolve strategies to move swiftly to the new regime of Alternate Benchmark Rates. This article explores the LIBOR, the issue, various benchmark rates globally being proposed, the role of RBI so far and the consequences and constraints. This article is useful for the accounting fraternity to properly guide their clients how they can easily, promptly, and effectively shift to the new regime.

Beyond the end of 2021, the Financial Conduct Authority (FCA), UK will not mandate Banks to poll LIBOR, the benchmark which has been used by all Banks/Financial Institutions in the world for financial foreign exchange contracts. These include

derivate transactions, bonds, loan agreements both retail and corporate loans. The rate ruled the world for almost five decades. Unfortunately, this rate was found manipulated during the year 2012 by individuals at various financial institutions. As a corrective action, the FCA had decided to leave the LIBOR. The quantum of LIBOR linked exposures globally is estimated to be around USD 240 trillion. At the end of June 2021, India's external debt was placed at USD 571.3 bn. The External Commercial Borrowings is the largest component of external debt (37.4%) followed by Non Resident Deposits (24.8%). Short-term debt on residual maturity basis (i.e., debt obligations that include long-term debt by original maturity falling due over the next twelve months

	Currency	Current	Change
Prime Rate	AUD	3.00%	01-Apr-19
Prime Rate	CAD	0.50%	01-Apr-19
Prime Rate	EUR	1.25%	01-Apr-19
Prime Rate	JPY	0.10%	01-Apr-19
Prime Rate	NZD	3.00%	01-Apr-19
Prime Rate	NOK	2.00%	01-Apr-19
Prime Rate	SEK	1.00%	01-Apr-19
Prime Rate	CHF	0.25%	01-Apr-19
Prime Rate		0.50%	01-Apr-19

and short-term debt by original maturity) constituted 44.7 per cent of total external debt at end-June 2021. The residual maturity of outstanding External Debt as at the end of June 2021 stood as under :

Residual Maturity	Amount in USD billion
Short term upto one year	255.60
1 to 2 years	54.30
2 to 3 years	53.50
More than 3 years	207.80
Total	571.30

(Source : RBI press release dated 30.9.2021 on India's External Debt as at the end of June 2021)

### What is LIBOR

London Inter-Bank Offered Rate is the average interest rate global banks base for their lending and borrowing from one another. The rate is calculated for five currencies namely, USD, Euro, British Pound, JPY and Swiss Franc for seven different maturities. They are overnight/spot, one week, one, two, three, six and twelve months. Thus, the total number of rates quoted on daily basis are five currencies multiplied by seven periods are 35. USD LIBOR is the most used floating interest rate globally.

It is calculated daily by ICE (InterContinental Exchange) by obtaining rates from Global banks how much they will charge for short term loans. They take the trimmed average meaning the highest and the lowest rates are trimmed, and the average of the remaining rates are taken for deciding the daily LIBOR rate. Once they are finalized, these rates are announced every day at 11.55 am London time by the ICE Benchmark Administration. The methodology is well documented and unbiased. A panel consisting of 16 major banks active in the London market provide the rates.

### LIBOR Issue

During the year 2012, a scandal came to light in quoting the rates by several major banks in collusion. It was reported that such events were taking place since 2003. The investigation showed that the traders were openly asking each other to set rates at a specified amount so that the positions based on inflated LIBOR rate will be profitable to them. Banks in the USA and UK who were involved in this scandal were fined to the tune of USD 9 billion.

### What are transitional Rates

After the scandal came to light several parties quoting their



London Inter-Bank Offered Rate is the average interest rate global banks base for their lending and borrowing from one another. The rate is calculated for five currencies namely, USD, Euro, British Pound, JPY and Swiss Franc for seven different maturities.

floating rates based on LIBOR, lost confidence in the rate. Finally, the ICE took over the supervision of the Rate from the British Bankers Association (BBA) and the rate quoted now is called ICE LIBOR.

Now each country is looking for bringing out an Alternate Reference Rate (ARR) for both short term and long-term contracts in the money market, derivative markets, bond markets or repo market and basing the mortgage and other loan agreements once the LIBOR is not available as a benchmark rate. A reference rate is a benchmark interest used to determine other interest rates.

The list below provides various Alternate Reference Rate (ARR) being devised by several countries.

Overview of ARRs in Certain Markets					
	USA	UK	EU	Switzerland	Japan
ARR	Secured Overnight Financing Rate (SOFR)	Sterling Overnight Interbank Average Rate (SONIA)	Euro Short Term Rate (ESTR)	Swiss Average Rate Overnight (SARON)	Tokyo Overnight Average Rate (TONAR or TONA)
Secured	Yes	No	No	Yes	No
Tenor	Overnight	Overnight	Overnight	Overnight	Overnight
Counterparties	Banks and non-banks	Banks and non-banks	Banks and non-banks	Banks only	Banks and non-banks

(Source: The article "Libor: the Rise and the Fall – RBI Bulletin Nov 2020)

## USA – SOFR

This rate has been recommended by the Alternative Reference Rates Committee as a benchmark replacement to LIBOR. It measures the cost of borrowing monies from US treasuries against collaterals (Like our Repo Rate in India). Many major Banks in the USA such as Wells Fargo, JP Morgan, Citigroup have conducted transactions with this benchmark rate. It is reported that around USD37 trillion in Futures, USD700 billion in Swaps have already been concluded based on this rate.

## UK – SONIA

These rates are chosen by a working group on Sterling Risk-Free Reference Rates as an alternate to LIBOR. It reflects the average interest rates that Banks pay to transact sterling currency in overnight markets from other financial institutions. Contracts to the tune of GBP5.7 trillions were already traded in Futures markets based on this benchmark rate.



Each country is looking for bringing out an Alternate Reference Rate (ARR) for both short term and long-term contracts in the money market, derivative markets, bond markets or repo market and basing the mortgage and other loan agreements once the LIBOR is not available as a benchmark rate.

## EURO – ESTR

The euro short-term rate (€STR) reflects the wholesale euro unsecured overnight borrowing costs of banks located in the euro area. The €STR is published on each TARGET2 business day based on transactions conducted and settled on the previous TARGET2 business day (the reporting date “T”) with a maturity date of T+1 which are deemed to have been executed at arm’s length and thus reflect market rates in an unbiased way.

## SWITZERLAND - SARON

It represents the overnight interest rate of the secured funding market for the Swiss Franc (CHF). (Swiss Average Rate Overnight) is an overnight interest rates average referencing the Swiss Franc CHF. It is based on transactions and quotes posted in the Swiss repo market.

## JAPAN - TONAR

It is a risk-free rate (“RFR”) based on the uncollateralized overnight Call rate. In 2019, the Cross-Industry Committee on Japanese

Yen Interest Rate Benchmarks, together with the Bank of Japan, held a public consultation on the choice of alternative benchmarks to JPY LIBOR, the results of which revealed an industry preference for two alternatives: the Tokyo Interbank Offered Rate (“TIBOR”) and the Tokyo Overnight Average Rate (“TONAR”).

## Present status of transition

The Greenback (USD) is the most traded currency in the world forex markets. 88% of global transactions include USD on one side of the transaction. The next comes EURO with 32.28 % and JPY with 16.80%. US dollar denominated debt remained the largest component of India’s external debt, with a share of 52.4 per cent at end-June 2021

The USD based contracts will shift to Secured Overnight Financing Rate (SOFR) once the LIBOR is eased out. The major differences in these rates are as under :

LIBOR	SOFR
Bank to Bank Lending Rate including credit risk component.	Risk-free rate – base rate. Credit risk is not taken into consideration.
Forward-looking rate published daily from one day to one year	Overnight – secured repo rate. Published on daily basis by Federal Reserve Bank of New York.
Term structure -available for seven periods.	No term structure (as of now). Based on overnight borrowing and lending in the US Treasury Repo market.
Based on the panel of Banks submissions and expert judgement	Transaction based
Based on roughly USD 1 Bn transaction per day	Based on roughly USD One Trillion per day.
The rate is based partially on market data and expert judgement by the panel	Relies entirely on transaction data. Calculated as a volume weighted median of transaction level data observed over the course of a business day. around 8 am Eastern Time. There is an option to republish the data in case errors are found.



All financial institutions including Asian Development Bank have already worked out strategies for the transaction of their loan books linked to LIBOR to different benchmarks for the respective currencies.

The derivative transactions are governed by the guidelines issued by the International Swaps and Derivatives Association (ISDA). The counterparties to a derivative transaction need to execute an ISDA document that has listed guidelines regarding interest payments and the structure of the derivative transaction. ISDA2020 IBOR (Interbank Offered Rate) Fallback Protocol had already set the guidelines wef 25.1.2021.

The method of interest calculation is also different in LIBOR and SOFR. In the case of LIBOR based financing, the benchmark rate is fixed in advance and the interest and principal amount are paid at the end of the period. The borrower will know his outgo of interest payment. In the case of SOFR based borrowing, the SOFR is not determined until the end of the periods as the SOFR to be applied is on day to day basis. In addition to the rate, credit risk premium need to be loaded to the rate.

### Measures in India

Reserve Bank of India appointed a committee in June 2013 headed by Shri P. Vijaya Bhaskar to review the financial benchmarks

in India. Based on the committee's recommendations, The Financial Benchmarks India Pvt Ltd. (FBIL) was set up to act as administrator for providing benchmarks in India in debt, interest rates and forex markets. The benchmarks pronounced by them are also used for the valuation of investment portfolios of the banks periodically. The FBIL announces the following benchmarks:

BENCHMARK	BASIS	DECLARATION
Overnight MIBOR	Based on Call money transactions	Daily basis. Announced at 10.45 am
Market Repo Overnight Rate (FBIL -MROR)	Based on basket repo trades	Daily at 10.45 am
Term MIBOR	Based on Pooling based submission by market participants	Daily basis at 11.45 am Three tenors 14 days, 1 and 3 months
Reference Rate	USD/INR, EURO/INR, GBP/INR, JPY/INR	Daily at 1.30 pm
Forward Premia curve	USD-INR	Daily at Overnight, 1 to 12 months tenor.
MIFOR curve	USD LIBOR	Daily at Overnight, 1 to 12 months tenor at 4.15 pm

In addition to the above benchmark rates, FIBL also announces benchmark rates for Treasury Bills, CDs, MIBOR-OIS, FC-Rupee Options Volatility Matrix and G-Sec valuations.

The IBA has since formed three workstreams on (i) LIBOR transition arrangements, (ii) Rates and methodology and (iii) Outreach to market participants. IBA has also circulated a guidance note among its member banks to enable them to assess their preparedness for LIBOR transition on various parameters, viz., exposure assessment and assessment of the accounting, tax, information technology (IT)

related implications. They have already communicated to the FICCI, CII and ASSOCHAM to advise their members to prepare for the transition.

As per the existing Reserve Bank of India guidelines, External Commercial Borrowings are linked to LIBOR (maximum borrowing costs Benchmark rate + 450 bps) with Minimum Average Maturity Period ranging

from 1 to 10 years, Trade Credits (Buyers' Credit and Suppliers' Credit) with benchmark rate plus 250 bps maturity ranging up to 3 years, Interest Rate on FCNR deposits linked to LIBOR plus 200/300 bps. In addition to that several Interest Rate Derivative transactions would also be based on benchmark rates.

The Government of India borrows from several international agencies and Countries such as Asian Development Bank, World Bank, International Development Association, International Bank for Reconstruction and Development, International Fund for Agricultural Development



The Greenback (USD) is the most traded currency in the world forex markets. 88% of global transactions include USD on one side of the transaction. The next comes EURO with 32.28 % and JPY with 16.80%.

and IMF based on bench market rates. As of 31<sup>st</sup> December 2020, the total bilateral debt India owes is USD30.5 Bn and multilateral debt of USD67.9 bn. If these borrowings are based on benchmark rates, they need to be relooked into.

A shift away from LIBOR will necessitate a distinct set of risks affecting external commercial borrowings including trade credits, cross-currency swaps, LIBOR-linked interest rate swaps, corporate bonds, credit default swaps and even the LIBOR-based Mumbai Interbank Forward Offer Rate (MIFOR) contracts, FCNR deposit rates and the government borrowings for foreign counterparties.

## Constraints

The change in benchmark rates from LIBOR to other currency specific benchmark rates may not be a smooth transition. While new contracts entered into on new Alternate Reference Rate after ceasing to exit from LIBOR will yet to test the waters on its implications, where transition of existing contracts based on LIBOR to new ARR are likely to have impact on Risk assessment, Tax implications, Control mechanism, change in protocols and preparedness of the present IT systems in the Banks to smoothly move to the new Bench mark rates. The accounting Authorities must come out what accounting methods to be

amended either in US GAAP & IFRS as well in IND AS. It may also pose new interest rate risks and whether the financial institutions and the Banks and their counterparties are prepared for probable losses is yet to be foreseen. The constraints are also foreseen in redrafting the ISDA agreement and redoing the entire exercise of the contracts which have been executed and likely to continue beyond 2021.

The corporates need to readjust their portfolios as they may have to hedge the additional exposures and meet the increased costs in lending after shifting to new benchmark rates. They must individually evaluate the transition process by understanding various contracts they have executed, legalities involved in renegotiating the rate and the contracts, measure the additional burden that may arise on costs. Banks must equally scan through their entire portfolios which were based on LIBOR benchmark rates and initiate discussions with the counterparties well in advance to mitigate any hiccups in transition. The ICAI may also investigate the impact of these transitions on the accounting standards. Since the new alternate benchmarks have not considered the credit risk as component in basing the rate, a fresh credit rating may have to be undertaken by the corporates from International Agencies which are not only time consuming but also involving huge costs.

## RBI guidelines

Reserve Bank of India vide circular dated 8<sup>th</sup> July 2021 had given the following steps to be taken by all the concerned such as Banks and financial institutions:

(1) They should cease entering into new financial contracts with LIBOR benchmark rates by



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December 31, 2021.

(ii) They must include robust fallback clauses in all financial contracts that reference LIBOR and the maturity of which is after the announced cessation date of the LIBOR settings.

(iv) Banks have also been advised to cease using the Mumbai Interbank Forward Outright Rate (MIFOR), a benchmark which references the LIBOR, as soon as practicable and in any event by December 31, 2021.

(v) Contracts referencing LIBOR / MIFOR may generally be undertaken after December 31, 2021 only for the purpose of managing risks arising out of LIBOR / MIFOR referenced contracts undertaken on or before December 31, 2021.

## Conclusion

The shift away from LIBOR is not as simple as it appears. All the stakeholders namely, Corporates, Financial Institutions, Banks, Regulators, Accounting Standard Authorities, Government need to address the issue fast and make them aware of the implications. Someone compared this transition as vital as the “Y2K” transition which happened two decades ago. The time is ticking fast. The saying that “Cross the bridge once we come to it” may not jell well in this situation. ■■■

## References :

(1) LIBOR: The Rise and the Fall – Article in RBI Bulletin November 2020.



All financial institutions including Asian Development Bank have already worked out strategies for the transaction of their loan books linked to LIBOR to different benchmarks for the respective currencies.

# Investment Banking in India: The Ultimate Industry Overview

*The importance of finance in business for revenue generation and value creation is indisputable. The COVID-19 pandemic has raised questions on the ongoing viability of businesses and the traditional approach of raising finance. Lockdowns have become an inevitable safety measure, however, giving rise to a situation where businesses are facing cash crunch as a challenge for survival. The hardship faced by businesses is due to a fundamental change in consumer behaviour, supply chain, client acquisition, delivery of product/ service and conduct of key functions in business. In these hard times, the role of investment banks is vital. An investment bank may act as life support to these devastated businesses requiring funds for sustenance. Read on...*



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Investment banks link businesses looking for funds with potential investors. Investor may be an angel investor, or a private equity fund, venture capitalist or a capital market participant. Further, the primary goal is to advise these business houses in identifying capital opportunity, structure and negotiating a deal and executing the matters such as transaction. Consulting is an 'add on' service offered by these banks, where they recommend a strategy for business expansion, advise on how the markets have been performing, advise on when to make a public offer, or investors active in the space.

## Broad Overview

In recent times, the term "Investment Banking" has gained increasing popularity. It is a separate division of banking that focuses on raising long term capital, whether debt or equity. Investment bankers offer advisory services to corporations, institutions, and governments looking to raise capital, merge, acquire or form a joint venture.

Investment banking means different things to different people. There is no definition or set bound of work that a banker is exclusively entitled to execute.

There are different phases in the deal cycle that bankers focus on:



1. **Sell side mandate:** Identify appropriate buyers and implement a competitive sale process.
2. **Buy side mandate:** Select appropriate targets to complement the business.
3. **Fund raising:** Preparing the company and finding the right type of capital and investor base.
4. **Leveraged buyout (LBO):** Structure tailor-made solutions to ensure smooth and efficient transitions between current family management and owners.

The process of fund raising, typically a private equity product, kicks off with business development, i.e., identifying and assessing companies with fund requirements. Depending on the type, appetite of an investment bank and its experience in the domain, the ticket size is decided. Say a bulge bracket investment bank regularly handles multibillion deals whereas deals in boutique investment bank may range much lesser.

Though business development is a continuous effort and happens throughout the year, it is an initiator to the whole funding process. Top level management, managing director, or business heads rarely get involved in the deal process. They are more about lead generation, sourcing new clients, serving the existing ones, seeking referrals and reaching out to their own network.

To reach out to potential clients, a pitchbook is prepared highlighting the IB's (Investment Banker) track record and credibility. It also includes elements such as how the IB can help the company to raise capital, how is the industry and peer set performing, at what multiples are the deals happening, technique best suited for valuing the company and etc. The point here is to convince the company to hire the IB as their advisors.

Once the deal is originated, i.e., the company agrees to proceed with the Investment Bank as its advisors, and signs an Engagement Letter (EL), the investment bank acts as an advisor, joint or exclusive (depending on the EL signed), to carry out the transaction on behalf of the company. The role of an IB here is to sell the company/ or some percent of its stake to the investors, based upon the fund requirement of the company.

The deal process can be complex and time-consuming. In order to market the company, investment bankers spend a lot of time on spreadsheets, building financial models and arriving at a valuation using different techniques to advise their clients. Various collaterals need to be prepared underlining information such as the favourable dynamics of the industry that the company operates in, the performance of the company, prospects of future earnings, transaction outline, purpose and utilisation



**Investment bankers offer advisory services to corporations, institutions, and governments looking to raise capital, merge, acquire or form a joint venture.**

of funds, and other variables that might be of interest to the investors. The information is generally presented in marketing collaterals categorised as follows:

1. **Teaser** – A one to two-page summary about the company on no name basis.
2. **Information Memorandum** – A detailed presentation about the company highlighting all elements from industry to future forecasts.
3. **Financial Model** – Historical financial performance and forecast, business drivers, key performance indicators, ratios and expected business valuation.

Initially a teaser is circulated amongst the investors to garner interest. If an investor is interested to pursue the opportunity further, a Non-disclosure agreement (NDA) is signed. Following which, a detailed analysis would be carried out by the investor to form a better understanding about the company. A discussion





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between the management and investor is bridged by the banker to form a conclusive stance on the core competencies of the company. Based on the information gathered, if the investor is convinced about the company's performance potential and willing to take a further step, the investor sends an investment proposal in the form of a non-binding letter of intent (LOI) expressing their intention to participate in the transaction. Points such as purchase price, form of purchase consideration, post-acquisition capital structure, time required to issue a binding offer, and other relevant details to the transaction are mentioned in the LOI.

Supplementarily, a process of due diligence is conducted through an external party, confirming all relevant facts related to the financial, commercial and legal aspect of the transaction. Consequently,

a final binding bid is sent by the investor. Negotiations between IB and investors keep taking place on the purchase consideration, structure of transaction until a mutually agreeable decision is arrived at. Once an agreement is reached on the offer made by the investor, a purchase agreement is signed by the buyer and seller, exhibiting a successful deal closure. The company receives a cheque from the investor and the IB gets its share of commission/ fees from the company.

The whole affair of fund raising looks easy but may require six months to about a year to complete. The number of people involved in the transaction are less but the consideration received is quite high, making the IB industry an attractive career option amongst many chartered accountants.

To enter into this profession, one must have a functional background in the field of financial modelling, business valuation, pitchbook and presentations, transaction documents, relationship management, sales, business development and negotiations. Valuation is a potential game changer that could revitalize the entire transaction process. An in-depth analysis is required with focus on metrics such as management of the company, capital structure, future earnings prospect, market value of company's assets and other decisive parameters depending on the industry and

core business of the company. Valuation is an elementary exercise of quantifying the value of a company based on which investors would invest their money. The size of industry, growth drivers, active players, competitive advantage and in depth analysis are imperative functions of analyst/ associate. Negotiation is a skill that bankers have to master. Every skill plays an important role till the day an investors signs a cheque in the name of the company.

Another domain of the job involves persuading the investors to buy stakes in the company. The most common types of investors are angel investors, venture capitalist, private equity funds, banks or institutional investors. The rationale behind investors putting their money into businesses is clear as day—returns. Business tycoon Ratan Tata, angel investor to multiple start-ups, has been promoting entrepreneurship in India. He says, “the drive to start something new, the fire in the belly, a better way to do something that is being done or a good opportunity to undertake all to make a difference... and above all the courage and tenacity to see it through, be it good or bad, and yet make it happen are the hallmarks I look forward in entrepreneurs”.

### Regulatory Framework

An investment bank incorporated under Companies Act, 2013, shall be governed by the provisions of that Act.



The whole affair of fund raising looks easy but may require six months to about a year to complete. The number of people involved in the transaction are less but the consideration received is quite high, making the IB industry an attractive career option amongst many chartered accountants.

Similarly, an investment bank incorporated under a separate statute shall be regulated by that respective statute

Merchant banking is a part of investment banking that deals with raising funds through capital markets. Investment banking is a wider concept that covers the functions of a merchant banker. The only difference between a merchant banker and an investment banker is that of a regulator. Since capital markets is primarily governed and regulated by the Securities Board and Exchange of India (SEBI), merchant bankers have to compulsorily register themselves with SEBI. Merchant bankers are organisations that link the investors with companies seeking funds in capital markets.

SEBI classifies merchant bankers as:

1. Issue Management
2. Underwriting
3. Portfolio Management
4. Consultants/ Adviser to issue
5. Investment Adviser
6. Others

The role and responsibilities of a merchant banker is regulated by the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992. In India, merchant banking services were started only in 1967 by National Grindlays Bank followed by Citi Bank in 1970. The State Bank of India was the first Indian commercial bank having set up a separate merchant banking division in 1972.

The future of investment banking in India looks bright. Investment banking is a high growth sector poised to thrive in a post pandemic economy. The key drivers that may dominate the IB sector in 2021 are:

1. Growing capital requirements : Capital are scarce.
2. Rise in financial challenge of business environment.
3. Surge in demand for fundamental advisory.
4. Advancement in technology.

### Deal Scenario in India

As per The Telegraph (India), during the year

2020, the average Indian investment banking pool has jumped 30 per cent from \$600-700 million to \$800-900 million. This is expected to rise to \$1 billion over the next 2-3 years. This in itself reflects the trust investors have placed in the Indian companies. Investors undoubtedly admit that the COVID-19 outbreak is an apparent obstacle and eventually things are going to normalise.

On the Private Equity/ M&A side, the largest deal in 2020, by volume and value was the funding raise by Jio Platforms. It raked a whopping \$17.3 bn from multiple investor entities for a stake of 22.4% valuing the company at an enterprise valuation of \$65-70 bn. The deal saw participation from investors such as Facebook, KKR, Vista Equity and others. This was the first time that during the pandemic, any group globally managed to raise such a volume of capital. Further, the start-up ecosystem in India has come a long way since 2014. In a recession-like year, where there was a huge revenue



Investment banking is a wider concept that covers the functions of a Merchant banker. The only difference between a merchant banker and an investment banker is that of a regulator.

crunch and uncertainty about the post-COVID scenario, some start-ups have weathered the storm and successfully raised funds during the pandemic at a valuation of more than \$1 bn. These unicorns have solved key challenges faced by individuals and businesses during the lockdown. Some of these start-ups are Nykaa (Online marketplace for beauty and wellness products), Zerodha (Stock trading platform), DailyHunt (News and content aggregator), Cars24 (Online used car market place), FirstCry (Baby product marketplace) and Unacademy (e-learning platform).

### Opportunities for Chartered Accountants

The growth of the Indian economy has ushered growth in almost every sector and led the way to the emergence of new age sectors. Opportunities for Chartered Accountants have opened up in not only in conventional sectors like Banking, Manufacturing,

Insurance but also in new age sectors like modern Retail, Information Technology, Education, e-commerce, including segments like Investment Banking, Venture Capital/ Private Equity. Chartered Accountants have also partnered with businesses like never before to increasingly scale the corporate ladder and occupy the position of a Chief Financial Officer (CFO) or a Chief Executive Officer (CEO).

The career of an investment banker is expected to last forever. With an established start up ecosystem in a country like India and increasing competitive landscape, the future prospects look to be high yielding. Earlier, the profile of an investment banker to a Chartered Accountant would have been an unfamiliar prospect. However, in recent times, a lot of CAs are shifting to IB due to its popularity and compensation benefits. Starting a career in investment banking is not easy. A lot of banks look for experienced



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professionals. Even an analyst (first in the corporate hierarchy), is expected to have a basic understanding of the profession, so experience is always preferred. The corporate hierarchy in an investment bank or to say the basic career path of an investment banker generally starts as an intern trainee/analyst and gradually acquires top positions of Director and Managing Director.

Depending on the requirements of different organisations and the zest and zeal of the candidate, many banks consider a newly qualified Chartered Accountant as a right fit for the role of Analyst. However, few of them may ask CAs to do an internship program for few months after which they would be offered a full-time job. A potential candidate should necessarily have a financial background with solid analytical skills. Advanced skills in using spreadsheets and on-point presentations are a must. ■■■



## Carbon Accounting Practices in Select European Companies

*In the 21<sup>st</sup> century, carbon market development has produced a mass of challenges for corporations, societies and nations. Carbon emission disclosures and their accounting treatment are essential for any corporate sector conducting businesses that have carbon emissions. Carbon trading practices in Europe are still working on an agreement on how to record carbon emission rights in the financial statements. The objective of this study is to explore the accounting practices for the recognition and disclosure of carbon allowances in the absence of any specific accounting standard. Results show a large divergence in the accounting of carbon allowances in their financial statements. Read on...*



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### Introduction

Carbon markets expansion has produced a mass of challenges for the corporations, societies, nations – of which, accounting for carbon emissions is perhaps the least implicit area for the corporation. Experts of carbon trading in Europe are still working on an agreement on how to record carbon emission rights in the financial statements whereas, companies emitting carbon emissions in the United States have just started to struggle with the accounting issues of an already

multifaceted and unknown market. (ACCA, 2010)<sup>1</sup>

Accounting standard setters globally have made forethoughts on this emergent topic but still, there is an absence of accounting standards to manage carbon emissions accounting. There are no specific guidelines on how to account for carbon emission allowances by companies in their financial statements. One report of (CNBC, February 2019)<sup>2</sup> shows that “half of European Union companies have no carbon reduction plan despite





admitting climate change risks and these European companies do not show a clear picture of any disclosure of carbon accounting treatment in their financial reports”.

European Union (10.76%) is the third-largest carbon emitter in the world after China and the USA. But EU is consciously aware about mitigating CO<sub>2</sub> emissions in the world. Seventeen emission trading schemes are running in the EU right now. Hence, the companies in the EU are facing problems on accounting treatment of carbon because no authoritative accounting standard exists at present. Without any accounting standards that specify how to account for carbon emission allowances, it is hard to compare the financial statements of companies. In general, there are multiple ways to account for carbon emission allowances. According to the different interpretations of general principles of accounting (International Financial Reporting Standards, IFRS), some companies classify emission rights as intangible assets, others as inventory assets and some others as R&D, but the fact is that there is no common standard for different institutional contexts.

This article attempts to explore accounting practices of carbon allowances followed by

companies in the EU through examination of their financial statements.

## Standardization of Carbon Accounting at International and National Level

- In 2003, the emerging issues task force (EITF)<sup>1</sup> brought carbon accounting onto the agenda, but it was removed in a very short time. Due to the lack of mandatory regulations, many companies developed their accounting policies related to carbon emissions during this period. Consequently in 2004, (IFRIC)<sup>2</sup> published IFRIC-3 on 2/12/2004, effective from 1/3/2005, had been withdrawn in June 2005. In IFRIC 3 Emission Rights, emission rights (allowance) are recognized as **intangible assets** and measured in accordance with IAS-38 intangible assets. If the government issues allowances for less than fair value, the difference between the amount paid and fair value of allowance is accounted as **government grant** in accordance with IAS-20 accounting for government grants and disclosure of government assistance. As a participant produces emissions, a **provision for its obligation** is recognized to deliver allowances in

accordance with IAS-37, provision contingent liabilities and carbon assets. Recognition under IFRIC-3, Allowances - Intangible asset - **fair value** at initial recording creates without payments - it recognized a grant which is deferred revenue in the financial statement. Recognition of a provision for its obligation to deliver allowances as emissions are produced and to measure them at fair value. The grant is gradually transferred from deferred revenue to income at its initial value. IFRIC-3 withdrawal because Mixed Presentation Model (gains and losses derived from the valuation of liabilities are reported in the income statement, while the gains and losses derived from any revaluation of the emission allowances were recognized under equity in the balance sheet). Mixed measurement Model (either at cost or fair value). After these mismatches, very few companies subject to such schemes have applied IFRIC 3 voluntarily. Instead, a range of approaches have developed in practice which can be broadly grouped into either the net liability approach or the government grant approach. In Europe, there has, however, been a strong trend towards the net

<sup>1</sup> "The Emerging Issues Task Force (EITF) is an organization formed by the Financial Accounting Standards Board (FASB) in 1984 to identify, discuss and resolve financial accounting issues with an aim to improve financial reporting."

<sup>2</sup> "IFRIC Interpretations are developed by the IFRS Interpretations Committee (previously International Financial Reporting Interpretations Committee IFRIC) and Interpretations are issued after approval by the International Accounting Standard Board (IASB). IFRIC Interpretations issued IFRIC- 3 Emission Rights."

# Accounting Standards

liability approach. In the net liability approach, emission permits granted are recorded at their nominal amount (i.e., nil if granted for nil consideration) and the entity only recognizes a liability once actual emissions exceed the permits granted and are still held. Under this approach, emission permits purchased are accounted for as any other purchased intangible asset.

- After this period of time in 2007, (FASB)<sup>3</sup> and (IASB)<sup>4</sup> started a joint project. IASB began a project about emission trading schemes along with FASB in December 2007. This project aims to develop comprehensive guidance in accounting for emission traded schemes and revise existing relevant standards like IAS- 38, IAS-39, IAS-20, IAS-2, and IAS-8.
- In order to tentatively suggest accounting treatment, after May 2010, IASB tentatively decided that an entity should recognize the allowances received free of charge from the government as assets and measure them initially at fair value. Another tentatively decided that an entity

recognizes a liability that represents its promise to pay allowances throughout the commitment period irrespective of whether the entity has already emitted.

- In December 2012, IASB formally reactivated the project as an IASB-only research project and deferred joint work with FASB. In 2015, the project was renamed from “Emission trading schemes” to “Pollutant pricing mechanisms” to address a variety of schemes that use emissions allowances to manage the emission of pollutants.
- FERC (Federal Energy Regulatory Commission)<sup>5</sup> of the US has issued GHG accounting guidance: there is no accounting standard or interpretation in US GAAP Suggested Accounting Treatment (2007). Emission allowance should be classified as inventory, measured on a historical cost basis (that is, they should be valued at their original cost, in most cases zero), with recognition of costs as emissions are made (that is, as the allowances are consumed) on a weighted average cost basis.
- There are several IFRS guidelines on the

recognition, measurement, and disclosure of financial elements connected to environmental matters.

However, there is not a single standard focused exclusively on environmental issues and their associated effects on the firms' accounts.

- **Guidance note on Accounting for Self-Generated CERs (Issued 2012)** - At the national level, The Institute of Chartered Accountants of India (ICAI)<sup>6</sup>, issued a Guidance Note on ‘Accounting for Self-generated Certified Emission Reductions (CERs)’. There is no specific Accounting Standard or interpretation provided by the International Accounting Standard Board (IASB) in relation to the accounting for Certified Emissions Reductions (CERs). There are, however, existing Accounting Standards (AS) that deal with the principles that should govern accounting for Certified Emissions Reductions (CERs). In this note, ICAI provides guidelines on how to account for carbon credits generated under the Clean Development Mechanism, i.e., CERs, which can be

<sup>3</sup> “The Financial Accounting Standards Board (FASB) is an independent non-profit organization that is responsible for establishing accounting and financial reporting standards for companies and non-profit organizations in the United States, following GAAP. The FASB was formed in 1973.”

<sup>4</sup> “The International Accounting Standards Board (IASB) is the independent, accounting standard-setting body of the IFRS Foundation. The IASB was founded on April 1, 2001, as the successor to the International Accounting Standards Committee.”

<sup>5</sup> The Federal Energy Regulatory Commission is the United States federal agency that regulates the transmission and wholesale sale of electricity and natural gas in interstate commerce and regulates the transportation of oil by pipeline in interstate commerce. The FERC was founded on 1 October 1977. It was issued GHG accounting guidance.

<sup>6</sup> The Institute of Chartered Accountant of India issued a Guidance Note on ‘Accounting for Self-generated Certified Emission Reductions (CERs) in 2012’.

considered as assets of the generating entity. ICAI guidance for self-generated CERs-

- **CERs is an asset** - The Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India, defines an 'asset' as follows: "An asset is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise." CER is an asset as per the definition. (UNFCCC)<sup>7</sup> - Approved CER as an Asset, under approval process – Contingent assets AS 29 (provisions, contingent liabilities, and contingent assets).
- **Recognition of CERs** - "An asset is recognized in the balance sheet when it is probable that the future economic benefits associated with it will flow to the enterprise and the asset has a cost or value that can be measured reliably." CER should be recognized on certification by UNFCCC at nominal cost (consultant fees and cash payment to UNFCCC towards administrative cost).
- **Type of assets** - CER is an intangible asset as per AS 26 "an intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services for rental to others, or for administrative purposes." (Ind AS 38). However, other requirements of AS 26 such as an intangible asset should include assets that are developed by the entity. Development should be recognized only if, its intention to complete the IA and use or sell it. CER is an intangible asset.
- **Accounted as Inventories** - Intangible assets held for the purpose of sale in the ordinary course of business are excluded from the scope of AS 26 and therefore are to be accounted for as per AS-2, valuation of inventories. Therefore, even though CERs are intangible assets these should be accounted for as per the requirements of AS 2.
- **Measurement of CERs** - Since CERs are inventories for an entity that generates the CERs, therefore, the valuation principles as prescribed in AS 2 should be followed for CERs. CERs should be measured at cost or net realizable value, whichever is lower.
- **Income Recognition** - Since CERs are recognized as inventories, the entity

should apply AS-9 to recognize revenue in respect of sales of CER.

- **Disclosure** - An entity should disclose the following information relating to CERs in the financial statements:
  - a. No. of CERs held as inventory and the basis of valuation.
  - b. No. of CERs under certification.
  - c. Depreciation and operating and maintenance costs of emission reduction equipment expensed during the year.

## The objectives of the present research study are:-

- To study carbon accounting practices in select European companies.
- To identify various heads under which CO<sub>2</sub> Emission Allowances are recorded.

## Research methodology

For the study, annual reports of 25 companies were analyzed through content analysis technique. The present study covers one year's data from 2017-18. In order to achieve the objective of the present research work, sample units have been selected on the basis of the ACCA<sup>8</sup> (The Association of Chartered Certified Accountants, 2010) report including convenience sampling and data availability. 25 units are selected from the European Union (EU) countries from different sectors i.e., Combustion, Iron, Steel, and Refining.

<sup>7</sup> The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty adopted on 9 May 1992 and opened for signature at the Earth Summit in Rio de Janeiro from 3 to 14 June 1992. It then entered into force on 21 March 1994, after a sufficient number of countries had ratified it. The UNFCCC objective is to "stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". As of 2015, the UNFCCC have 197 Countries.

<sup>8</sup> Association of Chartered Certified Accountants (ACCA) is the global professional accounting body offering the Chartered Certified Accountant qualification (ACCA). ACCA's headquarters are in London with principal administrative office in Glasgow. It was founded on 1904.

# Accounting Standards

**Table 1: Name of the sample Countries and Sectors**

S. No.	Country	No. of Companies	Percentage (%)	Sector
1.	Luxembourg	01	4%	Combustion; Iron and Steel
2.	Portugal	01	4%	Combustion
3.	Poland	03	12%	Combustion
4.	France	01	4%	Combustion
5.	United Kingdom	03	12%	Refining and Combustion
6.	Germany	04	16%	Combustion, Iron and Steel
7.	Czech Republic	01	4%	Combustion
8.	Spain	01	4%	Combustion
9.	Slovakia	01	4%	Iron and steel
10.	Netherland	03	12%	Combustion
11.	Austria	01	4%	Combustion
12.	Italy	02	8%	Refining
13.	Finland	01	4%	Iron and steel
14.	Greece	02	8%	Combustion
	<b>Total</b>	<b>25</b>	<b>100%</b>	

## Carbon Accounting Practices in European Companies

This section discusses carbon accounting mechanisms followed by European Union Companies which are summarized in Table 2 and Table 3 at a glance. These carbon accounting treatments have been compiled from reference companies. The table shows that sample companies of the study adopted various accounting treatments for carbon emission allowances and the different forms of presentation of carbon emission allowances in their financial statements.

**Table 2: Accounting practices for Carbon Emission Allowances**

S. No.	Accounting Treatment of Carbon	No. of Companies	Percentage (%)	Measured	
				At Cost	At fair Value
1.	Intangible Assets	08	32%	08	-
2.	Inventories	05	20%	05	-
3.	(Both Intangible Assets, Inventories)	04	16%	04	-
				02	02
4.	Other assets	01	04%	01	-
5.	No Disclosure	07	28%	-	-
	<b>Total</b>	<b>25</b>	<b>100%</b>		

**Table 3: The different forms of Presentation of Carbon Emission Allowances in Financial Statements**

S. No.	Accounting Treatment of Carbon	No. of Companies	Percentage (%)
1.	Provisions	11	44%
2.	Derivatives	13	52%
3.	CO <sub>2</sub> allowances show in cash flow from operating activities.	03	12%
4.	Sales of CO <sub>2</sub> allowances show in sales revenue.	02	08%



# Accounting Standards

5.	CO <sub>2</sub> shows in trade payable and other liabilities.	03	12%
6.	CO <sub>2</sub> emission rights are allocated to the company free of charge.	07	28%
7.	Show CO <sub>2</sub> emission rights as Non- amortizable assets.	01	04%
8.	Cost related to purchasing of emission rights shows under other operating expenses.	01	04%
9.	Changes in CO <sub>2</sub> emission allowances show in working capital (current assets, Inventories).	01	04%

## Analysis and Discussions

The above table shows which accounting treatments have been followed by different sectors.

- The result of this table shows that out of 25 companies, 8 companies (32) % have followed accounting treatment for carbon emission allowances (CEA) as intangible assets. Out of 8 companies, some companies held carbon emission allowances for “own use” are booked as intangible assets at cost price and some companies purchase carbon emission allowances (CEA) from the market for their use they are showing as an intangible asset. All 8 companies show CEA as intangible assets at cost price. The above table also shows 08 companies accounted for CEA as an intangible asset. Out of this 08, 07 companies are showing CEA as an amortizable intangible asset and only 01 company accounted for CEA as a non-amortizable intangible asset.
- The above table shows that out of 25 companies, 05 companies (20) %

show carbon emission allowances as inventories in their financial statements. Inventory is the goods and materials that a business holds for the ultimate goal of resale or trading purposes. When sample units hold Carbon Emission Allowances for a trading purpose then they accounted for CEA as inventories in books of accounts. All 05 companies show CEA as inventories at cost and net realizable value whichever is lower. An interesting fact is that out of 25 companies, only 05 companies treated CEA as an inventories in the head of current assets in the balance sheet but only 01 company shows changes in CEA as current assets in the working capital. It shows diversified accounting treatment followed by sample companies in the EU.

- In the above table out of 25 companies, only 04 companies (16) % show carbon emission allowances as both intangible assets and inventories in books of accounts when the company used CEA as its own used to show as intangible assets and when held for trading

purposes accounted as inventories. In these 04 companies, all show CEA as an intangible asset at cost price and all 04 companies show CEA as an inventories but 02 companies show at a cost price and 02 companies show at fair value.

- The table shows that out of 25 companies, only 01 (04) % company show CEA as other assets (other than intangible assets and inventories).
- It's a very interesting fact that out of 25 sample companies, a huge amount of companies 07, (28) % companies do not follow any accounting treatment for CEA. It's very shocking



Inventory is the goods and materials that a business holds for the ultimate goal of resale or trading purposes. When sample units hold Carbon Emission Allowances for a trading purpose then they accounted for CEA as inventories in books of accounts.

# Accounting Standards



A provision is an amount set aside from a company's profits to cover an expected liability or a decrease in the value of an asset, even though the specific amount might be unknown. A provision is not a form of savings; instead, it is a recognition of an upcoming liability.

but true these 07 companies are large energy sector companies in European Union countries but they have not disclosed any accounting treatment for carbon emission allowances.

- A **provision** is an amount set aside from a company's profits to cover an expected liability or a decrease in the value of an asset, even though the specific amount might be unknown. A **provision** is not a form of savings; instead, it is a recognition of an upcoming liability. Out of 25 sample units, only 11 (44%) units create a provision for carbon emission allowances/ GHG (greenhouse gases) and disclosed detailed information regarding carbon emission allowances provisions.
- The above table shows 13 companies out of which 25, 52% of sample units during trading of carbon emission

allowances through derivatives market and show CEA as a commodity. A derivative is a contract between two parties that derives its value/price from an underlying asset. The most common types of derivatives are futures, options, forwards, and swaps. These companies create CEA as a financial instrument.

- Out of 25 companies, only 03 (12) % companies show carbon emission allowances (CEA) in cash flow from operating activities. 05 companies those show CEA as inventories and other than this, 04 companies those show CEA as both intangible and inventories. But out of this 09 total companies, only 03 companies show CEA in cash flow from Operating Activities. Only 03 companies disclosed information about this.
- In this table out of 25 companies, 09 (36) % of companies treated carbon emission allowances as an inventory for the trading of CEA. But the interesting fact is that only 02 (8%) companies show sales of carbon emission allowances in sales revenue. Other remaining companies used CEA for trading purposes but the purchase and sales of CEA cannot be disclosed in their financial statements.
- Out of 25, only 03 (12%) companies treated CEA as

a trade payable and other liabilities.

- The above table shows that only 07 (28) % of companies disclose information about the fact that they are getting CEA free of charge from the government and other authorities. All 07 companies disclosed that they get free of charge carbon emission allowances and show as intangible assets at nominal value or nil value. Other remaining companies are also getting CEA free of charge but they cannot disclose it in their financial statements.
- Only 01 (04) % company disclosed "Cost related to purchasing of emission rights in other operating expenses". Other companies have not disclosed information regarding this.



Carbon trading practices in Europe are still working on an agreement on how to record carbon allowances in the financial statements. The result of the study concluded that divergent accounting treatment of carbon emission allowances has been followed by sample companies of European Union countries.

### Concluding Remark

Carbon trading practices in Europe are still working on an agreement on how to record carbon allowances in the financial statements. The result of the study concluded that divergent accounting treatment of carbon emission allowances has been followed by sample companies of European Union countries. All over the world, there is no single set of accounting standards for carbon emission allowances, so a large number of companies have not disclosed any information about carbon trading and some of the companies disclosed information about CEA but in a much-diversified manner. Without consistent accounting practices for carbon emission, it can be hard to compare the financial statements of companies. At present, there is no need for any new accounting standards for carbon allowances, the existing accounting standards are sufficient to deal with accounting issues of carbon

allowances. Some accounting bodies previously (IASB and IFRIC) have given guidance to CEA treated as an intangible asset (they are allocated free of charge or purchased) under the IAS 38. Other carbon allowances that are allocated for less than fair value should be measured initially at fair value, any difference between the amount paid and fair value should be identified as a government grant and accounted under IAS 20 (Accounting for Government Grants and Disclosure of Government Assistance). For accounting of liabilities, the liability should be recognized in the accounts as the emissions are made, and that this obligation should be treated as a "Provision" and covered by IAS 37 (Provisions, Contingent Liabilities, and Contingent Assets). Only proper guidance for how, when, and which existing standards are followed for carbon accounting treatment for companies all over the world and also companies in the European Union are required.



Some accounting bodies previously (IASB and IFRIC) have given guidance to CEA treated as an intangible asset (they are allocated free of charge or purchased) under the IAS 38. Other carbon allowances that are allocated for less than fair value should be measured initially at fair value, any difference between the amount paid and fair value should be identified as a government grant and accounted under IAS 20 (Accounting for Government Grants and Disclosure of Government Assistance).

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# SPAC: Solutions to Indian Housing Finance Sector

*Financing companies like Micro Finance Institutions (MFIs), Non-Banking Finance Companies (NBFCs), Co-operative Banks (CBs) and Banking companies (BC) are starving from lack of capital due to the threat of mounting Non-Performing Assets (NPAs). The reasons for recent jump in the NPAs and capital requirements were fuelled to a great extent by the COVID-19 pandemic. Collection efficiencies across all the lenders have reduced substantially. Read on....*

Big ticket industrial loans, luxury housing projects, commercial loans started showing mild symptoms of failure at the initial stage of the pandemic and currently they are in a further weakened stage due to liquidity crunch. Most of these loans were standard assets until the lock down began. Accessing the Capital Market is easy for existing listed companies but it is a herculean task for the unlisted



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companies. Most of the housing construction companies are unlisted, operate in a limited demographic market and do not have an all-India presence. As per the latest available data on incomplete projects in seven major cities namely Delhi-NCR (National Capital Region), Mumbai Metropolitan Region (MMR), Chennai, Kolkata, Bengaluru, Hyderabad and Pune, nearly 2.20 lakh housing units worth Rs 1.56 lakh crores where construction was started either on or before year 2011, is still stalled and incomplete. On all-India basis around 4.58 lakh houses are incomplete / stalled as on March 2020 and the Finance Minister has announced a support package of Rs 25,000 crores to revive the

stalled projects so that dream of lakhs of home buyers could be turned in to a reality.

The government will be infusing Rs 10,000 crores and the remaining will be routed through government-owned Life Insurance Corporation of India (LIC) and the State Bank of India (SBI). The government is planning to set up Category II – Alternative Investment Fund (AIF) registered with Securities and Exchange Board of India (SEBI) to pool all these investments. If we want to curb this menace of managing liquidity and ensuring easy access to the capital markets for these unlisted companies especially for house construction companies, the







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government should explore the uncharted waters.

### Special Purpose Acquisition Company (SPAC)

A SPAC is a publicly traded, developmental stage company that has no established business plan. It may be used to gather funds as a start-up or, more likely, it has the intent to merge or acquire another business entity. SPAC means a company with no commercial or business operations and formed strictly to raise capital through Initial Public Offering (IPO). These companies are formed for the purpose of acquiring other companies who are ready for sale due to multifarious reasons like debt challenges, liquidity issues,

litigations etc. SPAC performs as a cash rich enterprise who are scouting for perfect investment opportunities with adequate amount of funds in their kitty hence these are also known as *Blank Cheque companies*. SPAC will invest in any existing companies based on the expertise and experience of its management team. SPACs are famous in several European countries and in the USA. In the year 2020, more than 50 SPACs have been registered in USA and have raised around \$21.50 billion from the Capital Markets. After raising the money from public, SPACs will normally invest the same in selected projects within a 18-24 month period.

**The Operation Life Cycle of SPAC** - operations of SPAC could be summarized as follows,

- Established and participated in by private equity investors, institutional investors, venture capital companies and public, under the management and leadership of promoters who will have adequate professional experience and expertise in a particular industry or business sector.
- At the time of formation, SPAC will not have any business target but could be assumed that they might have internally short-listed investment avenues but the same may not be disclosed to public and investors.
- SPAC will be getting their IPOs underwritten or might

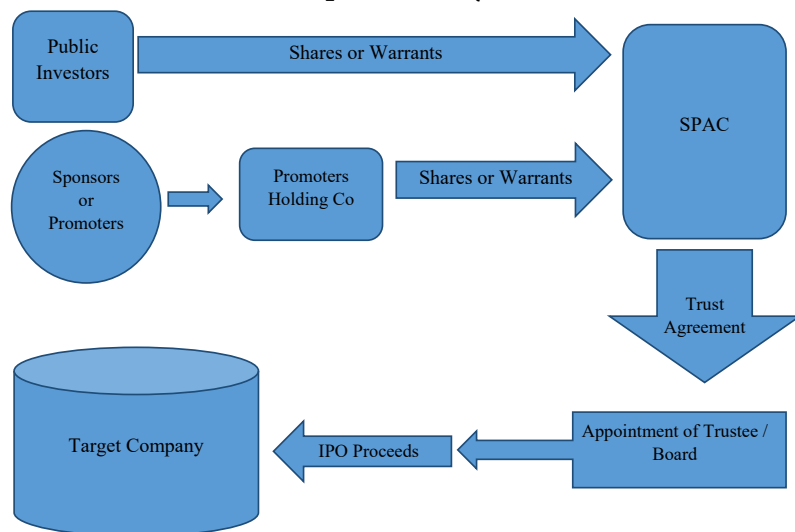
place the shares through private offer before offering it to the public at large.

- SPAC will have a 2 year period for investment and till that period, the amount raised through the IPO will be kept in an interest-bearing government / trust deposits. Income from such investments after meeting the operational expenses will be accumulated for the ultimate investment or business acquisition.
- If SPAC is unable to invest the amount raised, it will be liquidated after the specified period of 2 years and amount raised will be distributed back to investors.
- If SPAC is completing the acquisition, it will continue to be listed in the Stock Exchange like a normal ongoing business entity.
- Through SPAC acquisition, an unlisted company will become a listed entity and could enjoy all the advantages of a listed entity and shall bypass all the IPO formalities.



A SPAC is a publicly traded, developmental stage company that has no established business plan. It may be used to gather funds as a start-up or, more likely, it has the intent to merge or acquire another business entity.

**Chart – 1 Illustrates the operational cycle of SPAC**



### SPAC in India – Detrimental Laws and Regulations

Currently SPACs are not incorporated in India as there are multiple laws and regulations which do not authorise the forming and functioning of SPAC. An amendment in these provisions or specific laws are required to facilitate the functioning of SPACs. Some of the detrimental regulations are summarized as follows,

- **Objects clause in Companies Act** – SPAC will not have any object clause to list down as per Section - 4 of the Companies Act, 2013 since it is a company with an open acquisition proposal.
- **Striking off of a company** – As per section 248 of the Companies Act, 2013, The company can be struck off [a] When a company has failed to commence its business within one year of its incorporation [b] When a company is not actively carrying on any business or operation for a period of two immediately preceding Financial Years (FY) and has not made any application

within such period for obtaining the status of a “dormant Company” under Section 455 of the Act. In such circumstances, either the registrar of companies will strike off the name of the company on his own or the company may voluntarily apply for the strike off. SPAC may not be able to comply with this requirement since it will be waiting for a period of two years for a right investment opportunity.

- **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (amended Aug 2017) Profitability route** - Section 26 sets minimum eligibility conditions for a public offer like [a] Net tangible asset of at least INR 3 crore in each of the preceding three years (earlier requirement of maximum of 50% to be held in monetary assets has been done away with, in case the entire public offer is through sale). [b] Minimum average consolidated pre-tax operating profit of INR 15 crore during any three of the last five years [c] Net worth of at least Rs



If SPAC is unable to invest the amount raised, it will be liquidated after the specified period of 2 years and amount raised will be distributed back to investors.

1 crore in each of the last three years. It will be almost impossible for SPAC to meet any of the mentioned criteria.

- **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (amended Mar 2017)** - The condition for takeover is applicable only if the target company is listed, in which case it puts severe limitations on the extent of control that can be acquired and further increases the period for the transaction.
- **Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 (FEMR)** - FEMR is applicable in case either one of the SPAC or target company is listed outside India, or if an Indian SPAC receives investment from offshore / outside investors. As per guidelines, overseas investment will be subject to approval from Reserve Bank of India (RBI). Inbound and Outbound mergers are strictly regulated through FEMR Cross Border Regulations, 2018. Hence, multistage approvals are required for completing this process which is time consuming.
- **Stock Exchange Regulations** – Respective stock exchanges can set its own regulations for listing the SPAC shares and

compliances required. Many overseas stock exchanges are having its own controlling guidelines on SPAC listings, filing of information and de-listing. E.g., the London Stock Exchange (LSE) requires de-listing of a listed entity if the transaction is a reverse merger, once the merger is complete, they must reapply for listing. NASDAQ in the year 2018, proposed that SPACs should maintain net tangible assets of \$5 million to remain listed.

- **Redemption of Shares** – As per SPAC provisions in USA, investors have the right to redeem their shares and claim a refund of the amount they invested, till the acquisition of a target company. Such a provision in India will boost the investor confidence for SPAC like listed companies and will ensure liquidity to investors.
- **Income Tax (Capital Gains)** - As per the The Income-tax Act 1961, any gain derived by a person, from transfer of capital asset (being share in Indian Company) is taxable in India. Foreign SPACs acquire the entire share capital of the target company for cash consideration or in exchange of its own shares. In both the cases, capital gains

will ensue in the hands of the shareholders. If SPACs are made functional in India, it will be an amalgamation between two Indian entities and the resultant tax will be neutral, subject to complying with the Capital gain conditions.

### Indian Companies experienced taste of overseas listing through SPAC

One of India's biggest renewable energy company, ReNew Power opted for the SPAC route to get listed on NASDAQ. ReNew combined with RMG Acquisition Corporation II (RMG II), a US-based SPAC and after the deal has become a publicly listed company in NASDAQ. RMG II is a SPAC for effecting a merger, stock purchase or similar business combination with one or more businesses. Videocon D2H got listed in NASDAQ through reverse merger with "Sliver Eagle Acquisition Corporation" a SPAC co-founded by former chief of Hollywood studio MGM Harry Sloan and media sector veteran Jeff Sagansky. The shares issued by Videocon D2H as American Depositary Shares (ADSs) was distributed directly to Silver Eagle's stockholders.

Online travel agency Yatra was acquired through reverse merger by Terrapin 3 Acquisition Corp (TRTL), a NASDAQ-listed SPAC. TRTL was listed on NASDAQ in 2014, underwriting of the issue was done by Deutsche Bank. This deal was done through Yatra Online Inc, the US-based holding company of Yatra.com.

### SPAC in Indian Housing Sector

Government and regulators are examining the feasibility aspects of bringing the concepts of SPAC to India. SEBI has constituted a committee of experts (COE) to examine the various aspects under Primary Market Advisory



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Like finding an easy IPO for start-up companies, SPAC formats could easily help the housing sector which is bleeding because of the huge volume of incomplete projects. Long pending projects will take away the confidence of investors in the real estate and home buyers will not get the delivery of their dream home. Housing Finance Institutions (HFIs) have financed an almost sizeable portion in these pending projects which is affecting their liquidity and profitability since majority of these accounts are already in NPA or have no adequate security to enforce the mortgage. A formalized SPAC in housing finance sector could operate pan India which will ensure economies of operations in materials acquisition, overall management, construction cost and effective utilization of resources. HFIs and customers will be ready to shell out more money if they are getting an adequate confirmation that projects will be completed, and they will be getting their house completed. This will be a complete beneficial situation to all parties involved in the

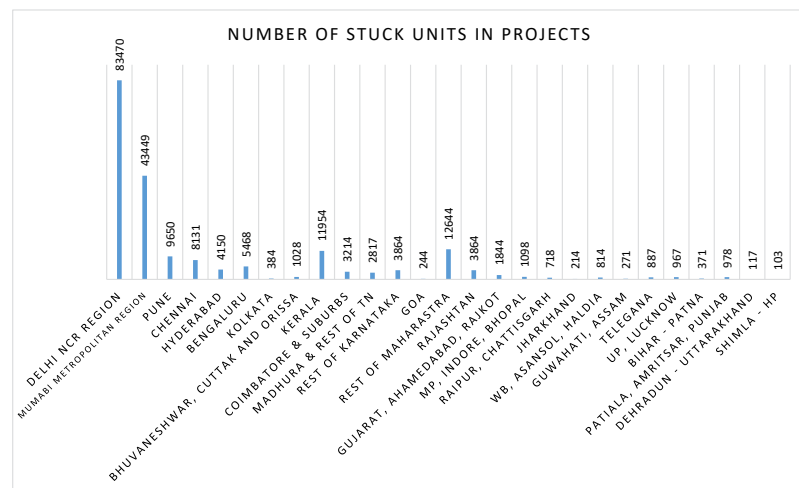


The condition for takeover is applicable only if the target company is listed, in which case it puts severe limitations on the extent of control that can be acquired and further increases the period for the transaction.

transaction like home buyers, HFIs and SPAC since they will be reviving a totally loss asset into a cash generating unit. SPAC being a cash rich entity, could negotiate and purchase the assets at a reasonable amount or could negotiate between lenders and home buyers to complete and handover the projects.

Capital Market regulator SEBI could compare the respective stock exchange control mechanisms and compliance requirements since these companies are listed across NASDAQ, London Stock Exchange, Australian Securities Exchange etc. In the FY 2020-21, more than 15 companies went public for IPO and raised more than Rs 25,000 crores, we should consider that a substantial portion of the FY was under the threat of pandemic hence it could be assumed that appetite of Indian investors for IPO is on the higher side and the government could channelize the same to revive the most required segments in the industry.

**Table 1: Location specific details of delayed units and incomplete projects in India**



Source: Consolidated from various reports like Economic Times, JLL, Magic Bricks, Times of India, Business standard

Table 1 depicts that majority of the stuck projects are in Delhi-NCR region (83470), Mumbai Metropolitan Region (43449) and other parts of Maharashtra (12644). The total number in these three areas when put together comes to around 1.40 lacs units. If a SPAC is at least concentrating only on these areas, it could be able to complete and handover around 1.40 lacs units. Even if the activities are circumscribed in to these two major regions namely, Delhi-NCR and MMR, units totalling to around 1.27 lacs could be completed. SPAC could ensure operational efficiency since they can focus on this location which will ensure simultaneous management of projects and easy movement of materials and services. As per assessment made in report named, Brick by Brick prepared by the Royal Institution of Chartered Surveyors (RICS) in association with international property consultant Knight Frank, India is likely to need additional 25 million more affordable houses by year 2030. As on July 2019, the report estimates that the current housing shortage in urban areas is around 10 million units. Most

of the housing shortage lies in the Economically Weaker Section (EWS) and Lower Income Group (LIG) segment hence, immediate action is required on taking steps to complete these partially built homes.

## Conclusion

Globally successful route of SPACs can be considered for at least for some specified sectors which require swift action like house construction, infrastructure development, rural healthcare, start-ups etc. Depth of water may be tested by allowing some sector specific rules and regulations so that they could access the capital market, subject to the progress in these sectors, they may enlarge the applicability to other sectors based on observing the existing performance and will get time to fine-tune the provisions or compliance requirements. Even if SPACs are successful in achieving at least 20% completion of the Delhi – NCR, MMR and Maharashtra region, the total number of completed properties would be around 25,000 homes. SPAC route can provide solid foundation to sail through the liquidity issues faced by the real estate sector and may be considered as a possible panacea for tackling the menace of incomplete properties in the country.

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# ACCOUNTANT'S BROWSER

## "PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE"

*Index of some useful articles taken from Periodicals received during September-October 2021 for the reference of Faculty/Students & Members of the Institute.*

### 1. Accountancy

Ind AS/IGAAP- Interpretation and Practical Application by Dolphy D'Souza. *BCAJ*, Vol.53-a/6, September 2021, pp.60-61.

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Yes Bank Fiasco: a corporate governance failure by Rajat Deb. *Decision*, Vol.48/02, 2021, pp.181-190.

### 4. Investment

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### 5. Management

Business strategy, intellectual capital, firm performance, and bankruptcy risk: evidence from Oman's non-financial sector companies by Tamanna Dalwai and Mahdi Salehi. *Asian Review of Accounting*, Vol.29/03, 2021, pp.474-504.

Corporate CSR practices and corporate performance: managerial implications for sustainable development by Sarfaraz Javed and Uvesh Husain. *Decision*, Vol.48/02, 2021, pp.153-164.

Corporate Governance & Reforms in India: Building new Authorities & the Changing Needs of Financial Sector by Jithin George Jackson K. *Chartered Secretary*, Vol.51/09, September 2021, pp.111-115.

### 6. Taxation and Finance

Controversies on Liability of GST on Supply of Capital Goods by Shrikant M. Shaligram. *Good & Services Tax Cases*, Vol.87/4, September 28-October 04, 2021, pp. 19-24.

Recent Developments in GST by G.G Goyal and C.B. Thakar. *BCAJ*, Vol.53-a/6, September 2021, pp.83-88.

Full Texts of the above articles are available with the Central Council library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-30110419 and 011-30110420 or by e-mail at [library@icai.in](mailto:library@icai.in).

# National Update

## India fast moving towards full Capital account convertibility: RBI

RBI deputy governor T Rabi Shankar remarked that, "There is an effort to liberalize FPI debt flows further with the introduction of the Fully Accessible Route (FAR) which places no limit on non-resident investment in specified benchmark securities". Addressing the Foreign Exchange Dealers' Association of India (FEDAI) Annual Day, he mentioned that "The move is unambiguously towards an eventual unfettered access for non-residents into Government securities".

India is moving fast towards full capital account convertibility as almost all debt securities would be available through the liberal Fully Accessible Route overtime and the accelerated integration of the domestic and offshore currency markets that has delivered efficiency, he said.

<https://economictimes.indiatimes.com/news/economy/policy/india-fast-moving-towards-full-capital-account-convertibility-rbi/articleshow/87022267.cms>

## SEBI streamlines issuance of SCORES info for firms listing securities

The markets regulator has introduced an online mechanism for obtaining SCORES (SEBI Complaints Redress System) credentials for all companies intending to list their securities on stock exchanges. "In view of the same, companies are no longer required to submit a physical copy of Form-A or e-mail the same to SEBI, as provided in a circular dated December 18, 2014," Sebi notified in a circular in October 2021.

This has been done as part of the Securities and Exchange Board of India's (SEBI) green initiative and to streamline the redressal of investor grievances against companies before listing.

SCORES is a platform designed to help investors lodge their complaints pertaining to the securities market online with Sebi against listed companies and Sebi-registered intermediaries. All complaints received are dealt through SCORES.

<https://www.livemint.com/market/stock-market-news/sebi-streamlines-issuance-of-scores-info-for-firms-listing-securities-11634285566083.html>

## Settlement orders: SEBI forms high-powered advisory panel

The Securities and Exchange Board of India (SEBI) has constituted a four-member high-powered advisory committee on settlement orders and compounding of offences. The committee will be chaired by Vijay C Daga, retired judge of High Court of Bombay.

<https://indianexpress.com/article/business/settlement-orders-sebi-forms-high-powered-advisory-panel-7574202/>

## SEBI proposes higher net worth for brokers to tackle possible risks

Market regulator Securities and Exchange Board of

India (SEBI) released a consultation paper to review net worth criteria for trading members, clearing members, professional clearing members and depository participants.

SEBI has proposed hiking the net worth requirement for trading members to at least ₹1 crore in two years as well as the net worth thresholds for clearing members. These proposals are part of efforts to mitigate possible risks amid increasing investor participation in the securities market.

<https://www.livemint.com/news/india/sebi-proposes-higher-net-worth-for-brokers-to-tackle-possible-risks-11632756352342.html>

## SEBI board approves framework for gold exchange

The Securities Exchange Board of India (SEBI) board has approved the framework for gold exchange wherein the yellow metal will be traded in the form of electronic gold receipts and will help in having a transparent domestic spot price discovery mechanism.

<https://www.livemint.com/market/stock-market-news/sebi-board-approves-framework-for-gold-exchange-11632829384010.html>

## SEBI revises financial info filing formats for entities having listed non-convertible securities

SEBI announced revised formats for filing financial information by entities that have listed their non-convertible securities on stock exchanges. In September 2021, the regulator had notified corporate governance rules for listed entities which have listed their debt securities. It had mandated that such entities should disclose financial results on a quarterly basis, including assets and liabilities, and cash flows. Now, SEBI has come out with formats for reporting of financial information and limited review report.

Banking and insurance companies should disclose financial information as per the formats prescribed by their regulators, according to a circular. SEBI has also asked the entities to disclose reasons for delay or non-disclosure of financial results to the stock exchanges within one working day of the due date of submission of the financial results. If the entities decide to delay the results prior to the due date, they have to disclose detailed reasons for such delays to the stock exchanges within one working day of taking the decision.

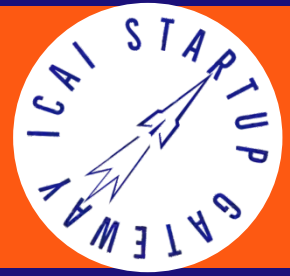
The regulator has provided a format for disclosure of standalone financial results on a quarterly basis and standalone and consolidated financial results on an annual basis. Besides, a format for statement of assets and liabilities on a half-yearly basis has been given and the same should contain the items mentioned in the format of balance sheet as given under the companies law.

Providing the format for statement of cash flows on a half-yearly basis, SEBI said the same should be prepared under the indirect method in accordance with the relevant accounting standards.

<https://economictimes.indiatimes.com/markets/stocks/news/sebi-revises-financial-info-filing-formats-for-entities-having-listed-non-convertible-securities/articleshow/86791730.cms>



**Committee on  
MSME & Start-up**  
The Institute of Chartered  
Accountants of India  
(Set up by an Act of Parliament)



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Website: <https://startup.icai.org/>

## Legal Decisions



### Income Tax

**LD/70/54; [ITAT Mumbai: ITA No. 774/Mum/2019] Jt. Commissioner of Income Tax Vs. Hillview Impex Pvt. Ltd. 29-09-2021**

Assessee-Company is engaged in business of trading and investment in shares and securities and filed return declaring a loss of Rs.4 Cr; AO made an addition of Rs.3.86 Cr. u/s 68 on account of alleged fraudulent short term loss; Assessee submitted it had not undertaken any trading during the year and the loss was on account of diminution in the value of inventory; ITAT held loss in value of unsold shares not to be bogus; ITAT observes the loss suffered by Assessee was on account of diminution in the value of inventories which was in conformity with AS-2 and Section 145; ITAT held that Revenue had framed the assessment on the basis of glaringly incorrect and misconceived facts.

**LD/70/55; [ITAT Chennai: ITA No.:949/CHNY/2017] TVS Electronics Limited Vs. The Asst. Commissioner of Income Tax 24-09-2021**

Disallowance u/s 40(a)(i) held to be not attracted on payment towards management fees to a non-resident service provider for non-deduction of tax at source u/s 195, since services rendered outside India were outside the scope of taxability at the time of making the payment; ITAT noted that at the time of making payment by the Assessee, law as per the Supreme Court ruling in Ishikawajma-Harima Heavy Industries Ltd prevailed and not the amendment brought in by Finance Act, 2010 as it was impossible for the Assessee to foresee the retrospective amendment and deduct taxes on said payments; ITAT accepts Assessee's submission that India-Mauritius DTAA is silent on taxability of FTS and as per Article 22 of India-Mauritius DTAA if DTAA does not cover FTS, then it can be taxed under Article 7 as business profits which was also not possible in the instant case in the absence of any PE in India.

**LD/70/56; [ITAT Delhi: ITA. 4840/Del/2017] Asst. Commissioner of Income Tax Vs. Rajat Bhandari, 16-09-2021**

ITAT allowed benefit of section 54F towards purchase of farmhouse holding that it is not a non-residential house property unless proved; Assessee-Individual

sold a property Rs. 3.10 crores in 2010 and claimed benefit u/s 54F for purchase of farmhouse in 2011; Apart from the reason that section 54F benefit was not permitted on purchase of a farmhouse, Revenue also denied section 54F benefit alleging that assessee owned more than one residential property; ITAT observed that Revenue could not substantiate its claim that Assessee owned more than one residential property; ITAT held that merely because a property is called a farmhouse, it does not become a non-residential house property unless otherwise proved.

**LD/70/57; [ITAT Ahmedabad: ITA No. 238/Ahd/2018] Mohmed Shakil Vs. The Income Tax Officer, 16-09-2021**

ITAT held that a technical defect of not furnishing prescribed particulars would not attract disallowance of expenditure u/s 40(a)(ia); Subsequent to original assessment, the Prin. CIT passed an order u/s 263 directing the Revenue to make a fresh assessment on the issue of non-deduction of tax at source on the freight / transport payment of Rs.10.63 lacs; CIT(A) affirmed the addition; ITAT noted that during assessment proceedings pursuant to revisionary order, all details of transportation expenses was furnished and the genuineness was not disproved by the Revenue, and CIT(A) sustained the disallowance merely on technical basis that there had been failure to make compliance with Section 194C(7); If there is compliance with Section 194C(6), no disallowance u/s 40(a)(ia) is permissible even though there is violation of Section 194C(7), as per ITAT.

**LD/70/58; [Supreme Court Delhi: Civil Appeal No.3453/2007] Ashwini Sahakari Rugnalaya & Res. Centre Vs. Chief Commissioner of Income Tax & Ors, 15-09-2021**

Supreme Court dismissed assessee's appeal against denial of exemption u/s 10(23C)(via); Assessee was held to be not eligible for exemption u/s 10(23C)(via) since it distributed the IPD earnings to doctors at the rates charged at par with other hospitals run on commercial basis; Supreme Court observed that the benefits in terms of the Section 10(23C)(via) are available to any hospital existing solely for philanthropic purposes and not for purposes of profit which is same as the erstwhile provisions of Section 10(22A) and the only change is due to the words "may be approved by the prescribed authority" which appears to have been inserted to disallow the ineligible entities from availing the benefit.

Contributed by CA. Sahil Garud, GST & Indirect Taxes Committee (CA. Mandar Telang), Disciplinary Directorate and ICAI's Editorial Board Secretariat. For details please visit Editorial Page webpage at <https://www.icaai.org/post/editorial-board>. Readers are invited to send their comments on the selection of cases and their utility at [eboard@icai.in](mailto:eboard@icai.in). For full judgement write to [eboard@icai.in](mailto:eboard@icai.in).



**LD/70/59; [Bombay High Court: Writ Petition 1083 of 2021] Trendsutra Client Services Pvt. Ltd. Vs. The Asst. Commissioner of Income Tax 14-09-2021**

Faceless assessment order held as non-est on account of non-issuance of SCN and draft assessment order u/s 144B and Revenue given liberty to conduct de novo assessment; Assessee was issued notice on April 09, 2021 requiring it to furnish information upto April 13, 2021, 6.54 p.m and in view of the short response time, Assessee required additional time and submitted all requisite details by April 17, 2021; Revenue passed the assessment order without issuance of show cause notice or the draft assessment order; High Court noted that there were variations in the assessment order from the returns filed and thus the final assessment order was not made in accordance with the mandatory prescribed procedure u/s Section 144B;

**LD/70/60; [ITAT Delhi: ITA No 2346/DEL/2014] Hughes Communications India Ltd Vs. The Dy. Commissioner of Income Tax, 14-09-2021**

Maintaining ERP based accounts having separate code for each head of expenditure sufficient for claim of deduction u/s 80-IA; Assessee claimed deduction of Rs.10.48 Cr. for AY 2008-09 u/s 80-IA which was restricted to Rs.5.61 Cr by the Revenue on the grounds that the Assessee did not maintain separate books of accounts for eligible and non-eligible units; Maintaining accounts on SAP ERP system of accounting tantamounts to maintenance of separate books of accounts and sufficient for claiming deductions u/s 80-IA; Revenue had allowed the deduction in AYs 2007-08 and 2011-12 and thus unless the claim for deduction u/s 80-IA was disturbed in the initial assessment year, the same could not be disturbed in the subsequent assessment years of the block; ITAT ruled in favour of assessee.

**LD/70/61; [ITAT Kolkata: ITA No. 39/Pat/2020] Motor Machinery Tools Vs. Asst. Commissioner of Income Tax, 09-09-2021**

Assessee-Firm was in receipt of "Special Redistributors' Incentive" of Rs.4.08 lacs from Usha International Ltd. in the form of credit notes, Revenue noted the incentive was given for the purchase of a van to be used for the promotion of the products of Usha International Ltd. and held the amount taxable as business income as per Section 28(iv); Addition u/s 28(iv) deleted by the ITAT for such incentive received; incentive was given for the specific purpose of purchase of van for painting of Usha logo to be used for display by Assessee and that only the balance cost

of van was reflected in the balance sheet on which depreciation was claimed; ITAT holds Assessee's case is covered under Explanation 10 to Section 43(1).

**LD/70/62; [ITAT Mumbai: ITA No. 6029/ Mum/2019] Shree Datta Prasad Sahakari Patasanstha Ltd. Vs. The Income Tax Officer, 08-09-2021**

Assessee held to be ineligible for deduction u/s 80P(2)(a)(i) where no claim was made in the return of income in the light of the condition contained in Section 80A(5); Assessee is an AOP and filed its return for AY 11-12 as a firm which was also processed u/s 143(1); Assessee preferred a rectification application u/s 154 seeking change of status from firm to AOP and also made claim for deduction u/s 80P(2)(a) which was rejected by the Revenue; ITAT finds that the Assessee did not claim deduction u/s 80P(2)(a)(i) in the original or revised return; Besides fulfilling the conditions of section 80P(2)(a)(i), assessee was also required to fulfil the condition of Section 80A(5);

**LD/70/63; [ITAT Mumbai: ITA No. 4831/ Mum/2019] Abeezar Faizullahbhy Vs. The Commissioner of Income Tax (Appeals) 01-09-2021**

Deduction of interest on borrowed capital for purchase of house property allowed even though possession of the same was not yet received; Assessee-Individual claimed deduction of interest of Rs.2 lakhs u/s 24(b) without actually taking possession of the property; Revenue had noted that it was unlikely that assessee would get complete possession over the property and earn income in near future on account of ongoing dispute and protracted litigation between the assessee and the Builder; ITAT observes there is no precondition/ criteria mandating possession of the property for claiming deduction u/s 24(b); Provisions only contemplate an innate upper limit on the amount of deduction and do not jeopardize an Assessee's claim to deduction of the interest payable on the capital borrowed.



## GST

**LD/70/64 [2021-TIOL-612-Cestat-Mad] M/S Abi Showatech India Ltd Vs Commissioner Of GST and Central Excise, 20-09-2021**

Manpower shared amongst group companies, wherein the intent was to rationalise cost and not create any agency-client relation, where no profit was earned, and where the control over the resources was

# Legal Update

exclusively with the actual employer, in such case the sharing of resources could not be classified as 'Man Power Supply Services'.

*LD/70/65 [2021-TIOL-615-Cestat-Mum]  
M/S Aurangabad Electricals Ltd Vs  
Commissioner of Central Excise and Service Tax,  
Aurangabad, 22-09-2021*

The insurance premium paid for 'Employee compensation service' under the statutory obligation with the intent to protect employees at work is eligible cannot be said to be the insurance meant primarily for personal use by the employees and hence is an eligible CENVAT credit.

*LD/70/66 [2021-TIOL-620-Cestat-Del]  
M/S International Travel House Ltd Vs  
Commissioner of Service Tax, Delhi, 17-09-2021*

Incentives received by the Air travel agents based on performance targets achieved cannot be subjected to service tax. The nature of services provided by Air Travel agents cannot be classified as 'Business Auxiliary services'.

*LD/70/67 [2021-TIOL-1907-Hc-Mum-Gst] M/S  
Monopoly Innovations Pvt Ltd Vs Union of India  
and Ors, 24-09-21*

The High Court directed that the objections raised by the assessee against the provisional attachment ought to be considered de novo as the detailed order passed by the Commissioner was found to suffer from infirmity of lack of application of mind as well as breach of principles of natural justice. High Court also stated that attachment of a property being in the nature of the exercise of a drastic power, the Commissioner was required to be more circumspect in recording his conclusions by reference to the applicable law rather than recording his ipse dixit. The Court also reiterated the principle that the validity of an order passed by an authority has to be judged on the basis of the reasons assigned therein, and reasons cannot be supplemented later on by an affidavit or otherwise when such order is challenged in a Court. It further stated that if the report of the expert is to be rejected, then a counter expert opinion would be required and the Commissioner cannot reject the same on its own.

## Disciplinary Case



***Appointment of Auditor -- Acceptance of appointment by the Respondent in contravention of appointment rules of the Bhajan Mandal -- Failure to qualify audit report -- Held, Respondent is guilty of professional misconduct within the Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.***

### **Held:**

In the instant case, the allegation against the Respondent is that he was appointed as auditor of the Bhajan Mandal (hereinafter referred to as "Mandal") for the financial year 2014-15 without calling the AGM/SGM. The Respondent in his defence submitted that there were threats and pressure from the opponent groups therefore, the Annual General Meeting was not called for. In support of his contention, the Respondent submitted the Minutes of the Management Committee. The Committee perused the Rules and Regulations, applicable to the Mandal, under Rule 8 under heading "General Meetings" and

found that the Rules provide that the auditor has to be appointed in General Body Meeting. Respondent violated the rules of appointment and accepted the appointment by the Resolution passed in Special Management Committee Meeting. As regards the second charge is concerned, the Committee noted that an amount of Rs.13,65,610 has been incurred under the head "Repairs and Maintenance for the Financial Year 2014-15". On perusal of the audit report, dated 15th June, 2017, for the Financial Year 2014-15 under (I) whether any tender was invited for repairs or construction involving expenditure exceeding Rs.5,000, the Respondent has mentioned 'Not Applicable'. On being enquired during the hearing, the Respondent mentioned that the above was typographical error and he intends to mention as 'NO'. However, he further submitted that no tenders were invited for the expenditure exceeding Rs.5,000/-. The Respondent therefore failed to convince the Committee that he inadvertently mentioned that his attention was to disclose properly that no tender has been invited for expenditure exceeding Rs.5,000/-. In view of above noted facts, the Committee held that Respondent is grossly negligent in performing his duty and did not exercise his due diligence while issuing net worth certificate and is GUILTY of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**In the matter of Sh. Vasant k. Kotian V. CA. Pranaay Naresh Ingle PR/251/2017-DD/279/2017/DC/919/2018**

# Circulars/Notifications

*Given below are summarised important Circulars and Notifications issued by the CBDT, CBIC-GST and FEMA since the publication of the last issue of the journal, for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. Suggestions on this column can be submitted at [eboard@icai.in](mailto:eboard@icai.in)*



## I. NOTIFICATIONS

### 1. Central Government relaxes provisions of TDS u/s 194A of the Income-tax Act, 1961 in view of the section of 10(26) of the Act - Notification No. 110/2021, dated 17-09-2021

The Central Government in exercise of the powers conferred by section 197A(1F) notified that no deduction of tax shall be made on the following payment under section 194A, namely payment in the nature of interest, other than interest on securities, made by a Scheduled Bank located in a specified area to a member of Scheduled Tribe residing in any specified area as referred to in section 10(26) subject to the conditions specified therein.

**The detailed Notification can be downloaded from the link below:**

<https://www.incometaxindia.gov.in/communications/notification/notification-no-110-2021.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/975/Press-Release-Central-Government-relaxes-provisions-of-TDS-us-194A-dated-17-09-2021.pdf>

### 2. Central Government specifies more pension funds u/s 10 (23FE) - Notification No. 111&112&114/2021, dated 16-09-2021 and 20-09-2021

Central Government has notified a few pension funds namely 'the 2452991 Ontario Limited', 'the 2726522 Ontario Limited' and 'the BCI IRR India Holdings Inc', for the purposes of section 10(23FE) in respect of the eligible investment made by them in India on or after 16.09.2021 and 20.09.2021 respectively but on or before 31.03.2024 subject to the fulfilment of the conditions laid therein.

**The detailed Notification can be downloaded from the link below:**

<https://www.incometaxindia.gov.in/communications/notification/notification-no-111-2021.pdf>

<https://www.incometaxindia.gov.in/communications/notification/notification-no-112-2021.pdf>

<https://incometaxindia.gov.in/communications/notification/notification-no-114-2021.pdf>

<https://incometaxindia.gov.in/communications/notification/notification-no-116-2021.pdf>

### 3. Government extends certain timelines to ease compliances - Notification No. 113/2021, dated 17-09-2021

The Central Government has extended certain timelines for compliances in the following cases, as under:

- Time limit for intimation of Aadhaar number to ITD for linking of PAN with Aadhaar has been extended to 31.03.2022.
- The due date for completion of penalty proceedings has also been extended to 31.03.2022.

**The detailed Notification can be downloaded from the link below:**

<https://incometaxindia.gov.in/communications/notification/notification-no-113-2021.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/974/Press-Release-Government-extends-certain-timelines-to-ease-compliances-dated-17-09-2021.pdf>

### 4. Gujarat Electricity Regulatory Commission, Gandhinagar notified u/s 10(46) - Notification No. 115/2021, dated 20-09-2021

The Central Government has notified 'Gujarat Electricity Regulatory Commission', Gandhinagar, a commission established by the state government of Gujarat, in respect of the specified income arising to that Commission subject to satisfaction of conditions applicable for FYs from 2021-22 to 2025-26.

Matter on Direct and Indirect Taxes is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee and Corporate Laws and Corporate Governance Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan.

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**The detailed Notification can be downloaded from the link below:**

<https://incometaxindia.gov.in/communications/notification/notification-no-115-2021.pdf>

**5. Safe Harbour Rules (Transfer Pricing) prescribed under Rule 10TD made applicable for AY 2021-22 vide the Income-tax (30<sup>th</sup> Amendment) Rules, 2021 w.e.f. 01.04.2021 - Notification No. 117/2021, dated 24-09-2021**

In order to reduce transfer pricing disputes, to provide certainty to taxpayers, to align safe harbour margins with industry standards and to enlarge the scope of safe harbour transactions, the CBDT had earlier vide Notification No. 46/2017 dated 07.06.2017 notified a new safe harbour regime by amending Rule 10TD of the Income-tax Rules, 1962. Vide this Notification, provisions of Rule 10TD have been made applicable for AY 2021-22 as well.

**The detailed Notification can be downloaded from the link below:**

<https://incometaxindia.gov.in/communications/notification/notification-117-2021.pdf>

**6. CBDT notifies Rules for implementing the amendments made by the Taxation Laws (Amendment) Act, 2021 - Notification No. 118/2021, dated 01-10-2021**

The Taxation Laws (Amendment) Act, 2021, inter-alia, amended the Income-tax Act, 1961 so as to provide that no tax demand shall be raised in future on the basis of the amendment to section 9 of the Income-tax Act made vide Finance Act, 2012 for any offshore indirect transfer of Indian assets if the transaction was undertaken before 28.05.2012. Vide this notification, Rule 11UE (providing for the specified conditions in order to be eligible to claim relief) and Rule 11UF (providing the form and manner of furnishing the undertaking for withdrawal of pending litigation, claiming no cost, damages, etc.) have been inserted in the Income-tax Rules, 1962 w.e.f. 01.10.2021.

**The detailed Notification can be downloaded from the link below:**

[https://incometaxindia.gov.in/communications/notification/notification\\_no\\_118\\_2021.pdf](https://incometaxindia.gov.in/communications/notification/notification_no_118_2021.pdf)

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/985/Press-Release-CBDT-notifies-Rules-for-implementing-the-amendments-dated-02-10-2021.pdf>

**7. Government exempts certain specified class of persons from filing return of income subject to conditions - Notification No. 119/2021, dated 11-10-2021**

Vide this notification the Central Government in exercise of powers conferred u/s 139(1C) has exempted a foreign company or non-corporate non-resident assessee and a non-resident eligible foreign investor assessee from the requirement of furnishing return of income from AY 2021-22 and onwards subjects to satisfaction of conditions specified therein.

**The detailed Notification can be downloaded from the link below:**

<https://incometaxindia.gov.in/communications/notification/notification-119-2021.pdf>

**8. The Relaxation of Validation (section 119 of the Finance Act, 2012) Rules, 2021 notified w.e.f. 13.10.2021 - Notification No. 120/2021, dated 13-10-2021**

In exercise of the powers conferred by the first proviso to section 119 of Finance Act, 2012; the CBDT vide this notification has provided for:

- (a) Form and manner of furnishing undertaking under first proviso to section 119, and
- (b) Conditions under clause (iv) of first proviso to section 119.

**The detailed Notification can be downloaded from the link below:**

<https://incometaxindia.gov.in/communications/notification/notification-120-2021.pdf>

**9. Punjab State Electricity Regulatory Commission, Chandigarh notified u/s 10(46) - Notification No. 121/2021, dated 13-10-2021**

The Central Government vide this notification has specified 'Punjab State Electricity Regulatory Commission', Chandigarh (PAN-AAAGT0052L), a commission established by the state government of Punjab in respect of the specified income arising subject to satisfaction of conditions applicable for FYs from 2021-22 to 2025-26.



## The detailed Notification can be downloaded from the link below:

<https://incometaxindia.gov.in/communications/notification/notification-121-2021.pdf>

## II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

### 1. Income Tax Department conducts searches in Mumbai and other regions - Press Release, dated 18-09-2021

The ITD conducted a search and seizure operation at various premises of a prominent actor in Mumbai and also a Lucknow based group of industries engaged in infrastructure development. Total 28 premises spread over Mumbai, Lucknow, Kanpur, Jaipur, Delhi, and Gurgaon have been covered in the search operation.

### The complete text of the above Press Release can be downloaded from the link below:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/976/Press-Release-IT-Department-conducts-searches-in-Mumbai-dated-18-09-2021.pdf>

### 2. Income Tax Department conducts searches in Nagpur - Press Release, dated 20-09-2021

The ITD carried out a search and seizure operation on 17.09.2021 in the case of a prominent public figure in Nagpur and his family members. The group is having wide business interest spanning the fields of Education, Warehousing and Agri-business in Nagpur and other parts of Maharashtra.

### The complete text of the above Press Release can be downloaded from the link below:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/977/PressRelease-ITD-conducts-searches-in-Nagpur-21-9-21.pdf>

### 3. Income Tax Department conducts searches in Delhi, Punjab and West Bengal - Press Release, dated 21-09-2021

The ITD carried out a search and seizure operation on 18.09.2021 on a leading business house of India involved in manufacture of textile and filament yarn having corporate offices in Delhi, Punjab and Kolkata. Further, the ITD also carried out a search and seizure operation on 17.09.2021 on a prominent group engaged in manufacturing of steel products in West Bengal.

### The complete text of the above Press Release can be downloaded from the link below:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/978/PressRelease-ITD-conducts-searches-in-Delhi-Punjab-and-WestBengal-21-9-21.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/979/PressRelease-ITD-conducts-searches-in-WestBengal-21-9-21.pdf>

### 4. Order u/s 119 providing exclusions to section 144B - Cases in which limitation period expires on 30.09.2021 - Order u/s 119, dated 22-09-2021

The CBDT vide Order F.No.187 /3/2020- ITA-1 dated 13.08.2020 read with order regarding mutatis mutandis application of Orders, Circulars etc. issued in order to implement the Scheme to Faceless Assessment u/s 144B, vide F.No.187/3/2020-ITA-1 dated 31.03.2021 directed that all the Assessment Orders shall be passed by the National Faceless Assessment Centre u/s 144B except cases as specified therein. In further modification of the said Order, the CBDT has directed that in addition to the exceptions as provided in the said Orders, the following exception is also provided as under:

iv. Assessment orders in cases

(a) set aside to be done de novo

or

(b) to be done u/s 147

for which the time limit for completion expires on 30.09.2021 pending with the jurisdictional Assessing Officer as on 11.09.2021 or thereafter, which cannot be completed as per the procedure laid down under Section 144B due to technical/procedural constraints in the given period of limitation.

### The complete text of the above Orders can be downloaded from the link below:

<https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/470/Order-us-119-providing-exclusions-to-section-144B-MiscComm-23-9-21.pdf>

<https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/469/Order-Section-144B-for-specifying-scope-cases-to-be-done-MiscComm-23-9-21.pdf>

### 5. Regularisation of returns of income verified through Electronic Verification Code (EVC) which are otherwise required to be verified through Digital Signature (DSC) as per Rule 12 - Order u/s 119(2)(a), dated 24-09-2021

In exercise of powers u/s 119(2)(a), CBDT vide this Order has directed that specified returns of income furnished electronically u/s 142(1), 148, 153A and 153C during the period from 07.06.2021 to 30.09.2021 and verified through Electronic Verification Code instead of Digital Signature, shall be deemed to have been furnished and verified as per Rule 12 of the Income-tax Rules, 1962.

# Legal Update

**The complete text of the above Orders can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/471/order-us-119-of-the-Income-tax-Act-1961.pdf>

**6. Gross Direct Tax collections for the Financial Year (FY) 2021-22 register a growth of 47% - Press Release, dated 24-09-2021**

Net Direct Tax collections for the FY 2021-22 have grown at over 74%. Advance Tax collections for the FY 2021-22 stand at Rs. 2,53,353 crore as on 22.09.2021 which shows a growth of approximately 56%. Refunds aggregating to Rs. 75,111 crore have been issued in the current fiscal.

**The complete text of the above Press Release can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/980/PressRelease-Gross-Direct-Tax-collections-for-FY-2021-22-register-a-growth-of-47-24-9-21.pdf>

**7. Income Tax Department conducts searches in Maharashtra, Gujarat and Tamil Nadu - Press Release(s), dated 25-09-2021 and 27-09-2021**

The ITD carried out search and seizure operations on 23.09.2021 on two private Syndicate Financing groups based in Chennai. Further, the ITD also carried out search and seizure operations on 22.09.2021 on premises of a leading Diamond manufacturer and exporter from Gujarat, based on intelligence input about tax evasion. The ITD also carried out a search and seizure operation on 23.09.2021 on a group of four major Steel Rolling Mills based in Jalna, Maharashtra.

**The complete text of the above Press Release(s) can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/982/Press-Release-IT-Department-conducts-searches-in-Tamil-Nadu-dated-25-09-2021.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/981/Press-Release-IT-Department-conducts-searches-in-Gujarat-dated-25-09-2021.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/983/PressRelease-ITD-conducts-searches-in-Maharashtra-27-9-21.pdf>

**8. Order u/s 119(2)(b) for filing applications for settlement before the Interim Board for Settlement - Order u/s 119(2)(b), dated 28-09-2021**

The CBDT in exercise of its power u/s 119(2)(b), in order to avoid genuine hardship to assesseees has authorised the CIT, posted as Secretary to the Settlement Commission prior to 01.02.2021, to admit an application for settlement on behalf of the Interim

Board for Settlement filed after 31.01.2021, which is the date mentioned in section 245C(5) for filing such application, and before 30.09.2021 and treat such applications as valid and process them as “pending applications” as defined in section 245A(eb).

**The complete text of the above Order can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/472/Order-us-119-2-b-dated-28-9-2021-MiscComm.pdf>

**9. Income Tax Department conducts searches in Ahmedabad and Maharashtra, Karnataka and Uttar Pradesh – Press Release(s), dated 02-10-2021 and 04-10-2021**

The ITD carried out search and seizure operations on 28.09.2021 on a real estate developer group and the brokers connected with this group in Ahmedabad. Total of 22 residential and business premises were covered in the operation. Further, the ITD carried out a search and seizure operation on 30.09.2021 on 37 premises spread across multiple cities including Mumbai, Pune, Noida & Bangalore. These groups/individuals were in varied businesses such as cable manufacturing, real estate, textile, printing machineries, hotels, logistics etc.

**The complete text of the above Press Release(s) can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/984/Press-Release-IT-Department-conducts-searches-in-Ahmedabad-dated-10-02-2021.pdf>

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/986/Press-Release-ITD-conducts-searches-in-Maharashtra-Karnataka-UP-4-10-21.pdf>

**10. Seychelles' Tax Inspectors Without Borders (TIWB) programme launched in partnership with India – Press Release, dated 04-10-2021**

Tax Inspectors Without Borders, a joint initiative of the United Nations Development Programme and the Organisation for Economic Cooperation and Development, launched its programme in Seychelles on 04.10.2021. India was chosen as the Partner Administration and has provided Tax Expert for this programme. This programme is the sixth TIWB programme which India has supported by providing Tax Expert.

**The complete text of the above Press Release can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/988/Press-release-Seychelles-Tax-Inspectors-Without-Borders-TIWB-dated-05-10-2021.pdf>

## 11. Cases pertaining to 'Pandora Papers' to be investigated – Press Release, dated 04-10-2021

On 03.10.2021, the International Consortium of International Journalists (ICIJ) has come out with what is claimed to be a 2.94 terabyte data trove that exposes the offshore secrets of wealthy elites from more than 200 countries and territories. The investigation is based on a leak of confidential records of 14 offshore service providers that give professional services to wealthy individuals and corporations seeking to incorporate shell companies, trusts, foundations and other entities in low or no-tax jurisdictions.

**The complete text of the above Press Release(s) can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/987/Press-release-Cases-pertaining-to-Pandora-Papers-to-be-investigated-dated-05-10-2021.pdf>

## 12. Income Tax Department conducts searches on certain businessmen/middlemen in Maharashtra and also in Assam, Meghalaya and West Bengal– Press Release(s), dated 07-10-2021 and 08-10-2021

The ITD carried out a search operation that commenced on 23.09.2021 on a big syndicate involving certain businessmen/middlemen of Maharashtra and some persons holding public offices. The intelligence was developed over 6 months. Further, the ITD also carried out search and seizure operations on 05.10.2021 in the case of two groups based in the North-East Region and West Bengal. A total of 15 premises were covered in the search action, which was spread across Kolkata, Guwahati, Rangia, Shillong and Patna.

**The complete text of the above Press Release(s) can be downloaded from the link below:**

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/989/Press-Release-IT-Department-conducts-searches-on-certain-businessmen-dated-07-10-2021.pdf>

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/990/PressRelease-ITD-conducts-searches-in-Assam-Meghalaya-and-WestBengal-8-10-21.pdf>

## 13. Cash seizure of over Rs. 142 crore in searches of ITD in Hyderabad and ITD conducting searches in Kanchipuram, Chennai and Vellore– Press Release(s), dated 09-10-2021 and 10-10-2021

The ITD carried out search and seizure operations on 06.10.2021 on a major Pharmaceutical group based out of Hyderabad. This Pharmaceutical group is engaged in the business of manufacturing of intermediates, Active Pharmaceutical Ingredients (APIs) and formulations. Further, the ITD also conducted searches on 05.10.2021 in two cases of Kanchipuram, one being a Chit Fund and Financing Group and the other a retailer of Silk Sarees and other

garments. The search operations were carried out at 34 premises located in Kanchipuram, Chennai and Vellore.

**The complete text of the above Press Release(s) can be downloaded from the link below:**

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/991/Press-Release-Cash-seizure-of-over-Rs-142-crore-in%20searches-of-IT-Department-in-Hyderabad-dated-09-10-2021.pdf>

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/992/Press-Release-IT-Department-conducts-searches-in-Kanchipuram-Chennai-and-Vellore-dated-10-10-2021.pdf>

## 14. ITD conducts searches in Bengaluru and its searches in Maharashtra reveal unaccounted income of over Rs. 184 crore – Press Release, dated 12-10-2021 and 15-10-2021

The ITD carried out search and seizure operations in the case of three major contractors based out of Bengaluru engaged in the execution of irrigation and highway projects. The searches commenced on 07.10.2021 have been carried out at 47 premises spread across 4 states. Further, the ITD carried out search and seizure operations on two real estate business groups of Mumbai and certain individuals/entities associated with them. The search operations commenced on 07.10.2021 and have been carried out at about 70 premises spread across Mumbai, Pune, Baramati, Goa and Jaipur.

**The complete text of the above Press Release can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/993/PressRelease-ITD-conducts-searches-in-Bengaluru-12-10-21.pdf>

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/996/Press-Release-IT-Department-searches-in-Maharashtra-dated-16-10-2021.pdf>

## 15. Over 2 crore Income Tax Returns filed on the e-Filing portal of the Income Tax Department – Press Release, dated 14-10-2021

The e-filing portal of the ITD (www.incometax.gov.in) has marked receipt of more than 2 crore Income Tax returns as on 13.10.2021. The new portal was launched on 07.06.2021 and in the initial period taxpayers had reported glitches and difficulties in the functioning of the portal. A number of technical issues have since been resolved and the performance of the portal has substantially stabilized.

**The complete text of the above Press Release can be downloaded from the link below:**

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/994/PressRelease-Over-2-crore-ITR-filed-on-the-e-Filing-portal-14-10-21.pdf>



## Significant Notifications and Circulars issued in GST and FTP from 16<sup>th</sup> September, 2021 to 15<sup>th</sup> October, 2021

### GST

#### I. Notifications

##### 1. Amendments in CGST Rules

**Notification No. 35/2021 – Central Tax dated 24<sup>th</sup> September, 2021** has made the following amendments in the CGST Rules, 2017:

##### i. Rule 10A (Furnishing of Bank Account Details) – To be effective from a date to be notified

The details of bank account furnished by the registered person after the grant of certificate of registration ought to be for the bank account which is in the name of the registered person and obtained on PAN of such registered person. In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

##### ii. Insertion of Rule 10B (Aadhaar authentication for registered person) - To be effective from a date to be notified

The registered person (other than the notified persons who are exempt from the requirement of Aadhaar authentication) shall be mandatorily required to undergo Aadhaar authentication of the persons mentioned in Table-1 below and of the authorized signatory in order to be eligible for-

- filing of application for revocation of cancellation of registration
- filing of refund application
- refund under rule 96 of the integrated tax paid on goods exported out of India

**Table-1**

S. No.	Entity	Authority
1.	Proprietorship Firm	Proprietor
2.	Partnership Firm	Any Partner
3.	HUF	Karta
4.	Company	Managing Director or any Whole Time Director
5.	Association of persons or Body of individuals or a Society	Any of the Members of the Managing Committee
6.	Trust	Trustee in the Board of Trustees

If Aadhaar number has not been assigned to the person required to undergo Aadhaar authentication, such person shall furnish the following identification documents, namely: –

- Her/his Aadhaar Enrolment ID slip; and
- Bank passbook with photograph, or Voter ID card issued by the Election Commission of India or Passport or Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988

Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

Consequential amendments have been made in rule 23 (Revocation of cancellation of registration), rule 89 (Application for refund of tax, interest, penalty, fees or any other amount) and rule 96 (Refund of integrated tax paid on goods or services exported out of India) to make Aadhaar authentication under rule 10B mandatory for filing application for revocation of cancellation of registration under rule 23, refund application under rule 89 and for refund under rule 96. Such amendments shall also be effective from a date to be notified subsequently.

##### iii. Insertion of Rule 96C (Bank Account for credit of refund) - To be effective from a date to be notified

The bank account under the following provisions shall mean such bank account of the applicant which is in the name of applicant and obtained on his PAN:

Rule 91(3)	Grant of provisional refund and issuance of payment order in Form GST RFD-05
Rule 92(4)	Order sanctioning refund under section 54(8) of the CGST Act, 2017 and issuance of payment order
Rule 94	Order sanctioning interest on delayed refunds and issuance of payment order

In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

##### iv. Rule 45 (Conditions and restrictions in respect of inputs and capital goods sent to the job worker) – To be effective from 1<sup>st</sup> October, 2021

In order to give effect to one of the recommendations of the 45<sup>th</sup> GST Council meeting, sub-rule (3) of rule 45 has been amended to specify the periodicity of furnishing Form ITC-04 as under:



S. No.	Particulars	Remark
(a)	Principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores	ITC-04 to be furnished once in six months (commencing on 1 <sup>st</sup> April and 1 <sup>st</sup> October)
(b)	In any other case	ITC-04 to be furnished annually

**v. Rule 59 (Form and manner of furnishing details of outward supplies) – To be effective from 1<sup>st</sup> January, 2022**

Earlier, the registered person was not allowed to file Form GSTR-1 if he has not furnished the return in Form GSTR-3B for preceding two months. Now, the said period of two months has been reduced to one month. Thus, the registered person shall not be able to file Form GSTR-1 if he has not filed the Form GSTR-3B for the previous month. Consequently, sub-clause (c) has been omitted.

**vi. Rule 89 (Application for refund of tax, interest, penalty, fees or any other amount) – To be effective from 24<sup>th</sup> September, 2021**

A new sub-rule (1A) has been inserted in rule 89 to prescribe specific provisions for claiming refund of tax under section 77 of the CGST Act, 2017. The new sub-section lays down that any person, claiming refund under section 77 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

**2. Amendment in Notification No. 03/2021 dated 23.02.2021**

*Notification No. 03/2021 dated 23<sup>rd</sup> February, 2021* specifies persons who are exempted from the requirement of Aadhaar authentication under section 25(6D) of the CGST Act, 2017. This notification has been amended to provide that in addition to provisions of Aadhaar authentication as

provided under sub-sections (6B) or (6C) of section 25, provisions of sub-section (6A) shall also not apply to persons specified under the notification.

***Notification No 36/2021-Central Tax dated 24<sup>th</sup> September, 2021***

**3. Amendments in CGST rates for Services**

Following changes have been made in rate notification for services viz., *Notification No. 11/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017* vide *Notification No. 06/2021- Central Tax (Rate) dated 30<sup>th</sup> September, 2021*:

- CGST rate of 6% is applicable on composite supply of works contract supplied by way of construction, repair etc., of a building used for carrying out the activities in relation to mid-day meal scheme sponsored by the Central/State Government, Union territory or local authorities if such building is owned by an entity registered under section 12AA of the Income Tax Act, 1961. Now the CGST rate of 6% would also be applicable if the building is owned by an entity registered under section 12AB of the Income Tax Act, 1961. This amendment has been made consequent to the insertion of 12AB in the Income-tax Act, 1961 vide the Finance Act, 2020.
- Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property Right in respect of both IT software and goods other than IT software would be taxable at the rate of 9% [CGST]. Thus, the earlier bifurcation of IT software and goods other than IT software has been done away with.
- Services by way of job work in relation to manufacture of alcoholic liquor for human consumption would be taxable at the rate of 9% [CGST].
- Services by way of printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6% or 2.5% or Nil, as the case may be, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer were taxable @ 6% [CGST]. This entry has been omitted. Now other manufacturing services; publishing, printing and reproduction services; material recovery services shall be taxable at the rate of 9% [CGST]. Thus, the bifurcation done earlier has been done away with.
- The rates relating to admission to amusement parks and casinos etc. has also been amended.

Equal rates of SGST would also be applicable in all the above cases. Parallel amendments have been made in IGST rate notification for services as well.

## 4. Amendments in Exemption for Services

Following changes have been made in exemption notification for services viz., *Notification No. 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017* vide *Notification No. 7/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021*

- Consequent to the insertion of section 12AB in the Income-Tax Act, 1961 vide the Finance Act, 2020, exemptions available to entities registered under section 12AA of the Income Tax Act, 1961 have been extended to entities registered under section 12AB as well.
- Exemption granted to services related to FIFA Women's World Cup, 2020 to be hosted in India shall continue to be exempted "whenever rescheduled".
- Exemption has been granted to services by way of right to admission to the events organized under AFC Women's Asia Cup, 2022 subject to fulfillment of specified condition.
- Exemption granted to services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India has been extended to 30<sup>th</sup> September, 2022.
- Exemption granted to services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways has been withdrawn.
- Exemption has been granted to services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States.
- Exemption available to services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration would now be available if 75% or more of the total expenditure is borne by the Central/State Government or UT administration.

Parallel amendments have been made in IGST exemption notification for services as well.

## 5. Amendments in CGST rates for Goods

Amendments have also been made in rate notification for goods to give effect to the decisions taken by the GST Council at its 45<sup>th</sup> Meeting held on 17.09.2021. For example, CGST rate on specified renewable energy devices and parts has been increased from 2.5% to 6%, CGST rate on waste and scrap of polyurethanes and other plastics has been increased

from 2.5% to 9%, CGST rate on fortified rice kernels for schemes like ICDS etc. and medicine keytruda for treatment of cancer has been reduced from 9% to 2.5% and 6% to 2.5% respectively. Further, carbonated beverages of fruit drink or carbonated beverages with fruit juice shall now be charged to CGST at the rate of 14%. Equal rates of SGST would also be applicable in all the above cases.

It has been clarified that exemption available to seeds, fruit and spores, of a kind used for sowing will not cover seeds meant for any use other than sowing. Further, exemption available on certain specified COVID-19 medicines has been extended to 31<sup>st</sup> December, 2021.

Parallel amendments have been made in IGST rate notifications for goods as well.

*[Notification No. 8/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021, Notification No. 9/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021, Notification No. 11/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021, Notification No. 12/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021]*

## 6. Amendment in reverse charge in respect of Goods

The reverse charge notification for goods viz., *Notification No. 4/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017* has been amended vide *Notification No. 10/2021-Central Tax (Rate) dated 30<sup>th</sup> September, 2021* to provide that tax on the following goods shall be payable by the *registered recipient of such goods under reverse charge when procured from an unregistered supplier*:

Essential oils other than those of citrus fruit namely: -

- a) Of peppermint (*Menthapiperita*);
- b) Of other mints: Spearmint oil (*exmenthaspicata*), Water mint-oil (*exmentha aquatic*), Horsemint oil (*exmenthasylvestries*), Bergament oil (*exmentha citrate*)

Parallel amendment has been made in IGST reverse charge notification as well.

## ii. Circulars

### 1. Clarification on doubts related to scope of "intermediary"

An intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons wherein two of them transact in the supply of goods or services or securities (the main supply) and one in arranging or facilitating (the ancillary supply) the said main

supply. There are two distinct supplies in case of provision of intermediary services-main supply between the two principals and ancillary supply of facilitating or arranging the main supply and which is clearly identifiable and distinguished from the main supply. This ancillary supply is supply of intermediary service.

The definition of intermediary is exhaustive and not inclusive. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary/ supportive role for the intermediary i.e., he must not be providing the main supply. In cases wherein, the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”. Sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

The above position has been further clarified with the help of few illustrations in the circular itself.

*Circular No. 159/15/2021-GST dated 20<sup>th</sup> September, 2021*

## 2. Clarifications in respect of certain GST related issues

- i. W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act, 2017.
- ii. The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4) of the CGST Act, 2017, whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.
- iii. There is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier under rule 48(4) of the CGST Rules, 2017 and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.
- iv. Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered

under the restriction imposed under section 54(3) of the CGST Act, 2017 for availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified, or which are fully exempted from payment of export duty would not get covered by the said restriction.

*Circular No. 160/16/2021-GST dated 20<sup>th</sup> September, 2021*

## 3. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act, 2017

It has been clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (also referred to as foreign company under Companies Act), are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”. Therefore, supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

*Circular No. 161/17/2021-GST dated 20<sup>th</sup> September, 2021*

## 4. Clarification on certain doubts/issues in respect of refund of tax specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017

### a. Meaning of the term “subsequently held”

The term “subsequently held” given in section 77 of CGST Act and section 19 of IGST Act covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

### b. The relevant date for claiming refund under section 77 of the CGST Act, 2017/ section 19 of the IGST Act, 2017

Through the insertion of sub-rule (1A) in rule 89 vide aforementioned *Notification No. 35/2021-Central Tax dated 24.09.2021*, it has been clarified that the refund under section 77 of CGST Act/ section 19 of IGST Act, 2017 can be

claimed before the expiry of two years from the date of payment of tax under the correct head. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of *Notification No.35/2021-Central Tax dated 24.09.2021*, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24.09.2021.

Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of *Notification No. 35/2021-Central Tax, dated 24.09.2021*, would also be dealt in accordance with the provisions of rule 89(1A) of the CGST Rules.

## c. Tax adjustment through issuance of credit note

Refund under section 77 of the CGST Act, 2017 / section 19 of the IGST Act, 2017 would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act, 2017 in respect of the said transaction.

*Circular No. 162/18/2021-GST dated 25<sup>th</sup> September, 2021*

## 5. Clarification on rate and classification for certain goods:

Some of the significant clarifications made in *Circular No. 163/19/2021 GST dated 06.10.2021* are:

- Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST @ 5%/12% as specified in the respective rate Schedules.
- With effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST @ 5%.
- Pure henna powder and henna leaves, having no additives is classifiable under tariff item 1404 90 90 and shall attract GST @ 5%. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall also be 5%.

- Flavored and coated *illaichi* is a value added product and falls under sub-heading 2106 and thus, attracts GST @ 18%.
- Exemption available to coconut, fresh or dried, whether or not shelled or peeled is not available to copra and it attracts GST @ 5% irrespective of use.
- Brewers' spent grain (BSG), dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST @ 5%.

For detailed clarifications on the above aspects and other issues clarified by the CBIC namely, GST rate on pharmaceutical goods falling under heading 3006, applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822, requirement of original/ import essentiality certificate issued by the DGH on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations, GST rates on external batteries sold along with UPS systems/ inverter, specified renewable energy projects, fiber drums, whether corrugated or non-corrugated, please refer *Circular No. 163/19/2021-GST dated 6<sup>th</sup> October, 2021*.

## 6. Clarification on rate and exemption for certain services:

The significant clarifications made in *Circular No. 164/20/2021 GST dated 06.10.2021* are:

- Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "restaurant service" and attract GST rate of 5% (without ITC).
- Where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.
- Services provided by any institutions/ NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government is exempt under GST under entry no. 72 of *Notification No. 12/2017-CT(Rate)*.
- As the satellite launch services supplied by New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, *Circular No. 2/1/2017-IGST*



*dated 27.09.2017*, issued in respect of ANTRIX Corporation Ltd. is applicable to NSIL as well.

*Circular No. 2/1/2017-IGST* has clarified that place of supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd. to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

- Overloading charges at toll plazas would get the same treatment as given to toll charges.
- The expression “giving on hire” in Sl. No. 22 of the *Notification No. 12/2017-CT (Rate)* includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.
- 28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to entries 34(iii) and 34(iiia) as they existed prior to their amendment w.e.f 01.10.2021.
- The expression “food and food products” in Sl. No. 26 [Item 1(i)f] of *Notification No. 11/2017-CT (R)* excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.
- Service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e., “licensing services for the right to use minerals including its exploration and

evaluation” and the intention has always been to tax this activity / supply at standard rate of 18%.

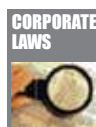
For detailed clarifications on the above aspects, please refer *Circular No. 164/20/2021-GST dated 6<sup>th</sup> October, 2021*.

## FOREIGN TRADE POLICY (FTP)

### Foreign Trade Policy 2015-2020 further extended till March 2022

The DGFT vide *Notification No. 33/2015-2020 dated 28<sup>th</sup> September, 2021* has further extended the duration of Foreign Trade Policy 2015-2020 (FTP) till 31.03.2022. Further, imports against Advance Authorisation and capital goods imported under EPCG Authorisation for physical exports shall also remain exempted from IGST and Compensation Cess till 31.03.2022.

Furthermore, imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India, by an EOU/EHTP/STP/BTP would also remain exempted from IGST and Compensation Cess till 31.03.2022.



## MINISTRY OF CORPORATE AFFAIRS (MCA)

### Summary of Circulars & Notifications from 15-09-2021 to 18-10-2021

- **Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014**

The Ministry of Corporate Affairs vide its Circular dated 27<sup>th</sup> September, 2021 has extended the last date of filing of Cost Audit Report for the FY 2020-21 by the Cost Auditor to the Board of Directors of the Companies to 31<sup>st</sup> October, 2021.

Consequently, the Cost Audit Report in e-form CRA-4 shall be filed by the Company within 30 days from the date of receipt of the copy of the Cost Audit Report by the Company.

Further, as per the proviso to Rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014, the Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file e-form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013.

Details are available at: <https://www.mca.gov.in/bin/dms/t?mids=KGIUmY7RepuZpkNfr7ThCw%253D%253D&type=open>

# Legal Update

## • Extension of period of the Company Law Committee

The Ministry of Corporate Affairs has further extended the tenure of the Company Law Committee by one year from the date of the expiry of the last order i.e. till 16.09.2022.

Details are available at: <https://www.mca.gov.in/bin/dms/t?mds=%252BpaAmGaQ%252Bcc0bTDekaOWIQ%253D%253D&type=open>



## SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

### Summary of Circulars & Notifications from 15-09-2021 to 18-10-2021

## • Revised Formats for Limited Review/ Audit Report for issuers of non-convertible securities

The SEBI vide its notification dated 07.09.2021 has amended Regulation 52 of the SEBI (LODR), Regulations 2015 ("Listing Regulations") inter-alia mandating that entities which have listed non-convertible securities shall disclose financial results on a quarterly basis, including assets & liabilities and cash flows as well as required certain changes in the line items in the financial results.

Accordingly, a circular has been issued by SEBI dated 14.10.2021 containing the revised formats for limited review report / audit report for listed entities (whose non-convertible securities are listed).

[CircularNo-SEBI/HO/DDHS/CIR/2021/0000000638]

Details are available at: [https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-limited-review-audit-report-for-issuers-of-non-convertible-securities\\_53279.html](https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-limited-review-audit-report-for-issuers-of-non-convertible-securities_53279.html)



## FEMA Updates

### (5<sup>th</sup> Amendment) FEMA 23(R) - Foreign Exchange Management Export of Goods and Services (Amendment) Regulation 2021

In Regulation 15(1) for clause (ii) following shall be substituted:

"ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and"

As per the above amendment now in addition to LIBOR plus 100 basis points, interest can also be paid as per any other applicable benchmark as directed by Reserve Bank.

### Summary Information on few Compounding Orders issued after 1<sup>st</sup> March 2020

Sr. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (Rs.)
1.	M/s. Dillinger Middle East FZE	Contravention under Regulation 4(d)(I) of FEMA Notification 22R in relation to extension of period of liaison office beyond prescribed period of years without making a prior application.	18-01-2021	6,46,644
2.	M/s. Kuwait Airways Company	Contravention under Regulation 4(e) of FEMA Notification 22R in relation to submission of fresh form FNC for establishment of additional branch office or liaison office along with justification for need for additional office/s.	17-05-2021	2,81,93,277
3.	Mr. Akash Mahajan	Contraventions under Regulation 5(1), para A(6), para C(3), para D(3) and para D(4) of Sch V read with regulation 20A and Regulation 15(iii) of FEMA Notification No. 120 relating to making overseas investment without prior approval of RBI, investment by resident individual in overseas entity which is not an operating entity, disinvestment proceeds not repatriated back to India within 60 days from date of disinvestment, obligations as prescribed in Reg 15 like receiving share certificate within 6 months from date of investment or repatriation of dues within 60 days of becoming due, filing of APR every year etc. no done, delay in reporting of disinvestment in Part III of Form ODI.	02-09-2021	84,521



## Campus for Newly Qualified Chartered Accountants (NQCA's)

September-October, 2021

Maintaining strong and spontaneous relationship with the industry and other business houses remains the main focus of the Committee for members in Industry & Business (CMI&B) of the Institute of Chartered Accountants of India (ICAI). An initiative to that effect remains the Campus Placement Programme (held twice a year) that provides a platform to both the NQCA's and the organizations looking for to hire the best available talents to fulfil their human resource requirement. ICAI simply acts as a facilitator to bring the recruiter and NQCA's together.

**Invitation to Organisations-** Any corporation, irrespective of its size, standing in the market and boundary of its business, can take part in this placement programme being held at several centers across the country during Sept-Oct, 2021.

### Campus Interview Schedule:

No.	Centre	Dates
1.	Mumbai	14 <sup>th</sup> , 16 <sup>th</sup> , 18 <sup>th</sup> , 20 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> & 23 <sup>rd</sup> October, 2021
2.	Delhi	16 <sup>th</sup> , 18 <sup>th</sup> , 20 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> , 23 <sup>rd</sup> & 25 <sup>th</sup> October, 2021
3.	Bengaluru	18 <sup>th</sup> , 20 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> , 23 <sup>rd</sup> & 25 <sup>th</sup> October, 2021
4.	Chennai	20 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> , 23 <sup>rd</sup> , 25 <sup>th</sup> & 26 <sup>th</sup> October, 2021
5.	Kolkata	21 <sup>st</sup> , 22 <sup>nd</sup> , 23 <sup>rd</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> & 27 <sup>th</sup> October, 2021
6.	Ahmedabad, Hyderabad, Jaipur & Pune	22 <sup>nd</sup> , 23 <sup>rd</sup> & 25 <sup>th</sup> October, 2021
7.	Durgapur, Ernakulam, Nagpur, Rajkot & Visakhapatnam	15 <sup>th</sup> November, 2021
8.	Kanpur	16 <sup>th</sup> & 17 <sup>th</sup> November, 2021
9.	Noida & Thane	17 <sup>th</sup> & 18 <sup>th</sup> November, 2021
10.	Bhubaneswar, Chandigarh, Coimbatore & Indore	20 <sup>th</sup> & 22 <sup>nd</sup> November, 2021

**Invitation to Candidates:** The above Campus is meant for the candidates, who passed the CA Final examination (May 2021 cycle) held in July, 2021 and also for others who have qualified earlier and are fulfilling the criteria mentioned in the Announcement.

**Organizations** intending to recruit NQCA's through campus scheme are requested to get in touch with the CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi -110002, and Email: [campus@icai.in](mailto:campus@icai.in), Tel No. (011)30110555 and to register log on to <https://cmib.icai.org/>.

**Candidates** may email at [cajob@icai.in](mailto:cajob@icai.in), Tel No. (011) 011-30110550/491 and to register log on to <https://cmib.icai.org/>.

Chairman  
Committee for Members in Industry & Business  
The Institute of Chartered Accountants of India

Organised By:  
Committee for Members in Industry & Business (CMI&B)  
The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)

'ICAI BHAWAN', Post Box No.: 7100, Indraprastha Marg, New Delhi – 110002 Tel. No.: (011) 30110555 | E-mail: [campus@icai.in](mailto:campus@icai.in)

## Single Transferable Vote - An appraisal

As the members are aware that the elections of the Institute to the Council and Regional Councils are held by following the system of proportional representation by means of a single transferable vote and in accordance with the Chartered Accountants (Election to the Council) Rules, 2006 read with Regulation 134 of the Chartered Accountants Regulations, 1988.

The term of the current (i.e. 24<sup>th</sup>) Council of the Institute is upto 11<sup>th</sup> February 2022 while the Regional Councils will be reconstituted soon after the Council (i.e. 25<sup>th</sup>) is reconstituted in accordance with the provisions of Section 9 of the Chartered Accountants Act, 1949.

Accordingly, the next elections to the Council and Regional Councils of the Institute will be held on 3<sup>rd</sup> and 4<sup>th</sup> December, 2021 at Agra, Ahmedabad, Bengaluru, Bhayandar, Bhilwara, Bhopal, Bhubaneswar, Chandigarh, Chinchwad, Chennai, Coimbatore, Delhi/New Delhi, Dombivali, Faridabad, Ghaziabad (including Indirapuram, Sahibabad and Vaishali), Gurugram, Guwahati, Hyderabad, Indore, Jaipur, Jodhpur, Kalyan, Kanpur, Kochi, Kolkata, Kota, Lucknow, Ludhiana, Meerut, Mira Road, Mumbai, Nagpur, Nashik, Navi Mumbai, Noida, Patna, Pune, Raipur, Rajkot, Ranchi, Surat, Thane, Udaipur, Vadodara, Vijayawada and Visakhapatnam and for one day on 4<sup>th</sup> December, 2021 at all other places where polling booths have been set up.

All Polling booths set up across the country will be functional from 8.00 am to 8.00 pm on each day of polling. A member can know his/her polling booth by visiting [www.icaai.org](http://www.icaai.org) under link Election-2021.

The members, especially the first time voters, would naturally be interested in knowing as to how the “single transferable vote” system, under which the elections are held, operates.

The broad details of the system are given below:

(1) Each voter has only one vote for election to the Council and one vote for election to the Regional Council. The voter, in order to cast his

vote, shall place on his ballot paper the number 1 (in Arabic numerals only) against the name of the candidate for whom he desires to vote, and may, in addition, place on his ballot paper the number 2, or numbers 2 and 3, or the numbers 2, 3 and 4 and so on opposite the name of other candidates in the order of his preference. A voter has as many preferences as the total number of candidates from that Regional constituency/Regional Council.

However, for the purpose of facilitating the process of election by avoiding fractions each valid vote is notionally considered to be of the value of 100 so that if a part of the vote has subsequently to be transferred from one candidate to another (next in the order of preference), it does not become necessary to resort to fractions, which would make the counting cumbersome.

(2) At the time of counting of votes, the covers containing the postal ballot papers are opened and the voting papers are separated. To these are added the voting papers taken out from the ballot boxes used at different polling booths. The ballot papers are, in the first place, examined and invalid papers are rejected and excluded from the process of counting. The total value of the valid votes is then calculated by multiplying the number of such votes by 100, as mentioned above. This total value is then divided by the number of vacancies increased by one, and the quotient increased by one gives the value that is required for any candidate to get elected. This figure is termed as the “quota”. Thus, if in a constituency, eight members are to be elected and there are 4,500 valid votes, the quota will be:

$$\frac{4,500 \times 100}{8 + 1} + 1 = 50,001$$

In other words, a candidate should get a value of 50,001 votes to get elected. The addition of one to the quotient is explained by the fact that if it is not done, there is a possibility that more candidates may get elected than the number of vacancies.

### The first Count

(3) The valid votes are sorted out and divided into parcels according to the candidates for whom the



first preference is marked on the respective votes. The value of the first preference votes received by each candidate is then worked out and the process is known as the first count.

(4) All the candidates, the value of whose votes is equal to or greater than the quota, are declared elected. The votes of the candidates who obtain exactly the quota are set aside as there is no question of transfer of any surplus from those votes.

### Transfer of Surplus and Subsequent Counts

(5) Then starts the process of transfer of the surplus values of the votes of those candidates who have secured more than the quota at the first count. Their cases are taken one by one in the strict order of the value of their votes, the largest surplus being dealt with first. In case no candidate obtains the quota in the first count, exclusion of candidates is resorted to (see para 12).

(6) The votes of the candidate whose surplus is to be transferred are scrutinized and all those votes which are capable of being transferred (viz., on which the next preference is marked for a candidate, who has not already been elected, or if the next preference is marked for an elected candidate, the preference marked next to that and so on) are separated. The remaining votes which are not capable of further transfer are set aside and treated as exhausted.

(7.1) Before the votes are transferred to the candidates marked next in preference, a new value of each vote is worked out. This value is arrived at by dividing the total surplus of the candidate by the number of votes to be transferred, the remainder being ignored, subject to the condition that the new value does not exceed the original value at which the vote was received by the candidate whose surplus is being transferred (viz., 100 in the case first preference votes).

(7.2) Thus, if after the first count, a candidate has a surplus of 2,962 and there are 65 votes in his parcel which are capable of being transferred each vote will be transferred at the new value of  $(2,962/65) 45$ . The remainder of 37  $[2,962 - (65 \times 45 = 37)]$  is treated as loss in value.

(8) The votes under transfer are then divided into parcels according to the candidates to whom they are to be transferred. The parcels of the transferred votes are also added as sub parcels to the parcels of original (viz., first preference) votes of the candidates

concerned. The total value of the votes going to particular candidate is obtained by multiplying the new value of each vote by the number of votes going to him and is added to the value of his original votes. The result of the transfer is then struck out and the candidates who obtain at this stage the "quota" are also declared as elected.

(9) This process of transfer of the surpluses of the elected candidates continues till the required number of candidates are elected or till all the surpluses have been dealt with.

(10) As already stated, the surpluses are transferred in the strict order of their value but all surpluses arising at an earlier count are disposed off before the surpluses arising out of subsequent counts are taken up.

(11) In the case of transfer of surplus of a candidate who was not elected at the first count but only as a result of transfer of some votes to him at a subsequent count, since the surplus arises out of the last sub-parcel of his votes, it is only the last sub-parcel that is scrutinised and the unexhausted votes contained therein which are capable of further transfer are revalued, in the manner stated in para 7.1 and 7.2 above, and then transferred to the candidates marked next in order of preference. If there is no vote in the last sub-parcel which is capable of further transfer, the whole of the surplus is treated as loss in value.

### Exclusion of Candidates

(12) When there is no surplus left for transfer and the number of candidates elected is less than the number of seats, the exclusion of candidates is resorted to. The process of exclusion comprises the transfer of votes (both original and transferred) of the candidate to be excluded to the candidates marked next in order of preference and who have not already been elected or excluded.

(13) The candidate, the value of whose votes is lowest at the time of exclusion, is first excluded.

(14) The parcels and the sub-parcels of the votes of the candidates to be excluded are taken up one by one in the order in which they were received and the votes contained in each parcel and sub-parcel which are capable of further transfer are transferred to the candidates marked next in order of preference at the same value at which they were received by him. Each parcel and sub-parcel is dealt with separately. It is only after the parcel and all the sub-parcels have been duly transferred that count is completed.

# ICAI Election 2021

(15) If, as a result of transfer of votes of a parcel, or a sub-parcel, any other candidate secures the quota and is elected, the count in progress is completed but no further votes are transferred to the elected candidate from the subsequent sub-parcels. The following example would make it clear. Let us suppose that the votes of candidate "A" who is to be excluded consist of the original parcel and two sub-parcels subsequently transferred to him. Suppose as a result of the transfer of votes contained in the original parcel, another candidate "B" gets elected. Then the remaining two sub-parcels will be dealt with one by one but no vote therefrom will be transferred to candidate "B" and such of the votes as would have normally gone to "B" will now be straightaway transferred to the candidates marked next to "B" in the order of preference on the respective votes.

(16) The process of exclusion continues till the requisite number of candidates has been elected or the number of candidates left in the field (i.e., the continuing candidates) is equal to the number of vacancies still unfilled.

(17) If, as a result of any exclusion, another candidate gets the quota and is thus elected, no further exclusion is done till the surplus of the elected candidate has been transferred and it becomes necessary thereafter again to resort to exclusion. In other words, candidate is to be excluded only when there is no surplus to be transferred.

(18.1) If, at any time during the course of counting of votes, the number of candidates remaining in the field is reduced to the number vacancies not yet filled,

all those candidates are declared as elected without resorting to any further calculations.

(18.2) It, therefore, follows that a candidate may be elected even though he does not get the required quota.

(19) If at a particular time only one vacancy is unfilled and the value of votes (both original and transferred) of anyone continuing candidate at that time exceeds the total value of votes of all the other candidates left in to field, including the surplus of any candidate not yet transferred, that candidate is declared as elected.

(20) If, when there is more than one surplus to distribute, two or more surpluses are equal, or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same values of votes and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom fewest original votes are recorded shall have his surplus first distributed, or shall be first excluded as the case may be. If the values of their original votes are equal, the Returning Officer shall decide by lot which candidate shall have surplus distributed or be excluded.

(21) When after counting of votes, a tie is found to exist between candidates, regard is given to the original votes and if the original votes are also equal, then the process of draw of lots is resorted to. In case of tie amongst more than two candidates, the candidate whose slip is picked up is excluded from the poll. If the tie is between two candidates, the candidate whose slip is picked remains in the poll or declared as successful, as the case may be.

## Option to Get Polling Booth Re-Alloted

The amended rules 5 and 6(2) of the Chartered Accountants (Election to the Council), Rules, 2006 provide that the Voters, who are entitled to vote by poll shall have the option to choose for a polling booth in the same/different city within the same constituency (Rule 5) or to a polling in another city outside one's own regional constituency [Rule 6(2)] due to change in his/her professional address published in the List of Voters as on 1<sup>st</sup> April, 2021 or expected to be away from his/her professional address on the day of polling i.e. 3<sup>rd</sup> and 4<sup>th</sup> December, 2021. In accordance with the aforesaid rules, Voters

interested to get the polling booth re-allotted may apply online as early as possible but latest by 11<sup>th</sup> November 2021 if the desired change is to a polling in a city beyond one's own constituency and 18<sup>th</sup> November 2021 if the desired change is to a different polling booth in the same city/different city within one's own constituency by accessing the Announcement dated 14<sup>th</sup> October 2021 on link <https://www.icaai.org/post/election2021-option-to-get-polling-booth-re-alloted>.

**CA (Dr.) Jai Kumar Batra**  
Returning Officer and Acting Secretary


## Admissible number of votes to a Voter and Ballot paper

Each eligible member to vote (i.e. Voter) shall be given a ballot paper each for Council of the Institute and his respective Regional Council at the polling booth for recording his preference(s). The ballot paper shall be printed in English language on one side only and will contain names (in alphabetical order), membership number and photograph of the candidates.

A voter shall have one vote only, but shall have as many preferences as there are candidates. In order to cast his vote, the voter shall place on his ballot paper the number 1 (**in Arabic numerals**) in the square opposite the name of the candidate for whom

he desires to vote; and may, in addition, place the number 2 or the numbers 2 and 3 or the numbers 2, 3 and 4 and so on (**in Arabic numerals only**), in the squares opposite the name of other candidates in the order of his preference upto the maximum number of candidates standing for the election. However, a cross, i.e. 'X' mark may be put in the squares opposite the name(s) of candidate(s) to whom the voter does not desire to vote. A few illustrations of valid and invalid marking of preferences on ballot paper are given hereinafter for guidance of the voters so that marking of preference in any manner, other than permissible manner, is avoided.

### Illustrations

	Name and Membership No. of the Candidate on the ballot paper	Valid Marking	Invalid Marking	Reason
Illustration 1	ABC ----- M.No. -----	1	T	Preference not marked in Arabic Numeral.
Illustration 2	ABC ----- M.No. -----	1	One	Preference not marked in Arabic Numeral.
Illustration 3	ABC ----- M.No. -----	1	(i)	Preference not marked in Arabic Numeral.
Illustration 4	ABC ----- M.No. -----	1		1 <sup>st</sup> preference not marked at all
Illustration 5	ABC ----- M.No. -----	1	1	Preference marked outside the box
Illustration 6	ABC ----- M.No. -----	1	1	Preference marked outside the box
Illustration 7	ABC ----- M.No. -----	1	Kumar	Name written in the box instead of marking valid preference
Illustration 8	ABC ----- M.No. -----	1		Signature used instead of marking valid preference.
Illustration 9	ABC ----- M.No. -----	1	एक	Preference not marked in Arabic Numeral.
Illustration 10	ABC ----- M.No. -----	1	God is great	Writing anything other than valid preference makes it invalid
Illustration 11	X) ABC ----- (Candidate 1) M.No. -----	1	1	Marking same preference to more than one candidate, makes that preference and all the subsequent preferences invalid.
	Y) DEF ----- (Candidate 2) M.No. -----	2	1	
	Z) GHI ----- (Candidate 3) M.No. -----	3	2	
Illustration 12	ABC ----- M.No. -----	1	✓	Tick symbol is used instead marking preference in Arabic Numeral.
Illustration 13	ABC ----- M.No. -----	1	X	1 <sup>st</sup> preference is not marked

# ICAI Election 2021

## Final Lists of Candidates for election to the Twenty Fifth Council and Twenty Fourth Regional Councils to be held in December 2021

In accordance with the provisions of sub-rule (2) of Rule 15 of the Chartered Accountants (Election to the Council) Rules, 2006 read with sub-regulation (10) of Regulation 134 of the Chartered Accountants Regulations, 1988, a copy each of the Final Lists of Candidates for election to the Twenty Fifth Council and Twenty Fourth Regional Councils to be held in December, 2021 is hereby published for information of the Candidates and Membership at large.

### ELECTION TO THE TWENTY FIFTH COUNCIL – DECEMBER, 2021

#### CONSTITUENCY NO. 1 – WESTERN INDIA REGIONAL CONSTITUENCY

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	034769	<b>ADUKIA RAJKUMAR SATYANARAYAN, FCA</b> OFFICE NO 3 BLDG NO 1 GROUND FLOOR MERIDIEN APARTMENTS VEERA DESAI ROAD MUMBAI - 400058 (MAHARASHTRA)
2	120645	<b>AGARWAL BALKISHAN, FCA</b> B-310 INTERNATIONAL COMMERCE CENTER RING ROAD SURAT - 395002 (GUJARAT)
3	114630	<b>AGARWAL VISHNU KUMAR, FCA</b> OFFICE NO 308 THIRD FLOOR THE SUMMIT BUSINESS BAY NEAR WEH METRO STATION MUMBAI - 400069 (MAHARASHTRA)
4	104234	<b>BAJAJ LALIT LAXMINARAYAN, FCA</b> SHOP NO 5 BARSANA SALASAR BRIJ BHOOMI TEMBA ROAD DIST THANE BHAYANDAR - 401101 (MAHARASHTRA)

5	104644	<b>BHANDARI ANIL SATYANARAYAN, FCA</b> 901 KAMLA EXECUTIVE PARK 9TH FLOOR ANDHERI KURLA ROAD J B NAGAR ANDHERI (EAST) MUMBAI - 400059 (MAHARASHTRA)
6	108090	<b>CHHAJED PIYUSH SOHANRAJI, FCA</b> 101 HUBTOWN SOLARIS NEAR EAST WEST FLYOVER N S PHADKE MARG MUMBAI - 400069 (MAHARASHTRA)
7	035885	<b>CHITALE CHANDRASHEKHAR VASANT, FCA</b> 3 GURUKRUPA 1317 SHUKRAWAR PETH PUNE - 411002 (MAHARASHTRA)
8	119293	<b>CHITALE SUSHRUT MUKUND, FCA</b> MUKUND M CHITALE & CO 2ND FLOOR KAPUR HOUSE PARANJAPE B SCHEME ROAD NO 1, MUMBAI - 400057 (MAHARASHTRA)
9	115774	<b>CHOKSHI HARDIK KANU, FCA</b> 15/17 RAGHAVJI B BLDG GROUND FLOOR RAGHAVJI ROAD GOWALIA TANK MUMBAI - 400036 (MAHARASHTRA)
10	102062	<b>DESAI DRUSHTI RAHUL, FCA</b> 3RD FLOOR MERCHANT CHAMBER 41 NEW MARINE LINES MUMBAI - 400020 (MAHARASHTRA)
11	101533	<b>DOSHI VISHAL, FCA</b> K C MEHTA & CO 2ND FLOOR MEGHDHANUSH RACE COURSE CIRCLE VADODARA - 390007 (GUJARAT)



# ICAI Election 2021

12	032523	<b>JOSHI SHRINIWAS YESHWANT, FCA</b> A 103/104 VARADLAXMI GOKHALE ROAD MULUND - EAST MUMBAI - 400081 (MAHARASHTRA)
13	044075	<b>KABRA DURGESH KUMAR, FCA</b> 803/804 ASHOK HEIGHTS NICCO CIRCLE NEAR BHUTA SCHOOL OLD NAGARDAS X ROAD GUNDAVALI ANDHERI EAST MUMBAI - 400069 (MAHARASHTRA)
14	105591	<b>KHANDELWAL DHEERAJ KUMAR, FCA</b> 511 / 512 ATLANTA ESTATE OPP WESTIN HOTEL WESTERN EXPRESS HIGHWAY GOREGAON EAST MUMBAI - 400063 (MAHARASHTRA)
15	100601	<b>KHANDELWAL PURUSHOTTAMLAL HUKAMICHAND, FCA</b> 216 MADHUPURA VEPAR BHAVAN NEAR GANJ BAZAR MADHUPURA CHOWK MADHUPURA AHMEDABAD - 380004 (GUJARAT)
16	045481	<b>KINARE MANGESH PANDURANG, FCA</b> 102 YASHWANT TOWER CHS DHARMAVEER MARG PANCHPAKHADI THANE - WEST THANE - 400602 (MAHARASHTRA)
17	045489	<b>PATODIA SUNIL KUMAR, FCA</b> SHREE SHAKAMBHARI CORPORATE PARK PLOT NO 156-58 CHAKRAVARTI ASHOK COMPLEX NEAR CAMBRIDGE SCHOOL J B NAGAR ANDHERI-EAST MUMBAI - 400099 (MAHARASHTRA)

18	045228	<b>RATHI RAKESH, FCA</b> 16TH FLOOR TOWER II INDIA BULLS FINANCE CENTER S B MARG, ELPHINSTONE (W) MUMBAI - 400013 (MAHARASHTRA)
19	108502	<b>SAVLA PRITI PARAS, FCA</b> 1004 LEVEL 10 SUNSHINE TOWER SENAPATI BAPAT MARGE ELPHINSTONE MUMBAI - 400013 (MAHARASHTRA)
20	109920	<b>SHAH HARDIK PRAVINKUMAR, FCA</b> 34 TAPI VILLA 4TH FLOOR VIJAY NAGAR SOCIETY B/H NIRMAL BHAVAN SURAT - 395002 (GUJARAT)
21	104605	<b>SHARMA UMESH RAMNARAYAN, FCA</b> 2ND FLOOR BLOCK NO 7 & 8 SHANGRILLA COMPLEX SAMARTH NAGAR AURANGABAD (MH) - 431001 (MAHARASHTRA)
22	131567	<b>TALATI ANIKET SUNIL, FCA</b> 2ND & 3RD FLOOR AMBICA CHAMBERS NEAR OLD HIGH COURT NAVRANGPURA AHMEDABAD - 380009 (GUJARAT)
23	119848	<b>YADAV ARCHANA SURENDRA, FCA</b> A-42, DAHISAR PAVITRA CHS OVERI PADA NEAR SHAILENDRA SCHOOL DAHISAR EAST MUMBAI - 400068 (MAHARASHTRA)

## CONSTITUENCY NO. II – SOUTHERN INDIA REGIONAL CONSTITUENCY

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	226622	<b>ABHISHEK M, FCA</b> VICTOR GRACE & CO O-704 SPENCER PLAZA 7TH FLOOR, NO 769 ANNA SALAI CHENNAI - 600002 (TAMIL NADU)

# ICAI Election 2021

2	200468	<b>ARULOLI P R, FCA</b> BLOCK NO 1373 KAMBAR KUDIIRUPPU 2 27TH STREET 18TH MAIN ANNA NAGAR WEST CHENNAI - 600040 (TAMIL NADU)
3	216244	<b>DAYANIWAS SHARMA, FCA</b> 6-3-569 4TH FLOOR OPP RTA OFFICE 'ABOVE BMW SHOWROOM KHAIRATABAD HYDERABAD - 500082 (TELANGANA)
4	215625	<b>DUNGAR CHAND U JAIN, FCA</b> PSDY & ASSOCIATES 70 NAICKER NEW STREET 2ND FLOOR MADURAI - 625001 (TAMIL NADU)
5	205929	<b>GOPAL KRISHNA RAJU, FCA</b> NO 215 WEST MASI STREET MADURAI - 625001 (TAMIL NADU)
6	202144	<b>JOMON K GEORGE, FCA</b> NO 39/2790A WILMONT PARK BUSINESS CENTRE PALLIMUKKU KOCHI - 682016 (KERALA)
7	029946	<b>MADHAVA MURTHY K S, FCA</b> NO 163 2ND FLOOR, R V ROAD MINERVA CIRCLE BENGALURU - 560004 (KARNATAKA)
8	026355	<b>MADHUBALA NAHAR, FCA</b> RAYALA TOWERS 781 MOUNT ROAD CHENNAI - 600002 (TAMIL NADU)
9	212977	<b>MUPPALA SRIDHAR, FCA</b> 11-5-449 OPP SHAH FUNCTION HALL REDHILLS HYDERABAD - 500004 (TELANGANA)

10	023999	<b>PRASANNA KUMAR D, FCA</b> FLAT NO:3C 47-9-39/17 SAI SADAN APARTMENTS DWARAKANAGAR VISAKHAPATNAM - 530016 (ANDHRA PRADESH)
11	204314	<b>RAJENDRA KUMAR P, FCA</b> 7TH FLOOREMPEE TOWER NO 59ADHITHANAR SALAI (FORMERLY HARRIS ROAD) CHENNAI - 600002 (TAMIL NADU)
12	205804	<b>SRINIVAS COTHA S, FCA</b> NO 27 SERVICE ROAD (BETWEEN 2ND AND 3RD CROSS) PAMPAMAHAKAVI ROAD SHANKARAPURAM BENGALURU - 560004 (KARNATAKA)
13	205829	<b>SRIPRIYA K, FCA</b> 5TH FLOOR APEX PLAZA NO 3 NUNGAMBAKKAM HIGH ROAD NUNGAMBAKKAM CHENNAI - 600034 (TAMIL NADU)
14	209716	<b>VENUGOPAL SWAMI B, FCA</b> FLAT NO 301 JYOTHI BLOOMS ROAD NO 3, UBI COLONY HYDERABAD - 500034 (TELANGANA)
15	215575	<b>VIDHU KUMAR B, FCA</b> 1ST FLOOR 32/1234 RAIBAN SHOPPING COMPLEX WEST OF HOSPITAL JUNCTION ALAPPUZHA - 688001 (KERALA)

## CONSTITUENCY NO. III – EASTERN INDIA REGIONAL CONSTITUENCY

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	059869	<b>AGARWAL RANJEET KUMAR, FCA</b> METRO TOWER 4TH FLOOR 170 CENTRAL AVENUE NEAR MG ROAD METRO STATION KOLKATA - 700007 (WEST BENGAL)

# ICAI Election 2021

2	057534	<b>GOYAL SUSHIL KUMAR, FCA</b> 4 B B D BAGH EAST STEPHEN HOUSE 4TH FLOOR ROOM NO 64 KOLKATA - 700001 (WEST BENGAL)
3	055753	<b>GUHA SUMANTRA, FCA</b> 16/1 GIRISH VIDYA RATNA LANE KOLKATA - 700009 (WEST BENGAL)
4	053649	<b>MITRA DEBASHIS, FCA</b> HARABALA ROAD ULUBARI GUWAHATI - 781007 (ASSAM)
5	056068	<b>SAHOO SUNIL KUMAR, FCA</b> 150 SAHID NAGAR NEAR BISHNU MANDIR BHUBANESWAR - 751007 (ODISHA)
6	050908	<b>SHAH MAHESH, FCA</b> 1/1 MONICA BUILDING 9B LORD SINHA ROAD KOLKATA - 700071 (WEST BENGAL)

## CONSTITUENCY NO. IV – CENTRAL INDIA REGIONAL CONSTITUENCY

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	413955	<b>AGARWAL ROHIT RUWATIA, FCA</b> B-130 INDUSTRIAL AREA JHOTWARA JAIPUR - 302012 (RAJASTHAN)
2	077293	<b>AGRAWAL ATUL, FCA</b> A-58 IST FLOOR SECTOR-65 NOIDA - 201301 (UTTAR PRADESH)
3	072814	<b>AGRAWAL MANU, FCA</b> 27 NAVEEN MARKET IIND FLOOR KANPUR - 208001 (UTTAR PRADESH)

4	076077	<b>BOOB PRAMOD KUMAR, FCA</b> O-19 2ND FLOOR AMBER TOWER S C ROAD JAIPUR - 302001 (RAJASTHAN)
5	079662	<b>CHHAJED ABHAY KUMAR, FCA</b> M/S S L CHHAJED & COMPANY R-12 ZONE-I M P NAGAR BHOPAL - 462011 (MADHYA PRADESH)
6	045405	<b>CHOUDHARY RAKESH, FCA</b> STC -1/804 SUN TOWER SHIPRA SUN CITY PH-II INDIRAPURAM - 201014 (UTTAR PRADESH)
7	075710	<b>GOYAL ANUJ, FCA</b> 1003 K M TRADE TOWER HOTEL RADISSON BLU KAUSHAMBI - 201010 DISTT - GHAZIABAD (UTTAR PRADESH)
8	400180	<b>GOYAL PRADEEP KUMAR, FCA</b> 315/103 BAN WALI GALI (BAG MAHA NARAIN) OPP DR GHOSH LUCKNOW - 226003 (UTTAR PRADESH)
9	072990	<b>GUPTA SATISH KUMAR, FCA</b> H-1/35 RAM VIHAR BUILDING IIND FLOOR OPP G P O JAIPUR - 302001 (RAJASTHAN)
10	409458	<b>JAIN CHURCHILL, FCA</b> 224 CHETAK CHAMBER 13-14 R N T MARG INDORE - 452003 (MADHYA PRADESH)
11	400571	<b>JAIN DINESH KUMAR, FCA</b> A-19 II FLOOR GOLIMAR GARDEN SEHKAR MARG JAIPUR - 302001 (RAJASTHAN)

# ICAI Election 2021

12	096656	<b>KUSHWAH MUKESH SINGH, FCA</b> III J-50 NEHRU NAGAR BEHIND PAWAN CINEMA HALL GHAZIABAD - 201001 (UTTAR PRADESH)
13	078720	<b>MISRA DEEP KUMAR, FCA</b> 15/258-E CIVIL LINES KANPUR - 208001 (UTTAR PRADESH)
14	078183	<b>MISRA GYAN CHANDRA, FCA</b> HALL NO 2 SECOND FLOOR SS TOWER PLOT NO 17 MAIN MARKET SECTOR-4, VAISHALI (UP) - 201010 DISTT GHAZIABAD (UTTAR PRADESH)
15	079225	<b>SHARMA GAUTAM, FCA</b> G-2 GOLDEN PALACE PLOT NO L-2-A KRISHNA MARG JAIPUR - 302001 (RAJASTHAN)
16	072332	<b>SHARMA PRAKASH, FCA</b> 324 3RD FLOOR GANPATI PLAZA M I ROAD JAIPUR - 302001 (RAJASTHAN)
17	078005	<b>SONI KEMISHA, FCA</b> 404 B PRAKRATI CORPORATE 18/1 Y N ROAD INDORE - 452001 (MADHYA PRADESH)
18	072739	<b>VASHISHT AMRESH KUMAR, FCA</b> 115 CHAPPEL STREET ST JOHN'S SCHOOL CROSSING MAA SANTOSHI MANDIR MARKET, MEERUT CANTT MEERUT - 250001 (UTTAR PRADESH)

## CONSTITUENCY NO. V – NORTHERN INDIA REGIONAL CONSTITUENCY

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	085252	<b>AGARWAL SANJAY KUMAR, FCA</b> FLAT NO 303 PRABHAT KIRAN BUILDING 17 RAJENDRA PLACE NEW DELHI - 110008 (DELHI)

2	502649	<b>ARORA RAJENDER, FCA</b> 401 DLF TOWER 15 SHIVAJI MARG MOTI NAGAR NEW DELHI - 110015 (DELHI)
3	507949	<b>BANSAL POOJA, FCA</b> SAAWARIYA & CO KD - 209 PITAM PURA NEW DELHI - 110088 (DELHI)
4	082467	<b>CHAUDHARY SANJIV KUMAR, FCA</b> SANJIV K CHAUDHARY & ASSOCIATES C-8 GF KAILASH COLONY NEW DELHI - 110048 (DELHI)
5	090460	<b>CHAWLA RAJ, FCA</b> 712 NEW DELHI HOUSE 27 BARAKHAMBHA ROAD NEW DELHI - 110001 (DELHI)
6	088646	<b>CHUGH HANS RAJ, FCA</b> E-24 (BASEMENT) LAJPAT NAGAR III NEW DELHI - 110024 (DELHI)
7	506945	<b>GARG SUMIT, FCA</b> 518 3RD FLOOR DEEP PLAZA OPPOSITE DISTRICT COURT GURUGRAM - 122001 (HARYANA)
8	501557	<b>GARG VISHAL, FCA</b> B 1 - 1185, SATSANG ROAD CIVIL LINE, LUDHIANA - 141001 (PUNJAB)
9	090358	<b>JAIN PRAMOD, FCA</b> A-2/132 PRATEEK APARTMENTS PASCHIM VIHAR NEW DELHI - 110063 (DELHI)
10	513220	<b>JINDAL SUNIL, FCA</b> 350 3RD FLOOR TARUN ENCLAVE PITAMPURA DELHI - 110034 (DELHI)



# ICAI Election 2021

11	096227	<b>KANWAR NITIN, FCA</b> UNIT 410 FOURTH FLOOR TOWER -A SPAZEDGE SECTOR -47 SOHNA ROAD GURUGRAM - 122002 (HARYANA)
12	012001	<b>KAPOOR JAGDISH CHANDER, FCA</b> B-7 HANS BHAWAN BAHADUR SHAH ZAFAR MARG NEW DELHI - 110002 (DELHI)
13	092805	<b>KHEMKA MANMOHAN, FCA</b> 205 TRIVENI PLAZA 17-A/56 W E A KAROL BAGH NEW DELHI - 110005 (DELHI)
14	506353	<b>KHURANA VIVEK, FCA</b> 30 SECOND FLOOR JANGPURA ROAD BHO GAL NEW DELHI - 110014 (DELHI)
15	089658	<b>NANDA CHARANJOT SINGH, FCA</b> 7/24 SOUTH PATEL NAGAR NEW DELHI - 110008 (DELHI)
16	091043	<b>NARANG RAJINDER, FCA</b> NARANG COMPLEX 25 CH DEVI LAL MARKET G T ROAD FATEHABAD - 125050 (HARYANA)
17	096086	<b>PERIWAL PANKAJ, FCA</b> 646/A MALERKOTLA HOUSE CIVIL LINES LUDHIANA - 141001 (PUNJAB)
18	075649	<b>SHARMA KANTA, FCA</b> 118 LGF NAVJIVAN VIHAR MALVIYA NAGAR NEW DELHI - 110017 (DELHI)

19	505453	<b>SHARMA MUKESH, FCA</b> UG-2 17A/56 TRIVENI PLAZA W E A KAROL BAGH NEW DELHI - 110005 (DELHI)
20	098258	<b>SHARMA RAJESH, FCA</b> 325 DHURVA APPARTMENTS 4 PATPARGANJ DELHI - 110092 (DELHI)
21	095377	<b>SINGHAL SANJEEV KUMAR, FCA</b> C-2-164 WEST ENCLAVE PITAMPURA DELHI - 110034 (DELHI)

## ELECTION TO THE TWENTY FOURTH REGIONAL COUNCILS – DECEMBER, 2021

### FINAL LIST OF CANDIDATES – REGIONAL COUNCILS

#### WESTERN INDIA REGIONAL COUNCIL

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	141254	<b>AGARWAL ANKIT RAMCHANDER, FCA</b> 204 SECOND FLOOR ABOVE SUMARIA ELECTRONICS VARDHAMAN HEIGHT BHIWANDI - 421302 (MAHARASHTRA)
2	122274	<b>AGRAWAL RAJESH RADHESHAM, FCA</b> FLAT NO 14 FOURTH FLOOR BUTTE PATIL TOWER NEAR GANJWE CHOWK OPP NAM JOSHI BHAWAN L B SHASTRI ROAD PUNE - 411030 (MAHARASHTRA)
3	402808	<b>AGRAWAL VIMAL KUMAR, FCA</b> C-4 C WING SHANTI JYOT BUILDING BALAJI NAGAR BHAYANDER WEST THANE BHAYANDAR - 401101 (MAHARASHTRA)

# ICAI Election 2021

4	166931	<b>AJMERA SOURABH, FCA</b> 404 NAVKAR ATLANTIS ROAD NO 3 DAULAT NAGAR MUMBAI - 400066 (MAHARASHTRA)	11	104000	<b>DODHIA VANDANA VERSHIBHAI, FCA</b> B/10 MADHAV BAUG 2ND FLOOR JAMBLI GALI BORIVALI - WEST MUMBAI - 400092 (MAHARASHTRA)
5	101701	<b>ASSAWA SHIW BHAGWAN, FCA</b> A 16 G3 HAPPY VALLEY NEAR TIKUJINIWADI MANPADA THANE - 400607 (MAHARASHTRA)	12	112294	<b>GAJRA SANJAY VALJI, FCA</b> ROOM NO 78 II FLOOR MUNSHI ESTATE ABOVE GOKUL HOSPITAL MUMBAI - 400080 (MAHARASHTRA)
6	101560	<b>BUDDH SANJEEV CHAMANLAL, FCA</b> 4-5 AMRISH INDIRA GANDHI ROAD NEAR GURUDWARA CROSS ROAD NEAR SHRINATH TRAVELS JAMNAGAR - 361001 (GUJARAT)	13	122933	<b>JAIN SHWETA JAYANT, FCA</b> G/007 OM SAI ENCLAVE NEAR GRACIOUS SCHOOL POONAM SAGAR COMPLEX DIST THANE MIRA ROAD - 401107 (MAHARASHTRA)
7	118125	<b>CHANDAK ANAND BALKISAN, FCA</b> SHRI SAI COMPLEX RISOD NAKA- GOPAL TALKIES ROAD WASHIM - 444505 (MAHARASHTRA)	14	432465	<b>JAIN VIJENDRA, ACA</b> SHOP NO 5 JAY RUDRA APARTMENT THAKUR MARG BHAYANDAR - 401101 (MAHARASHTRA)
8	122921	<b>CHANDAK PIYUSH PREMSUKH, FCA</b> 8 SULOCHANA OPP PATIL PLAZA NR ADVAIT COLONY CANADA CORNER SHARANPUR ROAD EXTENTION NASHIK - 422005 (MAHARASHTRA)	15	115545	<b>JAIN VIKASH GAUTAMCHAND, FCA</b> 204 WALL STREET- I NEAR GUJRAT COLLEGE OPP ORIENT CLUB ELLISBRIDGE, AHMEDABAD - 380006 (GUJARAT)
9	111703	<b>CHITALE RUTA SUBHASH, FCA</b> 2ANIL APARTMENTS BANER RESIDENCY BEHIND SUPRENE ICON PUNE - 411007 (MAHARASHTRA)	16	140066	<b>JIVANI ISHWARKUMAR RAMJIBHAI, FCA</b> 604 SHUBH SQUARE PATEL WADI 3, NEAR LAL DARWAJA SURAT - 395003 (GUJARAT)
10	105162	<b>DHAMANKAR REKHA VIVEK, FCA</b> 11 SIDDHATEK APARTMENTS S NO 95B PRABHAT ROAD NEAR PUNJAB NATIONAL BANK PUNE - 411004 (MAHARASHTRA)	17	135637	<b>KABRA ARPIT JAGDISH, FCA</b> 301 DDEFINITY 1ST JAI PRAKASH ROAD GOREGAON EAST NEAR MCDONALDS MUMBAI - 400063 (MAHARASHTRA)

# ICAI Election 2021

18	126497	<b>KABRA PRADEEP KUMAR, FCA</b> JLN US & CO M-19-20-21 METRO TOWER NEAR KINNARI CINEMA SURAT - 395002 (GUJARAT)	25	173435	<b>LATH GAUTAM, ACA</b> 106 SHERATHON CLASSIC NEAR SOLITARE PARK CHAKALA ANDHERI EAST MUMBAI - 400069 (MAHARASHTRA)
19	049978	<b>KACHWALA MURTUZA ONALI, FCA</b> FLAT NO 501 5TH FLOOR MONARCH BUILDING MOHAN HEIGHTS OPPOSITE GOLDEN PARK NEAR KHADAKPADA KALYAN - 421301 (MAHARASHTRA)	26	130730	<b>MAHESHWARI ADITYA RADHEYSHYAM, FCA</b> 701 HOMESTEAD LOKHANDWALA COMPLEX ANDHERI (W) MUMBAI - 400053 (MAHARASHTRA)
20	101686	<b>KALA JAYESH UMEDMAL, FCA</b> 504 RAINBOW CHAMBERS NEAR M T N L TELEPHONE EXCHANGE S V ROAD POINSUR KANDIVALI - WEST MUMBAI - 400067 (MAHARASHTRA)	27	136814	<b>MITTAL ABHISHEK MAHESH, FCA</b> G-4 PALAK COMPLEX GROUND FLOOR OPP C U SHAH COLLEGE NR SAKAR III INCOME TAX AHMEDABAD - 380014 (GUJARAT)
21	123080	<b>KAMDAR SNEHAL ARVIND, FCA</b> 301-302 POONAM PEARL JUHU LANE ANDHERI WEST MUMBAI - 400058 (MAHARASHTRA)	28	048091	<b>NATANI SATYAPRAKASH RAMMANOHAR, FCA</b> 505 GOYAL TRADE CENTER SONA CINEMA SHANTIVAN BORIVALI-EAST MUMBAI - 400066 (MAHARASHTRA)
22	133627	<b>KASAR YASHWANT JAYWANT, FCA</b> OFFICE NO 14 ABOVE MEHER ARIHANT BUILDING OPP AYURVED RASASHALA PUNE - 411004 (MAHARASHTRA)	29	107170	<b>NIKAM SANJAY DNYANESHWER, FCA</b> C 2-5 FLAT NO 1, C1/C2 TYPE APTS SECTOR 2, NAVI MUMBAI - 400703 (MAHARASHTRA)
23	059969	<b>KEDIA PINKI, FCA</b> A-501 CRESCENT GRANDE OLD NAGARDAS ROAD NR STATE BANK OF INDIA ANDHERI EAST MUMBAI - 400069 (MAHARASHTRA)	30	138932	<b>PANKHANIA HRUDYESH NATVARLAL NAYNA, FCA</b> B 9 DNYANESHWAR APT SOPARA ROAD BEHIND ZILLA PARISHAD MARATHI SCHOOL NALLASOPARA - 401203 (MAHARASHTRA)
24	110841	<b>KELKAR ABHIJIT JAYANT, FCA</b> SHRINIVAS KELKAR BUILDING BADKAS CHOWK MAHAL NAGPUR - 440002 (MAHARASHTRA)	31	105642	<b>PARIKH RAHUL HARSHAD, FCA</b> 803-804 GUNJAN TOWERS NEAR INORBIT MALL SUBHANPURA VADODARA - 390023 (GUJARAT)

# ICAI Election 2021

32	110741	<b>PATEL CHINTAN NARESHKUMAR, FCA</b> 803-804 MAURYANSH ELANZA B/S PAREKHS HOSPITAL SHYAMAL CROSS ROAD AHMEDABAD - 380015 (GUJARAT)	38	049176	<b>SAIYA KETAN DAMJI, FCA</b> A-2 WEST VIEW GROUND FLOOR L N ROAD OPP SWAMI NARAYAN TEMPLE MUMBAI - 400014 (MAHARASHTRA)
33	106137	<b>POMAL HITESH MANHARLAL, FCA</b> MANUBHAI & SHAH LLP G-4 CAPSTONEOPP CHIRAG MOTORS SHETH MANGALDAS ROAD ELLISBRIDGE AHMEDABAD - 380006 (GUJARAT)	39	144746	<b>SAVE GAURAV VIDYADHAR, FCA</b> OFFICE A -1A GROUND FLOOR SHRI KUNJ PREMISES 24 HANUMAN ROAD VILE PARLE (EAST) MUMBAI - 400057 (MAHARASHTRA)
34	043540	<b>PRAJAPATI MULSHANKAR DHULABHAI, FCA</b> OFFICE NO 228 SECOND FLOOR CENTRE POINT NATIONAL HIGHWAY NO 8 DIST VALSAD, VAPI - 396191 (GUJARAT)	40	113860	<b>SHAH SHARDUL DILIP, FCA</b> 202 JOLLY BHAVAN NO 2 NEW MARINE LINES MUMBAI - 400020 (MAHARASHTRA)
35	138978	<b>RANGWANI HARISHKUMAR NOTANDAS, FCA</b> SHOP NO 6 4TH FLOOR MANORAMA TOWER BHARAT MATA SQUARE NAGPUR - 440002 (MAHARASHTRA)	41	106240	<b>SHINAGARE SHILPA BABASAHEB, FCA</b> 201 AUTUMN GROVE LOKHANDWALA TOWNSHIP KANDIVALI (E) MUMBAI - 400101 (MAHARASHTRA)
36	162441	<b>RATHI ANKIT, FCA</b> B-402, INDRAPRASTH COMPLEX BEHIND MITHALAL JAIN BUNGLOW BHYANDER EAST MIRA ROAD - 401105 (MAHARASHTRA)	42	112411	<b>TAMBI LALIT OMPRAKASH, FCA</b> R R KHANDELWAL & CO 2ND FLOOR KOTHARI COMPLEX AMRAVATI - 444601 (MAHARASHTRA)
37	112543	<b>SABOO KAMLESH RAMPRASAD, FCA</b> 1 SHREE RAM LAXMI NIWAS CHS NEAR ANTHONY BAKERY KOLBAD, THANE - WEST THANE - 400601 (MAHARASHTRA)	43	121670	<b>VAIDYA ASHISH SUBHASH LALITA, ACA</b> A 403, KRISHNA GOKUL GARDEN CHS LTD THAKUR COMPLEX KANDIVALI EAST MUMBAI - 400101 (MAHARASHTRA)
			44	102854	<b>VASA NILESH BHUPATRAI, FCA</b> 101 GAYATRI, T P S ROAD NO 56 BORIVLI -W, MUMBAI - 400092 (MAHARASHTRA)



# ICAI Election 2021

45	114876	<b>VIJAYKUMAR JEYAM, FCA</b> B-2 CHANDRAGIRI L M ROAD MANDAPESHWAR MUMBAI - 400103 (MAHARASHTRA)
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## SOUTHERN INDIA REGIONAL COUNCIL

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	200546	<b>ALAGAPPAN V, FCA</b> C-36 FIRST FLOOR 7TH CROSS EAST THILLAI NAGAR TIRUCHIRAPALLI - 620018 (TAMIL NADU)
2	214530	<b>ARUN AYYAMPALAYAM VENKATESAN, FCA</b> AKSHAYAM OLD NO 4/1 NEW NO 153-B SUGAVANESWARA STREET SALEM - 636004 (TAMIL NADU)
3	028997	<b>BHANU NARAYAN RAO Y V, FCA</b> 8-2-205/A PATASALA STREET KUMMARGUDA SECUNDERABAD - 500003 (TELANGANA)
4	221424	<b>CHENGAL REDDY RAMIREDDYGARI, FCA</b> 6-2-966/1 FLAT NO 101 SAIMA ARCADE HILLS COLONY HYDERABAD - 500004 (TELANGANA)
5	218549	<b>CHINA MASTHAN TALAKAYALA, FCA</b> FLAT NO 101 B BLOCK PRESTIGE ROY TOWERS 6-3-664 OPP NIMS INSIDE CHROMA BUILDING PANJAGUTTA HYDERABAD - 500082 (TELANGANA)

6	206119	<b>DHAVALAGI CHANDRAMAPPA RAMANNA, FCA</b> DHAVALAGI CHAMBERS NO 4 II FLOOR KALBURGI NOOLVI MAJESTIC BESIDE MERCHANTS ASSOCIATION BUILDING HUBBALLI - 580029 (KARNATAKA)
7	213002	<b>GEETHA A B, FCA</b> #36/36 IST FLOOR 59TH CROSS 5TH BLOCK BHASYAM CIRCLE BENGALURU - 560010 (KARNATAKA)
8	024598	<b>JAYARAJAN B, FCA</b> 18/15 'LAKSHMI' EAST FORT ROAD, FORT MAIDAN PALAKKAD - 678001 (KERALA)
9	209430	<b>JOY P T, FCA</b> 34/306 C FIRST FLOOR J B PLAZA EDAPPALLY TRIPUNITHURA ROAD NEAR NSS HOSTEL OBERON MALL J N PADIVATTOM KOCHI - 682024 (KERALA)
10	217809	<b>KUMARA M G, FCA</b> 158/K28 KSHETRISH ROAD N S ROAD CROSS K R MOHALLA MYSURU - 570004 (KARNATAKA)
11	222425	<b>LOGANATHAN R, FCA</b> NO W-65 TLV MANOR 1ST FLOOR FLAT B-1 2ND STREET 3RD MAIN ROAD OPP TOWERS CLUB CHENNAI - 600040 (TAMIL NADU)
12	221452	<b>MADHAVAN S, FCA</b> NO 1-76 WEST STREET KALLUR POST THIRUMAYAM TALUKA PUDUKKOTTAI - 622209 (TAMIL NADU)

# ICAI Election 2021

13	229584	<b>MADIWALAPPA SANGAPPA TIGADI, FCA</b> MOTIBAG INDUSTRIES COMPOUND I FLOOR OZONE COMPLEX BELGAUM ROAD BAILHONGAL - 591102 (KARNATAKA)	19	026366	<b>PANNA RAJ S, FCA</b> FLAT 004 D NO 344/2 2ND CROSS GANDHI NAGAR BALLARI - 583103 (KARNATAKA)
14	217061	<b>MANDAVA SUNIL KUMAR, FCA</b> 1ST FLOOR H NO 8-3-677 PLOT NO 26 SRI NILAYAM SRI KRISHNA DEVARAYA NAGAR YELLA REDDY GUDA HYDERABAD - 500073 (TELANGANA)	20	220023	<b>PONUGOTI RAVI SANKARA REDDY, FCA</b> C/O CA RAVI SANKARA REDDY P MIG 91 KPHB 7TH PHASE MEDCHAL-MALKAJGIRI DISTRICT HYDERABAD - 500085 (TELANGANA)
15	208616	<b>MOHAMED RAFAEQ S, FCA</b> NO 145 AA BLOCK 3RD AVENUE ANNA NAGAR CHENNAI - 600040 (TAMIL NADU)	21	207582	<b>PRAKASH CHOKDA, FCA</b> SHOP NO 61 RAGHAVA RATNA TOWERS CHIRAG ALI LANE HYDERABAD - 500001 (TELANGANA)
16	027923	<b>MURALIDHARAN K P, FCA</b> NEW NO 45 (OLD NO 23) SECOND FLOOR 1ST MAIN ROAD CHENNAI - 600030 (TAMIL NADU)	22	231027	<b>RAJESH S, FCA</b> 14 MARIAPPA PILLAI STREET COIMBATORE DIST POLLACHI - 642001 (TAMIL NADU)
17	207921	<b>NAGAM DEVI KUMAR, FCA</b> D NO 15-7A-4 FLAT NO 101 QUEENS ROYAL TOWERS VENKATARTNAPURAM KAKINADA - 533001 (ANDHRA PRADESH)	23	246384	<b>REKHA U S, ACA</b> B3 F2 VELS MAYURA GOKUL STREET KATTABBOMMAN NAGAR CHENNAI - 600117 (TAMIL NADU)
18	201754	<b>NARESH CHANDRA GELLI, FCA</b> 201 SUNNY RESIDENCY DWARAKAPURI PUNJAGUTTA HYDERABAD - 500082 (TELANGANA)	24	200052	<b>REVATHI S RAGHUNATHAN, FCA</b> FLAT NO 2 7TH FLOOR A- WING PARSN MANERE NEW NO 442 ANNA SALAI CHENNAI - 600006 (TAMIL NADU)
			25	215702	<b>SABU THOMAS, FCA</b> MANAGING DIRECTOR KERALA STATE LABOUR FED CENTRAL MALLETTUMANOOR P O KOTTAYAM - 686631 (KERALA)

# ICAI Election 2021

26	028324	<b>SANKAR M S, FCA</b> A 1206 S ANDS SARVAM 200 FEET RADIAL ROAD CHENNAI - 600100 (TAMIL NADU)
27	209962	<b>SATHEESAN P, FCA</b> TC 29/342-11 VISHNU APARTMENTS THIRUVAMBADY THRISSUR - 680022 (KERALA)
28	206020	<b>SENTHILKUMAR RAMANATHAN, FCA</b> SITE NO 58 SADHGURU ILLAM MAIN STREET SWARNAPURI AVENUE 15 VELAMPAALYAM TIRUPUR - 641602 (TAMIL NADU)
29	026744	<b>SIVA PRASAD A S R S S, FCA</b> 33-25-34B DR ESWARKUMAR BUILDING BELLAPU SOBHANADRI STREET SURYARAOPET VIJAYAWADA - 520002 (ANDHRA PRADESH)
30	210507	<b>SONY C L, FCA</b> ROOM NO 87 FIRST FLOOR ADAM BAZAR BUSINESS COMPLEX RICE BAZAR THRISSUR - 680001 (KERALA)
31	205386	<b>SUBBA RAO MUPPALA, FCA</b> D NO 22-7-33 2ND FLOOR RAGHUPATHI RAO TOWERS BEHIND LALAPET POLICE STATION GUNTUR - 522003 (ANDHRA PRADESH)
32	029591	<b>SUNDARARAJAN R, FCA</b> NO 101 NATHAKAMALAM 1A PERIAZHVAR STREET EAST TAMBARAM KANCHEEPURAM - 600059 (TAMIL NADU)

33	214945	<b>THAVAMANI T, FCA</b> DHURIYA BHAVANAM NO 3 NEW PANKAJAM COLONY 1ST STREET NEAR VAIGAI RIVER MADURAI - 625009 (TAMIL NADU)
34	210744	<b>UMAMAHESWARA RAO O K, FCA</b> FLAT NO 207ACHENJI PLAZA K T ROAD BHAVANINAGAR CHITTOOR TIRUPATI TIRUPATI - 517501 (ANDHRA PRADESH)
35	025911	<b>YARRA TIRUPATHAIAH, FCA</b> D NO 2-2-1130/24/1/B/4 SECOND FLOOR INDIAN BANK BLDG SHIVAM ROAD NEW NALLAKUNTA HYDERABAD - 500044 (TELANGANA)

## EASTERN INDIA REGIONAL COUNCIL

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	057625	<b>AGARWAL HARI RAM, FCA</b> 219-C OLD CHINA BAZAR STREET 1ST FLOOR ROOM NO B-6 KOLKATA - 700001 (WEST BENGAL)
2	302458	<b>AGRAWAL MAYUR, FCA</b> 4 GANESH CHANDRA VENUE 7TH FLOOR KOLKATA - 700013 (WEST BENGAL)
3	069862	<b>DEY SANDIP, FCA</b> M/S DUTTA GHOSH AND ASSOCIATES 4 RIPON STREET 2ND FLOOR KOLKATA - 700016 (WEST BENGAL)

# ICAI Election 2021

4	064478	<b>JENA SAMIT KUMAR, FCA</b> SWASTIC CENTRE P 8 CHOWRINGHEE SQUARE 4TH FLOOR KOLKATA - 700069 (WEST BENGAL)
5	300721	<b>JHA SHAMBHU, FCA</b> JHA PRASAD & ASSOCIATES PODDAR COURT GATE NO-1 7TH FLOOR ROOM NO- 718 KOLKATA - 700001 (WEST BENGAL)
6	060238	<b>MAHATO PRABIR, FCA</b> 16/2G/1B DOVER TERRACE KOLKATA - 700019 (WEST BENGAL)
7	060108	<b>MISHRA PARTHA SARATHI, FCA</b> PLOT NO GA - 140 GROUND FLOOR NILADRI VIHAR BHUBANESWAR - 751021 (ODISHA)
8	301624	<b>PATRA DEBAYAN, FCA</b> NONA SHIBTALA NONA AREA C/O D N PATRA ULUBERIA - 711315 (WEST BENGAL)  <b>Address for Correspondence,</b> 10 OLD POST OFFICE STREET ROOM 101, 3 <sup>RD</sup> FLOOR KOLKATA-700001 (WEST BENGAL)
9	056409	<b>PATWA RAVI KUMAR, FCA</b> SARWAM 1ST FLOOR JANIGANJ BAZAR SILCHAR - 788001 (ASSAM)

10	059112	<b>SANGHI SANJIB, FCA</b> APEEJAY HOUSE 4TH FLOOR BLOCK A KOLKATA - 700016 (WEST BENGAL)
11	061953	<b>TULSYAN VISHNU KUMAR, FCA</b> P2 NEW CIT ROAD 2ND FLOOR UNIT 210 NEAR CENTRAL METRO STATION KOLKATA - 700073 (WEST BENGAL)

## CENTRAL INDIA REGIONAL COUNCIL

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	076332	<b>AGRAWAL DINESH KUMAR, FCA</b> KAMLAHARI VILLA ABOVE APOLLO PHARMACY MAIN ROAD VIDYA NAGAR BILASPUR (CH) - 495001 (CHHATTISGARH)
2	413300	<b>BAJAJ NAND KISHORE, FCA</b> C/O PREM KUMAR MODI NEAR STREET OF UNIQUE BOOK HOUSE KOYLA GALI BIKANER - 334001 (RAJASTHAN)
3	065676	<b>BARDIA KISHORE HEMRAJ, FCA</b> 1ST FLOOR JAGGI COMPLEX INFRONT OF SHOURYA POLICE PETROL PUMP NEHRU NAGAR RAIPUR - 492001 (CHHATTISGARH)
4	410780	<b>BARGOTI AKASH, FCA</b> 221 SECOND FLOOR KRISHNA SQUARE, SUBHASH NAGAR JAIPUR - 302016 (RAJASTHAN)



# ICAI Election 2021

5	059483	<b>BIYANI MANISHA, FCA</b> 3RD FLOOR SETHI CORPORATE BUILDING OPP STATE BANK OF BIKANER AND JAIPUR P P COMPOUND MAIN ROAD RANCHI - 834001 (JHARKHAND)	12	079750	<b>JAIN SHARAD, FCA</b> OFFICE NO 3 1ST FLOOR JEEVAN KUTI BUILDING L M COMPLEX EXTENSION OPP PARSWANATH TOWER NR TOWER CHOWK UJJAIN - 456010 (MADHYA PRADESH)
6	403080	<b>CHANDRAKER SHASHIKANT, FCA</b> 211 SECOND FLOOR DESHBANDHU COMPLEX AGRASEN CHOWK, SAMTA COLONY RAIPUR - 492009 (CHHATTISGARH)	13	413927	<b>JOSHI KIRTI KUMAR, FCA</b> 113/2 VALLBHA NAGAR BEHIND SGSITS COLLEGE INDORE - 452003 (MADHYA PRADESH)
7	405303	<b>GARG TANUJ KUMAR, FCA</b> A-12 1ST FLOOR DHARAMPALI PALACE BHOJA MARKET SECTOR-27 NOIDA - 201301 (UTTAR PRADESH)	14	411185	<b>MAHESHWARI LOKESH, FCA</b> 1109 MAHAVEER NAGAR FIRST NEAR BLUE BELLS SCHOOL KOTA - 324005 (RAJASTHAN)
8	079174	<b>GUPTA NITIN, FCA</b> III-B-1 FIRST FLOOR NEHRU NAGAR NEAR HOLI CHILD SCHOOL GHAZIABAD - 201001 (UTTAR PRADESH)	15	073921	<b>MEHROTRA ATUL, FCA</b> 8/196-A ARYA NAGAR KANPUR - 208002 (UTTAR PRADESH)
9	401237	<b>GUPTA RAJEEV, FCA</b> 1ST FLOOR CA HOSUE BEHIND MOOLCHAND HOSPITAL OPP P L SHARMA SMARAK MEERUT - 250001 (UTTAR PRADESH)	16	078737	<b>NALWAYA MANISH, FCA</b> 302 PARAS APARTMENT BASERA COLONY OPP SHRI PRAJAPATI VATIKA UDAIPUR - 313004 (RAJASTHAN)
10	439496	<b>JAGETIYA DEEPAK KUMAR, ACA</b> 53 1ST FLOOR PANNADHAY COLONY CHITTORGARH - 312001 (RAJASTHAN)	17	079812	<b>PANDEY ABHISAK, FCA</b> FLAT NO 3 FIRST FLOOR SIDDHARTH VILLA 7/17 TILAK NAGAR PARWATI BAGLA ROAD KANPUR - 208002 (UTTAR PRADESH)
11	524904	<b>JAIN RAHUL, FCA</b> 642/23 BLU CASTLE KESAR GANJ AJMER - 305001 (RAJASTHAN)	18	071503	<b>POKHARNA YOGESH CHANDRA, FCA</b> 15161718 DIAMOND PLAZZA FIRST FLOOR OPPOSITE CHOUDHARY HOSPITAL UDAIPUR - 313002 (RAJASTHAN)

# ICAI Election 2021

19	415256	<b>RATHI VINEET, FCA</b> C-25 NEW GANDHI NAGAR GHAZIABAD - 201001 (UTTAR PRADESH)
20	129087	<b>SHAH PANKAJ, FCA</b> 112-114, MANAS BHAWAN MAIN 11 RNT MARG INDORE - 452001 (MADHYA PRADESH)
21	424280	<b>SINGH MANOJ, FCA</b> 503 ANSAL SATYAM BUILDING RDC RAJ NAGAR GHAZIABAD - 201001 (UTTAR PRADESH)
22	073882	<b>SINGHAL PRAVEEN KUMAR, FCA</b> C-16 SECTOR-52 NOIDA - 201301 (UTTAR PRADESH)
23	510836	<b>SOMANI ANKIT, FCA</b> 1ST FLOOR BALAJI KI BAGICHI ROOPANGARH ROAD MADANGANJ KISHANGARH - 305801 (RAJASTHAN)
24	531932	<b>TIWARY JAYENDRA KUMAR, FCA</b> 1ST FLOOR H NO 130 SECTOR 3-A VAISHALI VAISHALI (UP) - 201010 (UTTAR PRADESH)
25	416606	<b>VERMA RAHUL, FCA</b> SS 946/47 SECTOR - G LDA COLONY KANPUR ROAD LUCKNOW - 226012 (UTTAR PRADESH)
26	405160	<b>YADAV ANIL KUMAR, FCA</b> F-137 1ST FLOOR DHANSHREE TOWER I OPP SHEKHAWATI HOSPITAL VIDHYADHAR NAGAR JAIPUR - 302023 (RAJASTHAN)

## NORTHERN INDIA REGIONAL COUNCIL

S. No.	Membership No.	Name and Address of the candidate [As published in the List of Voters]
1	508472	<b>AGARWAL SANDEEP, FCA</b> D-251 THIRD FLOOR AGARWAL BUSINESS CENTER LAXMI NAGAR DELHI - 110092 (DELHI)
2	522122	<b>AGGARWAL ABHINAV, ACA</b> 807 CYBER PLAZA NETAJI SUBHASH PLACE DELHI - 110034 (DELHI)
3	506192	<b>AGGARWAL DHEERAJ, FCA</b> SHOP NO 49 2ND FLOOR CHOUDHARY BALBIR SINGH COMPLEX JWALA HERI MARKET PASCHIM VIHAR NEW DELHI - 110063 (DELHI)
4	516131	<b>AGGARWAL SANGAM KUMAR, FCA</b> 41-A SG POCKET DILSHAD GARDEN DELHI - 110095 (DELHI)
5	532594	<b>AGRAWAL GAURAV, FCA</b> X-542 JAI MATA MARKET RAGHUBARPURA NO 1 DELHI - 110031 (DELHI)
6	520161	<b>BAHL SACHIN, FCA</b> B-5/402 SECTOR-3 ROHINI DELHI - 110085 (DELHI)
7	505763	<b>BHANDARI RACHIT, FCA</b> B XV 392 GILL ROAD 1 ST FLOOR MILLER GANJ LUDHIANA - 141003 (PUNJAB)

# ICAI Election 2021

8	512742	<b>CHUGH NITISH KUMAR, FCA</b> HANDS AND ASSOCIATES 5R/4 GOBIND BHAWAN 2ND FLOOR NEELAM CHOWK FARIDABAD - 121001 (HARYANA)
9	509322	<b>DASH SUDHIR KUMAR, FCA</b> L-2/37A D D A FLATS KALKAJI NEW DELHI - 110019 (DELHI)
10	511643	<b>DHARAM SINGH, FCA</b> CORPORATE FINANCE - ESTT 2ND FLOOR - B WING BHEL CORPORATE OFFICE NEW DELHI - 110049 (DELHI)
11	504757	<b>GARG GAURAV, ACA</b> KP 142 MAURYA ENCLAVE NEAR HOTEL CITY PARK PITAMPURA DELHI - 110034 (DELHI)
12	508535	<b>GARG NAVEEN, FCA</b> UNIT NO 503 JMD MEGAPOLIS SOHNA ROAD SECTOR-48 GURUGRAM - 122001 (HARYANA)
13	518702	<b>GOEL PITAM, FCA</b> JD-2C 2ND FLOOR PITAMPURA NEW DELHI - 110001 (NEW DELHI)
14	087009	<b>GOYAL AJOY KUMAR, FCA</b> 919 NAURANG HOUSE 9TH FLOOR 21 KG MARG CONNAUGHT PLACE DELHI - 110034 (DELHI)
15	096797	<b>GOYAL GAUTAM, FCA</b> 5-A/81 GOYAL TOWER NIT FARIDABAD - 121001 (HARYANA)

16	503976	<b>GOYAL HITESH, FCA</b> #275B SECTOR 20 A MOTIA KHAN MANDI GOBINDGARH - 147301 (PUNJAB)
17	500806	<b>GUPTA HEMANT, FCA</b> NO 24A POCKET A DDA LIG FLATS HARI NAGAR NEW DELHI - 110064 (DELHI)
18	524837	<b>GUPTA SHALINI, FCA</b> 440-D BRS NAGAR LUDHIANA - 141012 (PUNJAB)
19	527791	<b>GUPTA SHYAM JI, FCA</b> OFFICE NO 615-616 PLOT NO 7 ROOTS TOWER LAXMI NAGAR DISTRICT CENTRE LAXMI NAGAR DELHI - 110092 (DELHI)
20	501902	<b>GUPTA VIJAY KUMAR, FCA</b> 624 C H BLOCK PALAM VIHAR GURUGRAM - 122017 (HARYANA)
21	512338	<b>JAGS JAGJEET SINGH, FCA</b> B-3/A SAWAN PARK GURU DWARE WALI GALI ASHOK VIHAR PHASE-3 DELHI - 110052 (DELHI)
22	547116	<b>KHANNA PRANNAV, ACA</b> 186 DOUBLE STOREY NEW RAJINDER NAGAR NEW DELHI - 110060 (DELHI)
23	517791	<b>KUMAR AMIT, FCA</b> A-78 DABUA COLONY NEAR NEW POLICE CHOWKI BEHIND FCI GODAN FARIDABAD - 121001 (HARYANA)

# ICAI Election 2021

24	539685	<b>MALHOTRA NAVYA, FCA</b> H NO A - 61 PRASHANT VIHAR SECTOR - 14 DELHI - 110085 (DELHI)	31	516583	<b>SAINI BALRAM SINGH, FCA</b> 94A GROUND FLOOR J AND K POCKET DILSHAD GARDEN DELHI - 110095 (DELHI)
25	534662	<b>MITTAL VIJAY, FCA</b> PLOT NO 76 1ST FLOOR BLOCK C PKT 7 SECTOR 8 OPPOSITE DDA MKT ROHINI DELHI - 110085 (DELHI)	32	541413	<b>SHARMA ANKIT, ACA</b> SCO NO 27 D-248/10 BALAJI COMPLEX LAXMI NAGAR DELHI - 110092 (DELHI)
26	536135	<b>NAVNEET KUMAR, FCA</b> PLOT # 76-D UDYOG VIHAR PHASE 4 GURUGRAM GURUGRAM - 122001 (HARYANA)	33	096126	<b>SHARMA DINESH, FCA</b> 6/7/8-B-I FIRST FLOOR SHRI VIVEKANAND SWARG ASHRAM TRUST MODEL TOWN EXTENSION LUDHIANA - 141002 (PUNJAB)
27	529230	<b>NISHANT KUMAR, FCA</b> S-597 SECOND FLOOR NEHRU ENCLAVE SCHOOL BLOCK SHAKARPUR DELHI - 110092 (DELHI)	34	514513	<b>SHARMA PRAVEEN, FCA</b> IX/1624 GANDHI NAGAR NEW DELHI - 110003 (DELHI)
28	507900	<b>PANDEY ASHUTOSH KUMAR, FCA</b> 1/37 GROUND FLOOR GURUDAWRA GALI LALITA PARK DELHI - 110092 (DELHI)	35	519122	<b>SHARMA SANDEEP, FCA</b> 1/11087B GALI NO 8 SUBHASH PARK SHAHADARA, DELHI - 110032 (DELHI)
29	513913	<b>RAMANUJ SANTOSH, FCA</b> 575 FIRST FLOOR MAIN ROAD CHIRAG DELHI NEW DELHI - 110017 (DELHI)	36	512515	<b>SHARMA VIPIN, FCA</b> 3F-4, OZONE CENTER SHOPPING MALL-9 FARIDABAD - 121007 (HARYANA)
30	544528	<b>RASTOGI HIMANSHU, ACA</b> D 272 STREET NO 11 LAXMI NAGAR DELHI - 110092 (DELHI)	37	532077	<b>SINGH MUKESH KUMAR, FCA</b> C-205, 4TH FLOOR MADHUBAN NIRMAN VIHAR DELHI - 110092 (DELHI)
			38	094845	<b>YADAV RATTAN SINGH, FCA</b> 301 PANKAJ PLAZA -1 PLOT NO 1 SECTOR 6 CENTRAL MARKET MLU DWARKA, NEW DELHI - 110075 (DELHI)



## FORTHCOMING EVENTS

Committee Name: **Internal Audit Standards Board**

Sl. No	Title of the Seminar/Conference	Date	Place	CPE Hours
	Virtual CPE Meetings			
1.	Internal Audit and Risk Management	November 6, 2021, 6 PM – 9 PM	Virtual	3
2.	Standards on Internal Audit – Benchmark for Quality	November 11, 2021, 6 PM – 8 PM	Virtual	2
3.	Technology as Enabler of Internal Audit	November 13, 2021, 6 PM – 9 PM	Virtual	3
4.	Technology as Enabler of Internal Audit	November 20, 2021, 6 PM – 9 PM	Virtual	3
5.	Standards on Internal Audit – Benchmark for Quality	November 25, 2021, 6 PM – 8 PM	Virtual	2
6.	Technology as Enabler of Internal Audit	November 27, 2021, 6 PM – 9 PM	Virtual	3
Contact person	Programme/Course Co-ordinator* For Registration & Further Details:	Secretary, IASB IASB Secretariat:iasb.program@icai.in (0120-3045995)		
For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org				

## Classifieds

**5869** We, 38 years old CA firm having 22 Partners and 21 Branches, are seeking partners, who hold COP and are already in practice, for long term association. for more details <https://bit.ly/3qNWzx9>. Contact: CA. Vinay Mittal Mobile- 9910691575 or e-mail: [vncgzb.partners@gmail.com](mailto:vncgzb.partners@gmail.com)

**5870** CA firm in Gurugram requires Articles having both groups of IPCC passed. Good academic record. Excellent communication skills must. Contact: Nisha Rana, RKACA & Associates LLP. Phone:- 0124-4102000, Extn.108, E-mail: [nisha.rana@rka-india.com](mailto:nisha.rana@rka-india.com)

**5871** Delhi based CA with experience of 33 years (industry & practice) seeks professional work on assignment/retainership/subcontract/part-time/partnership basis. Contact: Chander Vijay Bhatia, 9268297873, [cvbhatia97@rediffmail.com](mailto:cvbhatia97@rediffmail.com)

**5872** Mumbai based FCA CoP Age 68, Experience in Industry and Practice Seeks professional work on Partnership basis at Mumbai 9820422001 [harshadshah1953@yahoo.com](mailto:harshadshah1953@yahoo.com)

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## ICAI in Media : Glimpses of September - October, 2021



## Can girls do better as CA

The results in the ICAI CA Final exams held in July 2021 may provide a fair indication

By Anurag Choudhary  
@anuragchoudhary

With girls constituting 10 per cent of the ICAI CA Final exam takers in July 2021, the results may be expected to show 'female' dominance.

While the pass percentage of male candidates in the July 2021 exam is 13.52% and that of girls is 10.22% in the New Course, girls have done better in terms of the marks, as the CGPA of girls is 1.00, while the pass percentage of male candidates is 1.25, and that of girls is 1.00, as per the results of the exam.

For a prolonged period, girls are likely to maintain their lead in the long run, says Anurag Choudhary, president, ICAI.

ICAI is looking to Education Times.



### Leadership skills

Confirmed that women can perform with the same level of competence as men, and women are equally capable of leadership.

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## BusinessLine

New Delhi, October 9, 2021

### NFRA CONTROVERSY

## ICAI President tells members not to directly write to MCA, NFRA

Wants them to send their views to him

KR SRIVATS

New Delhi, October 8

The CA Institute has advised its members to refrain from directly approaching the Ministry of Corporate Affairs (MCA) or the National Financial Reporting Authority (NFRA) when it comes to their concerns on the recent controversy around accounting standards revision and consultation paper on micro, small and medium companies (MSMCs).

"I request members to have patience and not send diverse communications to NFRA or to the Ministry individually. The council is doing everything that is required to be done in the given situation and in this matter," Nihar Jambusaria, President, ICAI,

told members in a video message.

Jambusaria asked members to write their views to him and promised to consider them for representation to the NFRA and the Ministry.

Jambusaria's advice comes on the heels of the recent controversy that arose after NFRA sent back the approach paper for revision of existing accounting standards, asking it to carry out Regulatory Impact Assessment (RIA) and hold nationwide discussion. NFRA had also issued a consultation paper in September, seeking public comments on whether mandatory audit can be done away with for MSMCs satisfying a specific threshold.

Meanwhile, the latest advice from the ICAI President should certainly not be seen as a deterrent, but more of a request to members to ensure that the multiple diverse com-

munications to the MCA and NFRA do not put the government in a quandary, said informed sources.

### Good coordination

The ICAI President told members that the CA Institute would like to have good coordination with NFRA for which discussions will be held. "We had done this in the past and we will continue to have channels of discussions with NFRA," he added.

Jambusaria noted that accounting standards revision commenced in 2006, and the approach paper developed by ICAI was approved by National Advisory Committee on Accounting Standards (NACAS), which was replaced by the NFRA. Jambusaria said that the ICAI will send the revised accounting standards back to the NFRA for its approval again.

THE TELEGRAPH CALCUTTA SATURDAY 2 OCTOBER 2021

NAC

## NATION

# PhD door opens for CAs

**BASANT KUMAR MOHANTY**

New Delhi: All those who have done courses in chartered accountancy, company secretaryship and cost and works accountancy will now be able to pursue PhD degrees and apply for teaching jobs in colleges.

The University Grants Commission (UGC), the higher education regulator, has approved a proposal in this regard, fulfilling a demand from the Institute of Chartered Accountants of India (ICAI) that functions under the ministry of corporate affairs.

The UGC took the decision in February and ratified it in

July. The minutes of a commission meeting on July 26 says CAs, CSs and ICWAs can appear in the National Eligibility Test (NET) or the State Level Eligibility Test (SLET) through which assistant professors, the entry-level post, are recruited in colleges.

However, such students will need to have an undergraduate degree too. Now, many students get admitted to the four-year CA, CS and ICWA courses directly after clearing Class XII while many others come after completing under-graduation.

ICAI president Nihar Jambusaria said the decision would help the thousands of students who undertake CA,

CS or ICWA courses every year to pursue higher studies.

"Earlier, those with CA, CS or ICWA qualifications were not able to register for PhD (in most cases) since they did not have a master's degree. Now these qualifications will be treated as equivalent to a post-graduate degree. They will be able to pursue PhD and also take up teaching jobs in colleges," Jambusaria said.

He, however, pointed out that the requirement of 55 per cent marks in post-graduation to appear for NET or SLET would still be a hurdle for CAs, CSs and ICWAs as these were low-scoring courses.

"The pass mark in these courses is 50 per cent. Insisting

on 55 per cent marks in PG courses for appearing in NET or SLET will be a hurdle. We will propose to the UGC to allow all those clearing CA, CS or ICWA courses to take NET and SLET," he said.

Former ICAI president Atul Gupta said nearly 30,000 students complete these three courses every year and many of them face problems while trying to pursue higher education abroad.

"When they try to pursue any course abroad, they face difficulties in convincing the institutions about their CA, CS or ICWA qualifications. It was not clear whether those who undertake these courses would be considered degree or

diploma holders. Now there is clarity," he said.

Students with Class XII certificates are eligible to pursue these courses. Academics pointed out that it was only fair that the four-year duration of these courses would make them the equivalent of postgraduate courses.

The Association of Indian Universities (AIU), which grants equivalence to certificates obtained from foreign institutions to their corresponding Indian degrees, has in the past granted equivalence to the CA course with MCom in individual cases.

Now, all 1,000 universities of the country will recognise and accept these certificate holders.





The Institute of Chartered Accountants of India

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Organised By

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**29th January, 2022**  
Hotel Le Meridien, New Delhi



Nominations in the following categories of awards have been started from 15.09.2021

CA Business Leader

CA Special Recognition

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CA Educator

CA Entrepreneur

CA CFO

CA Hall of Fame

CA Global Achiever

For more details regarding eligibility, sub-categories of awards, award process & guidelines etc. pls visit  
<https://awards.icai.org/>

Members working in industry and not holding full time COP may apply at the link  
<https://nominationforms.icai.org/>

In case of any queries, please contact at 011-30110548/549 or 8448115375 or email to [icai.awards@icai.in](mailto:icai.awards@icai.in)

**Committee for Members in Industry & Business (CMI&B)**

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

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