HAPPY TAMIL NEW YEAR!

THE MONTHLY MAGAZINE FROM CASC

Volume-2 **Issue-4** **April 2023**

CASC BULLETIN

INDEX

Date	Topic	Speaker
27.04.2023 (Thursday) at 6.30 p.m.	Opportunities in Insurance Industry	Sri. P.S. Prabhakar

The meetings will be held at CASC at 6.30 p.m. and will be preceeded by fellowship over High Tea at 6.00 p.m.

CASC Annual Members are requested to renew their subscription for 2022 - 2023

EDITORIAL

"So many of our dreams at first seem impossible, then they seem improbable, and then, when we summon the will, they soon become inevitable."

– Christopher Reeve

Dear Professional Colleagues,

Audit Trail

The Corporates have to start maintaining Audit Trail in the books of accounts with effect from 1st April 2023 onwards as per the requirement of Companies Act. This is only applicable for company and not for LLP or partnership firm. This is not going to create much challenges for large company who already have ERP systems like SAP, etc., and a well-organized finance department. But sure this is going to be a challenge for small companies who are not equipped with proper accounts and finance departments. The popular accounting software Tally has already made this feature available last year itself. The Companies should enable the same in Tally or any other software which they are using. Still there are other challenges which needs to be tackled.

Periodical posting of entries in books of accounts by the companies on a weekly, or monthly basis cannot be done anymore. The books should be updated on a real time basis. Missed entries when passed on a later date may appear to be suspicious, like passed on to avoid taxes and to boost profits.

GST Appellate Tribunal – Materialise in Few Months

As per the amendments proposed in the Finance Bill 2023, which was passed by Lok Sabha on Friday, benches of the GST Appellate Tribunal would be set up in every state and there will

be a principal bench in Delhi that will hear appeals related to the "Place of supply". The Finance Bill 2023 has opened the space for setting up of much awaited GST Appellate Tribunals across the country, with a principal bench in New Delhi and several State benches. The Tribunal will be headed by a former Supreme Court judge or a retired Chief Justice of a High Court.

Currently, taxpayers aggrieved with the ruling of tax authorities are required to move to high courts. The resolution process takes longer time as high courts are already burdened with a backlog of cases and do not have a specialised bench to deal with GST cases. Setting up state and national-level benches would definitely speed up the dispute resolution mechanism and give much relief to the Tax Payers, and reduce the impending cases in various High Courts and Supreme Courts. The Finance Bill will now be sent to the Rajya Sabha for passing. Once it is passed by the Rajya Sabha, the GST Appellate Tribunal will materialise in the next few months.

Denial of ITC by AO is Justified

This is the case of M/s. Ecom Gill Coffee trading pvt ltd, where there was some irregularities in Input Tax Rebate claimed by the purchasing dealer for Assessment Year 2010-2011, the AO issued notice under section 39 of the KVAT Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order was also passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers, 6 were found to be de-registered, 3 had effected sales to the respondent but did not file taxes and 6 have out rightly denied turnover nor paid taxes. Therefore, ITC came to be disallowed to the extent of Rs. 10.52 lacs. The Tribunal and High court allowed the ITC claim stating that the purchase was genuine based on the payments and Tax invoices.

But the Supreme Court stated that in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. Thus the orders passed by the Tribunal & High courts stands to be quashed and order passed by the AO and Appellate authority stands to be restored.

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and behalf of Editorial Board

Bhuvaneswari.R.V.

CA. BHUVANESWARI.R.V.

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RECENT JUDGEMENTS IN VAT/CST/GST

Delay in filing appeal : The Appellate Authority cannot entertain the statutory appeal if the said appeal has been filed by the petitioner beyond the maximum period of 60 days as per the TNVAT Act 2006. Only due to the technical glitches in the web portal of the respondents, petitioner was unable to file the statutory appeal within the prescribed maximum time limit of 60 days. For these reasons, the Court directed the petitioner to file the statutory appeal as against the Assessment Orders dated 11.08.2022 in respect of the Assessment Year 2014-15, 2015-16 and 2015-16, within a period of one week from the date of receipt of a copy of this order along with the mandatory pre-deposit statutory amount. On receipt of the said appeal along with the statutory pre-deposit amount, the respondents shall entertain the same and decide the appeal on merits and in accordance with law and also decide as to whether the appeal has been filed within the prescribed period of limitation or not. **S. Jayaraman vs1. The Appellate Deputy Commissioner (ST), Chennai (East), 2. The Assistant Commissioner (ST),Adyar Assessment Circle W.P. No.6050 of 2023 DATED: 28.02.2023**

CA. V.V. SAMPATHKUMAR

Property Attachment: Giving due consideration to Section 19-B of the TNGST Act that, only in cases where the Company has been wound up, the properties belonging to the Directors of the said Company can be attached or proceeded with vide Division Bench Judgment of this Court in the case of R.Vasinathan and Others Vs. CTO (FAC), Ambattur Assessment Circle, Chennai and Another reported in 2009 (23) VST 82 (Mad). **1. Shanthamanie 2. S.R. Ramakhanthun Vs. 1. AC (ST), Thudialur Assessment**

Circle, (Now Allotted to AC (ST), Perinaickenpalayam Circle, Coimbatore). 2.Sub Registrar, Perinaickenpalayam, 3.Manager,City Union Bank, Pappanaickenpalayam Branch, W.P.No.29869 of 2019 DATED: 27.02.2023

Rectification and affording hearing :The impugned orders passed u/s 84 of the TNVAT Act, 2006. There is no enhancement of assessment or penalty and therefore, there is no necessity for the respondent to adhere to the principles of natural justice as claimed by the petitioner in these writ petitions. **K.Subramani Vs. The Assistant Commissioner (ST), Singanallur North Circle, Coimbatore - 641 018 W.P.Nos.4796 and 4800 of 2023 DATED : 27.02.2023**

Notice : The Learned Standing Counsel appearing for the respondents submitted that the present writ petition is not maintainable on the ground that the petitioner has challenged the show cause notice(SCN) even without submitting a detailed reply to the same. According to him, the contention of the petitioner as raised in this WP can be considered only after they send a reply to the impugned SCN and not before that. Being a SCN, that too when the same has been issued on account of non-payment of the GST as per FORM GST DRC-01, this Court cannot entertain this writ petition at this stage. Necessarily the petitioner will have to submit a reply to the impugned show cause notice, raising the contentions that have been raised in this writ petition. On receipt of the same, it is for the respondents to consider it, on merits and in accordance with law. However, the respondents will have to adhere to the applicable provisions of the viz., section 42(3), 43-A and 16(2) and also give due consideration to the decisions of this Court, before passing final orders. Stating so, this writ petition was disposed of by directing the petitioner to submit an additional reply raising the contentions that have been raised in this writ petition to the respondents, within a period of three

weeks from the date of receipt of a copy of this order. It was also directed that on receipt of the said additional reply, the respondents, after affording a personal hearing to the petitioner, shall pass final orders, on merits and in accordance with law, as expeditiously as possible **M/ s.Liberty Clothing Company, Vs 1.Union of India, 2.State of TN, 3.DC, CGST and CE, Tirupur Division W.P. No.2924 of 2023 DATED: 03.02.2023**

Appeal : This Writ Petition has been filed challenging an order dated 01.09.2022 in respect of the assessment year 2017-18, levying interest and penalty on the petitioner. Petitioner has challenged the impugned order stating that the impugned order is contrary to the principle laid down in the Judgment rendered in W.P.No.4468 of 2020 in the case of M/ s.Maansarovar Motors Private Limited Vs. The AC, Poonamallee Division, Chennai Outer Commissionerate, Chennai-40 and Others; and that the impugned order is contrary to the Judgment rendered in W.P.No.15340 of 2022 dated 21.06.2022 in the case of G.K.Shetty Builders Pvt. Ltd. Vs. Joint Commissioner, Chennai and Others. The Court ruled that as there is no violation of principles of natural justice. Hence, the Writ Petition is not maintainable. The Judgments relied upon by the petitioner referred to supra, can very well be produced by the petitioner before the Statutory Appellate Authority. The petitioner then submitted that they are willing to file the Statutory Appeal as against the impugned order, provided the petitioner is granted sufficient time to file the same. The Hon'ble Court is of the considered view that one month time will suffice for the petitioner to file the Statutory Appeal and granted time to file appeal with directions **Tvl. Makesh Kumar Mills Pvt Ltd., Vs. Assistant Commissioner (ST), Tiruppur Central-II Circle, Tiruppur. W.P.No.4923 of 2023 DATED : 21.02.2023**

Rectification orders: As per Section 84 of the TNVAT Act, 2006, only in cases where there is an error apparent on the face of the record, the rectification

of an assessment order can be entertained. The first respondent under the impugned order has categorically held that no case has been made out by the petitioner for rectification of the assessment orders. The proviso to Section 84 of the TNVAT Act, 2006 also makes it clear that only in cases where the authority decides to revise the assessment, there is a necessity for granting an opportunity of hearing. In the case on hand, the authority, while deciding the petitions filed under Section 84(1) of the TNVAT Act, 2006, has not revised the earlier assessment orders passed by the respondents and therefore, has rightly not granted any opportunity of hearing to the petitioner. No specific request for personal hearing was also sought for by the petitioner. The first respondent has also observed that having not exercised the statutory appeal as directed by this Court in its order dated 18.06.2019 passed in W.P. No.6309 of 2017, the petitions filed u/s 84(1) of the TNVAT Act, 2006, by the petitioner seeking for rectification of the assessment orders cannot be entertained under any circumstances whatsoever. The Court does not found any infirmity in the said impugned order and this reveals that only to protract the inevitable, the Rectification Petitions have been filed. This Court does not find any merit in this writ petition and the consequential Auction Notice dated 07.02.2023, which is impugned in this writ petition also does not deserve any interference. **Poovai Amman Agencies vs 1.State Tax Officer, Kallakurichi. 2.Authorised Officer, City Union Bank Ltd, Credit Recovery and Management Dept, Kumbakonam–1. W.P. No.4788 of 2023 DATED: 20.02.2023**

Attachment of bank account: As per the assessment orders, apart from the tax liability, the petitioner is also liable to pay an equal sum towards penalty amount. The petitioner apprehends that the said penalty amount, despite the appeal having been filed, will also be recovered from the bank account of the petitioner maintained with the second respondent bank. When an appeal has

already been filed which is still pending and the statutory pre-deposit amount has also been made by the petitioner and that too, when the first respondent has already recovered the tax liability amount from the petitioner, as per the assessment orders, no further sums can be recovered by the first respondent from the petitioner. Since the Statutory appellate authority being a necessary party, has not been made as a party respondent in this writ petition, the Court suo motu impleaded the Appellate Deputy Commissioner (CT), Chennai (East) as the third respondent in this WP. For the foregoing reasons, this writ petition is disposed of by directing the third respondent to pass final orders on merits and in accordance with law on the petitioner's statutory appeal dated 13.04.2021 filed challenging the assessment orders within a period of twelve weeks from the date of receipt of a copy of this order. Till the final orders are passed by the statutory appellate authority, no coercive steps shall be taken against the petitioner pursuant to the impugned proceedings dated 13.02.2023 for the recovery of the amounts mentioned therein. Since the first respondent has already recovered the tax liability amount and that too, when the statutory appeal is pending consideration, by the third respondent viz., statutory appellate authority, the attachments effected on the petitioner's bank account maintained with the second respondent is directed to be lifted and the petitioner is permitted to operate their bank account maintained with the second respondent bank. **Hotel Sakithyan vs. 1.AC (Sales Tax), T.Nagar Assessment Circle 2.Branch Manager, IOB, Chennai-17. 3.Appellate DC of CT, Chennai (East). (R3 impleaded Suo Motu vide order of Court dt 20.02.2023). W.P.No.4976 of 2023 DATED: 20.02.2023**

Principles of Natural Justice Since the personal hearing has not been afforded to the petitioner before issuing the impugned proceedings, it is clear that principles of natural justice has been violated by the

respondent. Hence, the impugned assessment orders have to be quashed and the matters will have to be remanded back to the respondent for fresh consideration on merits and in accordance with law. The Court deemed it fit to fix the next date of personal hearing of the petitioner before the respondent as 14.03.2023 and on that date the petitioner shall appear before the respondent at 10:30 a.m. without fail. Stating these, the impugned assessment orders dated 29.04.2021 and 27.04.2021 were quashed and the matters remanded back to the respondent for fresh consideration on merits and in accordance with law. **Sri Murugan Electrical Stores Vs. The Assistant Commissioner (ST) (FAC), Namakkal (Rural) Assessment Circle W.P.Nos.767 etc of 2022 DATED : 20.02.2023**

Opportunity of hearing : A decision rendered by a learned Single Judge of this Court on 31.08.2020 in W.P.(MD).Nos.8133 of 2020, etc., batch, while interpreting Section 75 (4) of the TNGST Act, 2017 it has been observed that only after a reply is sent by the assessee, the Authority can apply its mind and if they contemplate an adverse decision they must provide an opportunity of hearing. Learned Single Judge has also observed that issuing a personal hearing notice even prior to the receipt of the explanation from the petitioner cannot be said to be in compliance of Section 75 (4) of the TNGST Act, 2017. Section 75 (4) of the TNGST Act, 2017 reads as follows: "75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person." For these reasons, this Court was of the considered view that the principles of natural justice has been violated by the respondent before passing of the impugned assessment order. In the result, the impugned assessment orders all dated 25.10.2022 were quashed and the matters are remanded back to the respondent for fresh consideration on merits and in accordance with law. **Shree Shyam**

Granites and Marbles Vs. The Assistant Commissioner (ST) (FAC), Hosur (South) - III Circle W.P.Nos.4105, 4110 and 4108 of 2023 DATED : 13.02.2023

Principles of natural justice: As seen from the impugned orders dated 31.10.2022, the replies sent by the petitioner dated 17.04.2015 and 28.12.2017 in respect of the assessment year 2014-15 have not been considered by the respondents. Insofar as the assessment year 2015-16 is concerned, the reply dated 10.05.2016 sent by the petitioner has also not been considered by the respondents in the impugned assessment order dated 31.10.2022. No personal hearing was afforded to the petitioner and by a non-speaking order, the impugned assessment orders have been passed and the respondents have levied tax and penalty on the ground of short reporting by the petitioner in their monthly return under the TNVAT Act 2006. The impugned assessment orders, having been passed by violating the principles of natural justice and being non-speaking orders with regard to the contentions of the petitioner as seen from their reply, both will have to be quashed and the matters will have to be remanded back to the first respondent for fresh consideration, on merits and in accordance with law. The impugned assessment orders dated 31.10.2022 in respect of both the assessment years 2014-15 and 2015-16 are hereby quashed and the matters are remanded back to the first respondent for fresh consideration, on merits and in accordance with law. **Tvl.Scope International P Ltd vs.1.CTO (ST), Nungambakkam Assessment Circle, 2.AC, Nungambakkam Assessment Circle, 3.The Commissioner of Commercial Taxes, Chennai – 5. W.P. Nos.3662 and 3663 of 2023 DATED: 10.02.2023**

Higher amount than figure in SCN determined: As seen from the impugned Assessment Orders, the proposal notices sent to the petitioner on different dates were for different amounts, but in the impugned Assessment Orders, the tax liability of

the petitioner is much more than the figure mentioned in the proposals sent to the petitioner. The petitioners' submitted that a clarification Circular, dated 20.04.2001 (para 13) issued by the Commissioner of Commercial Taxes stated that the order shall not be passed assessing a turnover different from the one proposed in the notice. Decision of the Hon'ble SC in the case of M/s.SACI Allied Products Ltd., U.P., vs. CCE, Meerut, dated 26.04.2005 in appeal Civil No.5854 of 1999, which decision also makes it clear that if the Assessment Order goes beyond the show cause notice, the said Assessment Order is bad in law. This principle was also laid down in the judgment of the Hon'ble SC in the case of the Commissioner of Customs, Mumbai vs. M/s.Toyo Engineering India Ltd., dated 31.08.2006. in Appeal Civil No.2532 of 2001. A Division Bench Judgment of the Madras High Court in the case of CCL Products (India) Ltd. and another vs. CESTAT and another, dated 07.11.2014 in C.M.A. No.2379 of 2006, wherein also a similar view was taken. This Court was of the considered view that principles of natural justice has been violated by the respondent(s) before passing of the impugned Assessment order and by non-application of mind the impugned Assessment Orders have been passed, since the proposal notices sent by the respondent(s) discloses a different figure than which is determined in the impugned Assessment Orders and the figure determined in the impugned Assessment Orders are much higher than the figure disclosed in the proposal notices sent by the respondent(s). Stating so, the impugned Assessment Orders were quashed and the matter remanded back to the respondent(s) for fresh consideration on merits and in accordance with law. **M/s.Eagle Earth Movers vs 1. STO, Tiruchengode Town Assessment Circle, 2.AC (ST) (FAC), Tiruchengode Rural Assessment Circle, W.P. Nos.10294, 10337 and 10350 of 2020 DATED: 09.02.2023**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

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CASE LAWS - SERVICE TAX AND GST

1. GST - SCN ISSUED IN STANDARD FORMAT WITHOUT STRIKING OUT IRRELEVANT PORTIONS AND WITHOUT STATING SPECIFIC CONTRAVENTIONS COMMITTED – DEMAND CONFIRMED –SET ASIDE

CA. VIJAY ANAND

In Roushan Kumar Chouhan v. CST, Jharkhand 2023 (69) G.S.T.L. 29/2 Centax 229 (Jhar.), proceedings were initiated on the assessee on account of a mismatch in GSTR-3B and GSTR-2A for the period in question and that the petitioners have taken undue ITC to which they were not entitled. The SCN did not strike out the relevant particulars nor enumerate the contravention for which the petitioners have been called upon to reply. These. The Summary of the Order contained in Form GST DRC-07 imposes 100% penalty which could only be levied in a proceeding u/s 74 (9). No adjudication order has been uploaded. The assessee filed a petition challenging the above for which the high court observed as under:-

On a writ petition the HC observed as under:

1. Notices u/s 73(1) is in the standard format and neither any particulars have been struck off, nor specific contravention has been indicated to enable the petitioner to furnish a proper reply to defend itself and can be termed as vague. In M/s NKAS Services Private Limited, 2022 (58) G.S.T.L. 257 (Jhar.), it was held that the summary of show cause

notice in Form GST DRC-01 cannot substitute the requirement of a proper show cause notice u/s 73(1) of the Act of 2017.

2. Levy of penalty of 100% of tax dues reflected in the Summary of the Order contained in Form GST DRC-07 vide Annexure-34 in the writ petition is also in the teeth of the provisions of Section 73(9), wherein while passing an adjudication order, the Proper Officer can levy penalty up to 10% of tax dues only.

3. The above clearly shows non-application of mind on the part of the Adjudicating Authority and the proceedings suffer from violation of principles of natural justice and the procedure prescribed u/s 73 and are in teeth of the judgment rendered by this Court in the case M/s NKAS Services Private Limited, 2022 (58) G.S.T.L. 257 (Jhar.).

Hence, the impugned show-cause notices and Summary of the Show Cause Notice and Summary of Orders contained in Form GST DRC-07 dated 12.12.2020 were quashed.

However, the Adjudicating Authority is at liberty to initiate fresh proceeding for the alleged contravention for the said tax period after issuance of proper show-cause notice in accordance with law. The petitioner were accordingly disposed

2. ST- TAXABILITY OF CERTAIN OVERSEAS PAYMENETS

In Kalpataru Power Transmission Ltd. v. CCE & ST., Ahmedabad-III 2023 (69) G.S.T.L. 54/2 Centax 56 (Tri.-Ahmd), the adjudicating authority confirmed the demand under reverse charge mechanism on the following services during the period July 2007 to March 2012 from the abroad:-

a. Banking and Other Financial Services:

b. Business Auxiliary Service:

c. Legal Consultancy Service:

d. Supply of Tangible Goods Services:

e. Technical Testing and Analysis Service

f. Cargo Handling Service:

g. General Insurance Service:

h. Information Technology Software Service :

On appeal, the Tribunal observed as under:

Banking and Other Financial Services:

1. The case of the department is that the Appellant was required to furnish Bank Guarantee in respect of the work of erection, commissioning and installation of high-tension power transmission towers abroad. For this the foreign banks charged bank guarantee commission. Also while remitting foreign currency earning in India, the foreign bank charged bank charges. These charges are in the nature of charges towards providing Banking and Financial Service and Service tax is sought to be paid on such charges paid by the Appellant.

2. No documents have been produced by the department showing that foreign bank has charged any amount from the appellant directly. Therefore, to presume that they are receiving services from the foreign bank is not correct. The facts clearly indicate that it is the Indian Banks who had paid the charges to the foreign banks. The Appellant solely deals with the Indian Bank and Appellant does not have any kind of interaction with foreign banks.

3. In this matter, if any has been received it is by the Indian Bank and not by the appellant. The amount charged by foreign banks to Indian banks can, prima facie cannot be considered as service received by the appellant.The following judgments relied upon by the appellant squarely applicable to the facts of the present matter.

(i) Dileep Industries Pvt. Ltd. 2017(10)TMI 1231

(ii) Themis Exports Pvt. Ltd. 2019(26) G.S.T.L. 104

(iii) Greenply Industries Ltd. 2015(38) STR 605

(iv) Final order No. A/85816/2018 dated 23.03.2018 – Raymond Ltd.

4. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged from them under Section 66A of the Finance Act.

Business Auxiliary Service:

5. As per the definition of „Business Auxiliary Services , it was necessary for Revenue to point out under which head of the said definition the demand was raised. It is important to classify the activity under the speific sub-clause before confirming the demand. The same has not been done in the present matter. In the absence of the specification of the exact sub-clause under which the demand was raised the said demand cannot be sustained, relying on the decision in United Telecoms Ltd. v. CST - 2011 (22) S.T.R. 571, Sharma Travels – 2017(52) STR 272) and Balaji Enterprises v. C. Ex. & S.T. - 2020 (33) G.S.T.L. 97.

6. A reading of Section 66A of the Finance Act, 1994, make it clear that a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country and such establishment situated abroad as a “separate person , will be understood to have been prescribed only to determine the provision of service whether in India or out of India. In the present matter, the department has not disputed the facts that the payment to overseas consultant/ agents/ service providers was made from the overseas projects site branch/ office of the Appellant and said Foreign

Service providers have charged local VAT/GST/Service tax as applicable in the respective foreign countries in invoices issued by them to foreign site / project office /Branch office of Appellant.

7. The above clearly established that the services have been provided by the foreign agents to the foreign site office/branch office of Appellant and thus, the service cannot be said to be received in India when the same is provided outside India, used outside India and paid outside India. Therefore, demand of service tax in the impugned matter legally not correct on this ground also.

8. The Ld. Commissioner has confirmed the demand on the ground that the arrangement to set-up an overseas office is a temporary arrangement made for the convenience of Appellant. The ultimate facts is that the site office abroad work under the umbrella of the head office located in Gandhinagar. In M/s. British Airways v. CCE (Adj.), Delhi 2014 (36) S.T.R. 598 (Tribunal), the assessee is an airline engaged in providing the service of transportation of passengers and cargo by air throughout the world. BA (UK) also had a branch office in India (BA, India). BA (UK) entered into agreement with several CRS/GDS companies for maintaining database regarding flight schedules of BA (UK) Flights, fares, seats availability etc. and this information was made available to IATA agents of British Airways all over the world including BA (India).

9. All the CRS/GDS companies were located outside India and had no branch office in India. CRS/GDS companies also provided certain hardware to IATA agents for providing connectivity for retrieving data and bookings etc. Entire payment to CRS/GDS was made by BA

(UK) based on the number of tickets issued by IATA agents. It was the view of the Revenue in that case that services availed by IATA agents in India are liable to service tax under reverse charge as services received in India.

10. Relying on the decision in M/s.British Airways v. CCE, 2018 (10) G.S.T.L. 561 (Tri. - Del.), the foreign branches/ establishments of the appellant have not acted as "facilitators but have actually consumed those services abroad for which local VAT/GST/ Service tax of the respective country has been paid. Therefore, payment of local tax abroad will be an indicator to decide whether a service is provided and consumed outside India or has been consumed/received in India.

11. Hence, the impugned order confirming the service tax liability on the appellant cannot be sustained.

Legal Consultancy Service:

12. The Ld. Commissioner has not disputed the facts that the payment to overseas consultant/ professional was made from the overseas projects site branch/ office of the Appellant on the basis of invoices issued by the said service providers to site office /branch office.

13. Therefore, these services have been provided by the foreign consultants /professionals to the foreign site office/branch office of Appellant and thus, the service cannot be said to be received in India by the Appellant when the same is provided outside India to site office of appellant, used outside India by the site office of the appellant and paid outside India by the site office of the Appellant.

14. Consequently, the demand of service on the above cannot be sustained.

Supply of Tangible Goods Services:

15. The Adjudicating Authority did not accept the contention of the appellant of exclusion from service tax on the ground that that transfer of possession and effective control of the machinery was with them holding that the agreement entered with overseas party, the value of hiring charges and other charges are separately specified and in case of agreement entered with the two overseas party, the value of hiring charges included all expenses.

16. The agreement does have provision that the machinery supplier would make available service engineers from beginning to end of period of hire. Further, if the machineries were fully under control of Appellant, hire charges would have been uniform for the period of hiring. These factors disprove Appellant's claim of having effective control of the equipment during the period of hire.

17. The appellant had entered into agreement with overseas parties for lease of machineries required for laying of long distance pipe line and for use of such machineries in India accordingly the Contract Law governed under International Chamber of Commerce. During the lease period, the appellant has full right to use equipment in India as per their wish and in India for their required purpose and these were not disp[uted by the department.

18. The department nowhere disputed the facts that Appellant operated the machineries through their own operators and lessor had no control over the use of the machinery leased to the Appellant.

19. Thus, it is clear that under the lease rental agreement exclusive right to use along with effective control and possession of the equipment has been transferred to the Appellant during the lease period.

20. Service tax demand is related to services received by the abroad site office /branch office of Appellant from HIDELECO was confirmed by the Ld. Commissioner on the ground that the overseas offices were an integral part of Appellant and were nothing but an extended arm of the Indian entity. As per the invoices submitted by the Appellant, the overseas site office of Appellant has received the service from HIDELECO for carrying out the survey and provided technical consultancy services for the transmission line project at Algeria Sonelgaz.

21. Since the service of survey and technical consultancy is in relation to erection, commissioning and installation of transmission line, prima facie demand of service tax under the category of „supply of tangible goods services is wrong and cannot be sustained.

Technical Testing and Analysis Service

22. Service tax demand was related to reimbursement expenses made to the overseas technical persons on account of their travel expenses, accommodation charges etc. In terms of the contract with the overseas customers for supply of materials it is mandatory on the part of Appellant to conduct the testing of the equipments and parts manufactured by Appellant. The representative of the overseas buyers merely witnessed the testing process carried out by the Appellant at factory. The Appellant paid the traveling and accommodation charges to representative of overseas buyers and did not pay service tax on said reimbursements expenses.

23. The said amounts cannot be considered as taxable under „Technical Testing and Analysis service , as under the category of said service, the amount can be

taxed as a testing fees or technical testing and analysis fees paid by the appellant, if any, to representative of overseas buyers. There are no such type of service charges paid by the appellant.

24. The appellant has not paid any testing charges / testing fees and has only reimbursed the expenses incurred by representative of overseas buyer, in our view, the said expenses cannot be taxed under „Technical Testing and Analysis service .

25. Rule 7(1) of the Service Tax (Determination of Value) Rules, 2006 is specifically applicable for reverse mechanism under Section 66A and for the purpose of discharge of Service Tax for the service provided from outside India, the value is equal to the actual consideration charged for the services provided or to be provided.

26. In the matter, it is on records that in case of fees/ remunerations paid to overseas technicians Appellant have paid the service tax. Since the alleged amount was not paid for services but paid for travelling expense, accommodation charges etc. clearly said expenses cannot be considered as value of taxable service. Hence, demand of service tax not sustainable on said expenses.

Cargo Handling Service:

27. The Appellant had paid the cargo handling charges from their overseas site office which are exclusively related to the services at overseas country for the business and commerce at overseas country. However Ld. Adjudicating authority rejected the contentions of the Appellant on the ground that the overseas office were an integral part of the Appellant and were nothing but an extended arm of the Indian entity.

28. In this context, reliance is against placed on the the judgment of M/s.British Airways v. CCE, 2018 (10) G.S.T.L. 561 (Tri. - Del.), which held that a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country and such establishment situated abroad as a "separate person". Therefore, the demand of service tax confirmed by the Ld. Commissioner was legally not correct.

29. Furthermore, the Appellant manufactured the goods at their factories located in India and then taken the goods from India to overseas site location of customers and carry-on erection, commissioning and installation work. In this process they take the services of companies for handling goods at ports.

30. Handling of export cargo is not taxable under the "Cargo Handling Service" consequent to which such a service tax could not have been levied on the cargo handling services availed by the Appellants for export purpose. This has also been clarified by the Board vide Circular No. 11/1/2002-TRU, dated 1.8.2002.

31. Hence, there is no merit in the impugned order on the issue with regard to the demand of service tax on Cargo Handling Service which merits to be set aside.

General Insurance Service:

32. The Appellants have shown expenditures in foreign currency under the head "Insurance Charges" and appellant accepts order from the overseas customers with the conditions to Door delivery price, in such contract appellant pays insurance charges.

33. This insurance charges are paid directly from the overseas site office of the Appellant to

overseas insurance company. However, the Ld. Commissioner held that overseas offices were an integral part of the Appellant and were nothing but an extended arm of the Indian entity. Thus the Appellant s contentions do not merit consideration.

34. In the present matter, the department has not disputed the facts that the payment to overseas insurance company was made from the overseas projects site branch/ office of the Appellant and said service was used only for the transportation of goods from overseas custom port to site of overseas customer. Moreover the overseas insurance company directly raised invoice on the foreign site office of the Appellant along with applicable taxed in respective foreign countries. The said facts clearly established that the services have been provided by the foreign Insurance Company to the foreign site office/branch office of Appellant and thus, the service cannot be said to be received in India when the same is provided outside India, used outside India and paid outside India.

35. In view of the above, the impugned order canned be sustained.

Information Technology Software Service :

36. This demand pertains to the expenses shown in foreign currency under the head "Computer Expense". The said expenses related to the maintenance of computer, replacement of part, internet charges, etc in the foreign site offices of the appellant. The services provided by the overseas service provider to the overseas site offices of the appellant cannot be said to be received in India when the same is provided outside India, used outside India and paid outside India, consequently demand is not sustainable.

Hence the appeals were allowed and impugned order set aside.

3. GST – ADVANCE RULING - AFFORDABLE RESIDENTIAL APARTMENT – TO BE CATEGORISED UNDER RESIDENTIAL REAL ESTATE PROJECT -SUBECT TO 1.5% GST

In RE: Crescent Builders G.S.T.L. 98/(2022) 1 Centax 135 (AAR-GST-Ker.), the applicant is engaged in the development and construction of residential apartments and wanted to avail the benefit of concessional tax rate for "Affordable Residential Apartments" which was notified with effect from 1-4-2019.

An application was filed seeking advance ruling as to whether the rate of 0.75% under Item No. (i) of Entry No.3 of Notification No. 03/2019-Central Tax (Rate) can be availed in respect of those units which qualify as "Affordable Residential Apartment" in a "Residential Real Estate Project" when the project consists of both "Affordable Residential Apartments" as well as apartments other than Affordable Residential Apartments? The authority observed as under:

1. The applicant is engaged in the development and construction of residential apartments. The question to be answered is regarding the rate of GST applicable in respect of the construction of "Affordable able Residential Apartments" in a Residential Real Estate Project [RREP] having both "Affordable Residential Apartments" and "Other than Affordable Residential Apartments" as per the rate Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019 - Central Tax (Rate), dated 29-3-2019 with effect from 1-4-2019.

2. On a combined reading of the entries at Items (i) and (ia) of Sl. No. 3 of the Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 and the definitions, it is evident that the rate of GST prescribed under the entry at Item (i) applies to the construction of affordable residential apartments and under the entry at Item (ia) applies to the construction of residential apartments other than affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate.

3. Hence, the rates are prescribed for the construction services of different categories of individual apartments in residential real estate and the rate as prescribed in Items (i) and (ia) shall apply to each apartment in the residential real project according to the category under which it is classified.

4. From the above, it is clear that the project to be undertaken by the applicant falls within the definition of a real estate project and the applicant falls within the definition of "promoter".

5. Further, on a conjoint reading of the above provisions of law, the facts as stated in the application and the terms and conditions in the draft agreement, the services of construction of apartments provided by the applicant in the residential real estate project squarely fall within the description of services specified in Items (i) and (ia) of Sl. No. 3 of the Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29-3-2019 and accordingly the applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at Item (i) and the

rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments in the project as per entry at Item No. (ia) of Sl No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 subject to the conditions prescribed under the respective entries.

Hence, the authority ruled that the applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at Item (i) and the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments as per entry at Item No. (ia) of Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 in the Residential Real Estate Project subject to the conditions prescribed under the respective entries.

4. GST – NOTICE PAY RECOVERED FROM EMPLOYEES ON LEAVING JOB – NOT LIABLE

In Manapuram Finance Ltd. v. Acct& EX., Thrissur 2023 (69) G.S.T.L. 141/(2022) 1 Centax 120 (Ker.), the petitioner is an NBFC and has writ petition has been filed challenging Order in appeal to the extent it found that the petitioner is liable to pay tax on notice pay received from the former employees of the petitioner and praying that, since GST Appellate Tribunal has not been constituted, the petitioner has no other remedy other than to approach this Court under Article 226 of the Constitution of India. The High Court observed as under:

1. The terms of CBIC Circular No.178/10/2022-GST dated 3.8.2022 specifically clarifies that the amount of money received by the petitioner as notice pay from erstwhile employees is not a

taxable transaction for the purposes of the GST laws. The favourable decisions of the Supreme Court in Navnit Lal (supra*), [1965] 56 ITR 198 (SC),* which was applied and followed in K.P.Varghese *(supra),[1981] 131 ITR 597 (SC),* are binding precedents for the proposition that Circulars in the nature are binding on the Department and no officer can take a view contrary to stipulations contained in such Circulars.

2. The fact that the Circular was issued only after the issuance of order of the first appellate authority is no reason to hold that the petitioner is not entitled to the benefits of the Circular.

3. The Circular only clarifies the existing law. The question as to whether the Circular has any retrospective effect need not be considered. Even otherwise, in the light of the law laid down in Suchitra Components Ltd, 2007 (208) ELT 321 (SC), the provisions of a Circular in the nature of will have to be deemed to apply retrospectively.

4. The contention against the petition on the ground of availability of an effective alternative remedy before the GST Appellate Tribunal does not apply as the GST Appellate Tribunal is yet to be constituted. The fact that the period of limitation will start to run only from the date of the constitution of the Appellate Tribunal is no solace to the petitioner. The petitioner is, therefore, entitled to exercise the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the orders impugned in this writ petition.

5. Accordingly, all orders rejecting the application of the petitioner for a refund of GST paid on notice pay received by the petitioner from its employees will stand quashed.

Hence, the petition succeeds and the applications filed by the petitioner for refund shall stand restored to the file of the adjudicating authority, who shall reconsider the matter, having regard to the findings contained in this judgment.

5. SERVICE TAX – LEASING/ RENTING OF WAGONS ORIGINALLY BOUGHT LEASING FROM INDIAN RAILWAYS "OWN YOUR WAGONS" AND THEN DRY LEASED THEM FOR LONG TERM ON WHICH VAT HAS BEEN LEVIED ON– NOT LIABLE

In MSPL Ltd. v. CCE & Cus., Belgaum 2023 (69) G.S.T.L. 289/2 Centax 311 (Tri.-Bang.), the appellants are engaged in mining and sale/export of iron ore and are registered and have availed 'own your wagon scheme' introduced by Indian Railways by purchasing and leasing out six rakes of railway wagons under agreements dated 23.2007 and 8.3.2007 to M/s. South Western Railway, Hubli. The dry lease of wagons was initially for a primary period of 10 years extendable to secondary period of up to 20 years. The department confirmed the demand of of service tax on the lease/rental charges received on lease of wagons under the category 'Supply of Tangible Goods' holding that (i) the appellant-lessor is the absolute owner of the wagon; (ii) the cost of repairs and modification of the wagons have to be borne by the appellant-lessor; (iii) the lessor has got the right to terminate the agreement under certain circumstances; (iv) the appellants have insured the wagons; and that (v) the appellants have not paid VAT/ sales tax on the transaction of the lease. On appeal, the Tribunal observed as under:

1. On the perusal of the above, it appears that though the wagons are purchased and provided by the appellants, the effective

control of the wagons is with the Indian Railways. From the clauses of the agreement, it shows that the lessor-appellant need not pay for the standard maintenance; Indian Railways will be at liberty to make the necessary modifications/changes on the leased wagons and that Indian Railways are free to deploy the wagons as per their schedule and not necessarily only to the appellants. A combined reading of the same goes to prove that during the leased period, the effective control of the wagons is with the Railways.

2. In order to be a taxable service, the supply of tangible goods, etc., for use should be without transferring the right of possession and effective control and such transfer of goods should not be a sale or deemed sale. In the instant case, the right of possession and effective control of the wagons is with the Indian Railways and not with the appellants. Furthermore, the transaction entered into by the appellants with the Indian Railways constitutes a deemed sale in terms of Clause 29(A) of Article 366 of the Constitution of India as the appellants have demonstrated that they have paid appropriate VAT along with penalties to the Karnataka State VAT Department.

3. Government of India, Ministry of Railways have clarified vide letter dated 11.6.2014 that this is a case of deemed sales tax under Article 366 (29A) of Constitution of India attracting the provisions of VAT/CST Act, as applicable in that state and that there is no service tax payable on this in leased case. Although, railways are no authority to clarify the matters in respect of excisability of certain service to the service tax or sales tax for that matter, it is understandable that such a

clarification will not be issued by a Ministry in the Government without having due legal consultation.

4. It is on record that the appellants have paid the relevant VAT for the impugned transaction along with penalty though in a belated manner, the agreement entered by the appellant with the Railways cannot be deemed to be a not sale by any standard. As the VAT stands paid in view of the provision of Section 65B(44) of the Finance Act, 1944, the transaction of the appellants constitutes a deemed sale and as such, the supply of wagons by the appellants in the impugned case will automatically go out of taxable service.

5. This view was held in the following cases

a. Great Eastern Shipping Company Ltd. vs. State of Karnataka, 2020 (32) G.S.T.L. 3 (SC)

b. G.S. Lamba & Sons vs. State of Andhra Pradesh 2015 (324) ELT 316 (AP)

c. Aggarwal Brothers vs. State of Haryana and Another (supra) AIR 1999 SC 2868

d. Kinetic Communications Ltd. vs. CCE, Pune: 2017 (3) G.S.T.L. 319 (Tri. -Mum.)

6. The appellants have transferred the right of possession and effective control of the wagons leased out by them to the South Western Railways. The appellants have also discharged applicable VAT / Sales Tax on such transaction, therefore, the activity undertaken by the appellants does not constitute a taxable service of "Supply of Tangible Goods".

Hence, the appeals were allowed and impugned order set aside.

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Family Arrangement – Whether transfer under S.2(47) of Income tax Act [ITA]

CA. G. PARI

TRANSFER UNDER INCOME TAX ACT [ITA]:

1. Under Income tax Act, the term 'transfer' has been used as a taxing event on the following occasions:

a) Capital Gains: Transfer u/s 2(47) for the purpose of charging capital gains u/s 45; however, S.47 provides that certain transactions as not regarded as transfer for the purpose of charging capital gains;

b) Balancing charge: Under S.41(2) for the purpose of charging surplus on the transfer of depreciable assets, instead of the word 'transfer' the expression 'sold, discarded, demolished or destroyed' has been used in the statue; in such situations it has been held that the phrase 'sold' appearing in S.41(2) has been interpreted to exclude relinquishment or extinguishment of rights[1].

c) Clubbing of income: Under S.64, the term 'transfer' has not been defined for the purpose of clubbing; but the expression ' *assets transferred directly or indirectly'* has been used in many sub-sections in order to invoke the clubbing of income in case of such transfers. However, it has been held that S.64 being created to tax an artificial income it should have strict construction[2] and also, the word 'transfer' appearing therein by not 'including every means by which the property may be passed from one to another' in spite of including the phrase 'indirectly'[3]; accordingly, a deed of release[4] or partition in HUF[5] are not regarded as transfer for the purpose of clubbing (taxing) income thereon under S.64.

[1]CIT v. Hind Construction Ltd. [1972] 83 ITR 211 (SC).
[2]CIT v. Prem Bhai Parekh [1970] 77 ITR 27 (SC)/ CIT v. Manilal Dhanji [1962] 44 ITR 876 (SC)/CIT v. Keshavlal Lallubhai Patel [1965] 55 ITR 637 (SC)
[3]CIT v. Keshavlal Lallubhai Patel [1965] 55 ITR 637 (SC)/ CIT v. M.K. Stremann [1965] 56 ITR 62 (SC).
[4]Dady R.D. Wadia v. CIT [1971] 81 ITR 289 (Bom.)/ CIT v. Smt. A. Indiramma [1986] 160 ITR 829 (Kar.).
[5]CIT v. Keshavlal Lallubhai Patel [1965] 55 ITR 637 (SC)

Transfer u/s 2(47) for charging capital gains under ITA:

2. The definition of 'transfer[u/s 2(47), being an inclusive one, neither exhaust other kinds of transfer[6] nor the application of contextual or ordinary meaning of the word 'transfer'[7]. Further, the term 'transfer' under ITA has been widened from time to time with a view to plug the loopholes in charging capital gains on the transfer of capital asset. Some parts of the definition are extracted hereunder for an immediate reference:

"(47) "transfer", in relation to a capital asset, includes,—

(i) the sale, exchange or relinquishment of the asset ; or

(ii) the extinguishment of any rights therein; or ……

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement ***or any arrangement*** *or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property. [emphasis added] ……"*

Transactions not regarded as transfer under ITA:

3. S.47 provides the transactions which are not regarded as transfer for the purpose of charging the capital gains. Relevant clauses of S.47 are given hereunder for an immediate reference and analysis:

"47. *Nothing contained in section 45 shall apply to the following transfers :—*

(i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

(ii) ….

(iii) any transfer of a capital asset under a gift or will or an irrevocable trust : ……."

[6]Sunil Siddharthbhai v. CIT/Kartikeya V. Sarabhai v. CIT [1985] 156 ITR 509 (SC).
[7]CIT v. Narang Dairy Products [1996] 85 Taxman 375 (SC)

4. Though S.47 has been captioned under *'Transactions not regarded as transfer'*, the section commences with the expression *'Nothing contained in section 45 shall apply to the following transfers'*; this leads to the interpretation that though the transactions are transfers, for the purpose of capital gains under S.45, these were not regarded as transfers.

5. **Total or partial partition in HUF:** Partition consists of defining the shares of coparceners in joint property. Once the shares are defined, partition is complete. A right to partition by the coparceners is an incident of joint ownership; it, therefore, follows that the existence of two coparceners is a precondition to any partition[8]. S.47(i) specifically provides any distribution of capital assets on the total or partial partition of HUF is not a transfer for the purpose of charging capital gains under S.45. Consequently, any family arrangement of HUF properties under the helm of total or partial partition is expressly exempted from the charging of capital gains, in spite of the debate whether such family arrangement is a transfer or not?

6. '**Owelty' – receipt of money as compensation to bridge the inequality in partition not chargeable to capital gains**; Further, under partition, if any co-parcener receives money from other co-parcener for accepting lesser share in immovables, such money is called **'owelty'** and it has to be treated at par with receipt of property[9] in partition and not be in the nature of debt[10], therefore not chargeable to capital gains[11]. Further**, 'provision of owelty**' has been explained in the decision of apex court *Badri Narain Choudhary* as where the property is not capable of physical partition or if divided will loose its intrinsic worth, either compensation money can be given to other or it can be sold or sale proceeds may be divided among the joint owners with the consent of the parties or through court decree for achieving equitable partition[12].

[8]CIT v. Shantikumar Jagabhai [1976] 105 ITR 795 (SC), V.V.S. Natarajan v. CIT [1978] 111 ITR 539 (Mad.) and T.G.K. Raman (HUF) v. CIT/CWT [1983] 140 ITR 876 (Mad.).
[9]T.S. Swaminathavdayar v. Official Receiver of West Tanjore AIR 1957 SC 577
[10]Parvathi Amma v. Makki Amma AIR 1962 Ker. 85; Sivaswami Chettiar v. Muthuswami Chettiar [1965] 78 LW 695 [Mad HC]
[11]CIT v. Ashwani Chopra [2013] 30 taxmann.com 299 (Punjab and Haryana); CIT v. AL. Ramanathan [2000] 245 ITR 494/[2003] 128 Taxman 87 and CIT v. Kay Arr Enterprises [2008] 299 ITR 348 (Mad.)
[12]Badri Narain Choudhary v. Nilratan Sarkar [1978] 3 SCR 467

7. **Gift, will or irrevocable trust:** S. 47(ii) provides exemption from capital gains on any transfer of capital asset under a gift or will or irrevocable trust since these are all not regarded as transfers. These transactions are distinct from family arrangement since the conditions precedent for a family arrangement viz existence of a) antecedent title and b)disputes (both present and future) are virtually absent in these transfers.

8. **Succession or inheritance properties:** Though S. 47 does not expressly provide that the properties succeeded or inherited are not regarded as transfer, a co-joint reading of sections 2(42A), 47(iii), 49(1) and 55(2) of the ITA suggests that succession or inheritance does not occasion the transfer of properties. The Delhi Tribunal in the case of *Smt. Sharda Seshadri* held, for the purpose of S.49(1)(iii) *that* where the capital asset becomes the property of the assessee by family arrangement (which may be in any one of the modes of succession, inheritance or devolution) then the cost of the acquisition of the asset shall be deemed to be the cost for which the previous owner of the property[13]. Basically, these are operation by law or customs and not effected by persons. Bona fide family arrangements in such cases with an intent to avoid disputes among family members can be argued and claimed as not chargeable to capital gains under the premise that these are all not transfers envisaged under S.2(47) of ITA.

9. Sums received in the status of **legal heir of intestate succession** consequent to a compromise recognised by Court (held as family arrangement) is not chargeable to capital gains since it is realisation of rights of legal heir and this would not be regarded as sale, relinquishment or extinguishment of right to property [14]. Also held sums received for giving up the rights to contest the validity of Will could not be said as money received with out consideration for the purpose of S.56(2) (vii)(a) and also not chargeable to capital gains under S.45[15]. It is to be noted that when the 'pre-existing right'

[13]ITO v. Smt. Sharda Seshadri [1986] 16 ITD 615 (Del.)
[14]Smt. T. Gayathri v. ITO [2014] 47 taxmann.com 190/150 ITD 48 (Bang. - Trib.)
[15]K. V. Sridhar v. Income-tax Officer [2022] 137 taxmann.com 313 (Bangalore - Trib.)

(i.e. '***antecedent title'*** as discussed hereunder) is not in existence at the time of partition among the family members, then the transaction could not be called as a family arrangement and consequently it is taxable16.

Transfer under the Transfer of Property Act 1882:

10. Section 5 of the Transfer of Property Act 1882 defines 'transfer' under the said Act. The kinds of transfer prescribed under the Transfer of Property Act are i) sale, ii) mortgage, iii) lease, iv) exchange, v) gift and vi) transfer of actionable claims; further the said Act provides the legal formalities required to be complied with for such transfers. However, it is to be noticed that the following transactions are not regarded as transfer under the general law:

a) Family Arrangement: Family settlement defines a pre existing joint-interests as separate interests, therefore there is no conveyance of properties or rights under such settlements. The conditions precedent for a family arrangement are existence of i) antecedent title and ii) dispute (both present and future) among family members. Thus, in case of family arrangement there is no transfer of title warranting drafting of any conveyance for registration.

b) Compromise: This is also similar to 'family arrangement' on the assumption of existence of antecedent title, however executed to compromise or settle a default claim or right.

c) Partition: As partition effects only a change in the mode of enjoyment of property it does not transfer or convey any property from one living person to another[17].

d) Throwing into joint family hotchpot; - This topic will be considered later in some details in the context of the Income-tax and Wealth-tax Acts.

[16]P.P. Mahatme v. Assistant Commissioner of Income-tax, Circle-2, Margao [2019] 112 taxmann.com 253 (Bombay)
[17]V.N. Sarin v. Ajit Kumar Poplai AIR 1966 SC 432, Kisansing Mohansing Balwar v. Vishnu Bal-krishna Jogalckar AIR 1951 Bom. 4

FAMILY ARRANGEMENT – Basic concepts:

11. **Family arrangement – not defined under any statue:** The term 'family arrangement' or 'family settlement' has not been defined under any statue in India; therefore one has to consider the general meaning or meanings assigned in the judicial rulings for the purpose of better understanding.

12. **Meaning of 'family':** The expression 'family' in the context of family arrangement has a very wide connotation and it is not restricted to only group of persons having a right of succession or claim to a share in the property in dispute; the term family can also be extended to those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a *spes successionis* so that future disputes are sealed for ever. In the case of Krishna Beharilal[18], for the purpose of family arrangement, the apex court held the meaning of 'family' as;

    "….the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations, then the settlement of such a dispute can be considered as a family arrangement…"

13. **Basic elements in family arrangement:** In the land mark decision of Kale[19] the apex court has laid down the following principles for a valid family arrangement, which has been referred and followed in many decisions rendered under the ITA; "

1. *The family **settlement must be a bona fide one** so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*

2. *The said settlement **must be voluntary and should not be induced by fraud**, coercion or undue influence;*

[18]Krishna Beharilal v. Gulabchand [1971] AIR 1971 SC 1041 referring the decision in Ram Charan Das v. Girjanandini Devi AIR 1966 SC 323 and Sahu Madho Das and others. v. Pandit Mukanel Ram and another [1955] AIR 1955 SC 481

[19]Kale v. Deputy Director of Consolidation [1976] 3 SCC 119

3. *The family arrangements **may be even oral** in which case no registration is necessary;*

4. *It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document **and a mere memorandum prepared after the family arrangement** had already been made either for the purpose of the record or for information of the Court for making necessary mutation. **In such a case the memorandum itself does not create or extinguish any rights in immovable properties** and therefore does not fall within the mischief of section 17(2) (sic) section 17(1)(b) of the Registration Act and is, therefore, not compulsorily registrable;*

5. *The members who may be parties to the family arrangement **must have some antecedent title, claim or interest** even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will be upheld and the Courts will find no difficulty in giving assent to the same;*

6. Even **if *bona fide* disputes, present or possible**, which may not involve legal claims are settled by a *bona fide* family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.*"[emphasis added]*

14. **Bona-fide family arrangement:** In order to constitute a valid family arrangement, it must be bona-fide one; arrangement with intent to evade taxes are not regarded as family arrangement. Held, lifting of corporate veil without assigning reasons and further taxing the benefit obtained by a beneficiary in a family arrangement as benefit or perquisite received u/s 2(24)(iv) holding that the family arrangement is sham and bogus is not valid[20].

[20]Glebe Trading (P.) Ltd. v. Income-tax Officer [2020] 116 taxmann.com 866 (Delhi - Trib.)

15. **Transactions in a family arrangement are not regarded as transfer involving creation or extinguishing of any rights in properties:** Rearrangement or realignment of interest in a family arrangement is not a transfer since it neither creates any interest nor alienate any rights of property in favour of a family member; in a family settlement each party takes a share or claim in the property by virtue of the independent title which is admitted to that extent by the other parties[21]. Further in case of in the case of *SK. Sattar SK. Mohd. Choudhari*[22], the apex court held that in case of family arrangement **there is no conveyance of property from the person who has title to another who has not title** and the relevant ruling is reproduced hereunder for an immediate reference:

"Section 5 contemplates transfer of property by a person who has a title in the said property to another person who has no title. A family arrangement, on the contrary, is a transaction between the members of the same family for the benefit of the family so as to preserve the family property, the peace and security of the family, avoidance of family dispute and litigation and also for saving the honour of the family. Such an arrangement is based on the assumption that there was an antecedent title in the parties and the agreement acknowledges and defines what that title is. It is for this reason that a family arrangement by which each party takes a share in the property has been held as not amounting to a 'conveyance of property' from a person who has title to it to a person who has not title."

16. It is, further, to be noted that the above rulings of the apex court have been referred and followed in many decisions that were rendered in the context of charging capital gains in case of family arrangement under ITA.

[21]Ram Charan Das vs Girjanandini Devi And Ors on 20 April, 1965 [sc]
[22]SK. Sattar SK. Mohd. Choudhari v. Gundappa Ambadas Bukate [1996] 6 SCC 373

17. **Memorandum (deed) is adequate for family arrangement**: It is held that family arrangement may be oral or in writing. No conveyance and registration is required for a family arrangement, however, in case of writing the terms it has to be reduced in writing; further since it does not create or extinguish any rights in immovable properties, a mere memorandum is adequate for getting decree in the Courts in case of documenting the family arrangement.

18. **Existence of antecedent tile, claim or interest in property is mandate under family arrangement:** A family arrangement or family settlement is, basically, a device to settle disputes and derive peace with respect to the antecedent property rights of the family members and in order to constitute a family arrangement the members should have an antecedent title, interest or claim in the property which is the subject matter of the settlement. The family arrangement is a typical legal phenomenon substantially different from the one that is contemplated under the Transfer of Property Act or the Sale of Goods Act though transfer of movable and immovables happened in such family arrangement[23].

19. **Bona fide disputes *in praesenti* or in future - a condition precedent for the validity of family arrangement:** Bona fide disputes of present or future[24] without involving any legal claim are adequate for a family arrangement. The apex court in the landmark case of *Maturi Pullaiah* held on family arrangement that, 'family arrangement' as 'a transaction between members of the same family for the benefit of the family so as to preserve the property, peace, and security of the family, avoidance of family dispute and litigation and for saving the honour of family. Such an arrangement assumes that there was an antecedent title in the parties and the agreement acknowledges and defines what title is."[25]

[23]P. Shankaraiah Yadav (HUF) v. ITO [2015] 59 taxmann.com 263/232 Taxman 757/371 ITR 386
[24]CIT v. S.N. Zaman & S.M. Elahi [1996] 221 ITR 842/[1997] 91 Taxman 177 (Gauhati HC); Ziauddin Ahmed's case [1976] 102 ITR 253 (Gauhati)
[25]Maturi Pullaiah v. Maturi Narasimham A.I.R. 1966 S.C. 1836

FAMILY ARRANGEMENT – whether transfer for the purpose of Capital Gains under ITA:

20. **Family arrangement vs Partition:** The properties received on partition of a family are a CAPITAL RECEIPT[26]. Where an asset is acquired through a family arrangement, it is on par with an asset acquired on partition or any other succession[27]. In fact, family arrangement is wider than partition whereby the former envisages both ancestral and *intestate* property for division but the latter envisages only ancestral property for division. Therefore, money received in pursuant to family arrangement which is in the form of court decree with the consent of the parties are not taxable under capital gains[28]. **Further in the case of *R.Nagarajarao, the Karnataka High Court*** held that under family arrangement the shares of the members are adjusted and crystalised and therefore, it is not a transfer under S.2(47) of ITA; the relevant extract is given hereunder for reference:[29]

" ….. the word transfer does not include partition or family settlement as defined under the Act. It is well settled that a partition is not a transfer. What is recorded in a family settlement is nothing but a partition. Every member has an anterior title to the property which is the subject matter of a transaction that is partition or a family arrangement. So there is adjustment of shares, crystallization of the respective rights in the family properties and therefore it cannot be construed as a transfer in the eye of law. When there is no transfer there is no capital gain and consequently…"

21. **Realignment of interest in family arrangement would not be regarded as a transfer:** No transfer of title involved on the transfer of 50% share holding in a company and lands in a HUF partition and the monies received for the

[26]Ld. CIT v. RM.AR. Veerappa Chettiar reported in [1970] 76 ITR 467 (SC)
[27]CIT v. Shanthi Chandran [2000] 241 ITR 347 (Mad HC)
[28]Smt. T. Gayathri v. Income-tax Officer, Ward-4(3), Bangalore [2014] 47 taxmann.com 190 (Bangalore - Trib.)
[29]CIT v R. Nagaraja Rao [2013] 352 ITR 565/[2012] 207 Taxman 236/21 taxmann.com 101 [Kar HC]

realignment of interest are not taxable under capital gains since it is a family arrangement arrived at in consultation with the panchayatdars in order to avoid continuous friction and to maintain peace among the family members[30].

22. **Exchange vs Family arrangement – Decision of Madras HC:** An exchange is mutual transfer of ownership on properties between two parties; it involves the transfer of property by one person to another and reciprocally the transfer of property by the other to the first person[31]. When two brothers settled their properties in two separate settlement deeds, the AO concluded that it was exchange of properties and charged the transaction to capital gains under S.45. The CIT (A) allowed the appeal concluding the same as gift between two brothers without discussing the fact with respect to the aspects discussed in the assessment order. On further appeal by revenue, the Tribunal held that there is no difference between 'gift' and 'family settlement for the purpose of S.49(1)(ii) and therefore, the settlement made by the brothers could not be charged to tax without assigning any reasons for such conclusion. On appeal, the Madras HC[32] remanded back to CIT (A) for fresh consideration considering the facts of the case. It is to be noted that in this case though the deed is named as 'family settlement' the facts are not clear with respect to the principles ruled in the case of Kale (supra) has been followed, though the same has been referred by the appellants as one of the grounds.

23. **Receipt of property and money on one time family settlement contrary, due to certain impracticability, to the covenants of Will – whether transfer?**: Receipt of **property** in contravention to the covenants of Will to a family member consequent to family settlement would not be a transfer u/s 2(47) of ITA as there is no sale, exchange or relinquishment of any asset or

[30]CIT v. AL. Ramanathan [2000] 245 ITR 494
[31]CIT v. Rasiklal Maneklal (HUF) [1989] 43 Taxman 259 (SC).
[32]Principal Commissioner of Income-tax-I, Chennai v. S.Yogarathnam [2020] 118 taxmann.com 54 (Madras)

extinguishment of any right therein. However, since the receipt of **money** (not the property received that has been duly dealt in the assessment order) has not been dealt in the assessment order, it is directed to re-decide afresh on the receipt of money considering the facts of the case[33].

24. **Rearrangement of shareholding in a company to avoid possible litigation:** Where a family arrangement has been taken to arrange the shareholdings in a company to avoid possible disputes among family members and to have active supervision and control, held there is no transfer on the transaction of rearrangement hence no capital gains accrue or arise on such rearrangement under section 45 of ITA. Here, the family arrangement has been made voluntarily and bona-fidely without any fraud or collusion[34]. While rendering the decision, the Madras HC has relied on the land mark rulings of apex court, furnished hereunder, however this has been rendered under the general law;

5. *In* ***Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836****, cited supra, the apex court has held as follows (page 1841) :*

"Briefly stated, though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

6. *In* ***Kale v. Deputy Director of Consolidation, AIR 1976 SC 807****, cited supra, the apex court has laid down the propositions which are the essentials of a family arrangement and the same read as follows (page 812) :*

[33]Tarlochan Singh v. Additional Commissioner of Income-tax, Range-41, New Delhi [2018] 91 taxmann.com 333 (Delhi - Trib.)
[34]Commissioner of Income-tax v. Kay Arr Enterprises [2008] 299 ITR 348 (Madras)

"(1) the family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family ; (2) the said settlement must be voluntary and should not be induced by fraud, coercion or undue influence." ."

25. **A company cannot be a member in family arrangement:** "A shareholder has no interest in the property of the Company..... It has only a right to participate in the profits of the Company as and when the Company decides to divide them. The Company is a juristic person and is distinct different from it's share holders. It is the Company which owns the property and not the share holders."[35] Relying on the decision of apex court ***the Bombay HC in case of B.A. Mohota Textiles*** held that transfer of shares by an independent corporate entity was assessable to capital gain tax since being an artificial juristic and distinct person it cannot be a member in the family arrangement and lifting of corporate veil at the insistence of shareholder has no merit[36]; courts are permitted to lift the corporate veil only in case of tax evasion only when it is beneficial to revenue.[37]

26. However, in case of a family arrangement approved by the CLB order, in pursuance of the petition filed by two groups, which provided an option to buyback the shares through a company for one group and when the said company executed it, held it is a family arrangement and not a transfer *by distinguishing the facts of B.A. Mohota Textiles (supra),* where the transaction occurred were not among family members, whereas in the appellant case it is among the family members[38]. In another Chennai Tribunal decision, *but prior to the decision of Bombay HC in the case of B.A. Mohota Textiles*, held that certain amounts and assets received in pursuant to family arrangement from a company by a family member in which the family member had substantial interest is not taxable u/s 2(22)(e) as deemed dividend and also is not a transfer for the purpose of 2(24)(iv) or Sec.56(2)(vi)[39].

[35]Mrs. Bacha F. Guzdar v. CIT [1955] 27 ITR 1 (SC)
[36]B.A. Mohota Textiles Traders (P.) Ltd. v. Deputy Commissioner of Income-tax, Special Range - 2 [2017] 82 taxmann.com 397 (Bombay)
[37]In Re. Dinshaw Maneckjee Petit AIR 1927 (Bom.) 371
[38]Sujan Azad Parikh v. Deputy Commissioner of Income-tax [2022] 145 taxmann.com 167 (Mumbai - Trib.)
[39]SKM Shree Shivkumar v. Assistant Commissioner of Income-tax, Circle-I, Erode [2014] 48 taxmann.com 346 (Chennai - Trib.)

27. **Impact of transactions u/s 56(2):** S.56(2)(vii) has been introduced, as an anti-abuse measure, to tax the understatement of consideration of certain transactions as income in the hands of recipient. When the entire shareholding of the company is retained by the family, S.56(2)(vii)(c) would not be applicable for the pro-rata allotment of shares and where the value of share for allotment is less than the FMV since the transaction is between the close relatives it should not be seen as introducing black money or evasion of the tax. Corporate veil can be lifted for ascertaining the nature / tax evasion in such transactions[40]. Similar view has been taken for not taxing the excess share premium on the transactions between relatives as income under S.56(2)(vii)(b)[41]. Held that there is no liability on gift tax in case of unequal distribution of assets amongst family members[42] and this principle could be extended even for the purpose of transactions of gift under S.56(2).

CONCLUSION:

28. Broadly, in a valid family arrangement there is no transfer of property or rights to any family member as it is just a document for crystallisation or defining the interest of family members; accordingly any receipt in pursuant of a family arrangement is not taxable under Income tax Act. However, if a family arrangement without having the valid criteria, as discussed in the apex court decision of KALE and others, but merely intended to evade taxes, then it would not be regarded as a bona-fide arrangement and the transaction would be liable for taxation. Further, since the family arrangement does not convey any rights, for the purpose of documentation, mere deed of memorandum with court decree (evident for settlement of disputes) is adequate for defining the rights of family members without any registration.

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[40]Kumar Pappu Singh v. Deputy Commissioner of Income-tax, Circle-1, Andhra Pradesh [2019] 101 taxmann.com 122 (Visakhapatnam - Trib.)
[41]Vaani Estates (P.) Ltd. v. ITO[2018] 98 taxmann.com 92/172 ITD 629 (Chennai Trib)
[42]Commissioner of Gift-Tax v. N. S. Getti Chettiar, 82 ITR 599 [SC]

EXCEL TIPS

Sort Function & Formula

One of the essential features of Excel is the "Sort" function, which allows users to arrange data in a particular order. Sorting data in Excel is a simple and easy process, but it can be confusing for beginners. In this write-up, we will discuss the Sort function in Microsoft Excel, including how to use it, different sorting options available, and tips for sorting data effectively.

CA. DUNGAR CHAND U JAIN

How to Use the Sort Function:

To sort data in Excel, you first need to select the range of cells you want to sort. You can do this by clicking and dragging your mouse over the cells you want to include in your selection. Once you have selected the range, follow these steps:

- Go to the "Data" tab on the Excel ribbon.
- Click on the "Sort" button to open the Sort dialog box.
- In the Sort dialog box, select the column you want to sort by from the "Sort by" dropdown list.
- Choose whether you want to sort in ascending or descending order.
- If you want to sort by multiple columns, click on the "Add Level" button and repeat steps 3-4 for each column.
- Click the "OK" button to apply the sort to your selected range.

Sorting Options Available:

There are several sorting options available in Excel. Let's discuss each one in detail:

Sort by Values: This is the most common sorting option used in Excel. It sorts data based on the values in a particular column, either in ascending or descending order.

Sort by Cell Color: This option sorts data based on the color of the cells in a particular column. For example, if you have a column with red, yellow, and green cells, you can sort them by color to group all the red cells together, followed by yellow and green.

Sort by Font Color: This option sorts data based on the color of the text in a particular column. For example, if you have a column with black and red text, you can sort them by font color to group all the black text together, followed by red.

Sort by Cell Icon: This option sorts data based on the cell icons in a particular column. For example, if you have a column with red, yellow, and green icons, you can sort them by icon to group all the red icons together, followed by yellow and green.

Tips for Sorting Data Effectively:

Here are some tips for sorting data effectively in Excel:

- Always select the entire range of cells before sorting. This ensures that you don't miss any data or accidentally exclude any cells from the sort.
- Use the "Sort by Color" option to group similar data together visually. This can make it easier to analyze and understand your data.
- When sorting by multiple columns, make sure you select the columns in the correct order. Excel sorts the data based on the order of the columns you select.
- Consider using filters before sorting to narrow down the data you want to sort. This can save time and make it easier to find the data you're looking for.

Sorting data in Excel is a crucial task that helps users organize and analyze their data effectively. The Sort function in Excel is a powerful tool that offers several sorting options to help users sort their data in a variety of ways. By following the tips outlined in this write-up, you can ensure that your data is sorted effectively and accurately.

SORTing using Formula :

"Sort" function in Excel is a common tool that allows users to arrange their data in a particular order. However, the "Sort" function is limited to sorting a range of cells manually. To sort data automatically, users can use the "Sort" formula in Excel. In this write-up, we will discuss the "Sort" formula in Microsoft Excel 365, including how to use it, different sorting options available, and examples of sorting data using the formula.

How to Use the Sort Formula:

The "Sort" formula in Excel is used to sort a range of cells automatically based on one or more columns. The syntax of the "Sort" formula is as follows:

=SORT(array,[sort_index],[sort_order],[by_col])

The "array" argument is the range of cells you want to sort. The "sort_index" argument is the column number you want to sort by. The "sort_order" argument is either 1 or -1, representing ascending or descending order, respectively. The "by_col" argument is a logical value that determines whether to sort by column or row. If "by_col" is set to TRUE or omitted, the formula will sort by column. If "by_col" is set to FALSE, the formula will sort by row.

Let's look at some examples of using the "Sort" formula :

Example 1 : Sorting in Descending Order

Suppose you have a table of sales data that includes the name of the salesperson, the sales amount, and the month in which the sales were made. You want to sort the data by the sales amount in descending order. Here's how you can do it using the "Sort" formula:

1. Select a blank cell where you want to display the sorted data.
2. Type the following formula: =SORT(A2:C10,2,-1)
3. Press Enter.

The formula will sort the data in the range A2:C10 based on the sales amount column (column 2) in descending order (-1). The resulting sorted data will be displayed in the cell where you typed the formula.

Example 2 : Sorting by Date

Suppose you have a table of data with employee names, hire dates, and salaries. You want to sort the data by hire date in ascending order. Here's how you can do it using the SORT function:

1. Select a blank cell where you want to display the sorted data.
2. Type the following formula: =SORT(A2:C10,2,1)
3. Press Enter.

The formula will sort the data in the range A2:C10 based on the hire date column (column 2) in ascending order (1). The resulting sorted data will be displayed in the cell where you typed the formula.

Example 3 : Sort by Multiple Columns

Suppose you have a table of employee data that includes the employee name, department, salary, and hire date. You want to sort the data by

department and then by salary in descending order. Here's how you can do it using the "Sort" formula:

1. Select a blank cell where you want to display the sorted data.
2. Type the following formula: =SORT(A2:D10,{2,-3},{1,-1})
3. Press Enter.

The formula will sort the data in the range A2:D10 first by the department column (column 2) in ascending order (1), and then by the salary column (column 3) in descending order (-1). The resulting sorted data will be displayed in the cell where you typed the formula.

Example 4 : Sort by Text Length

Suppose you have a list of names in a column, and you want to sort them by the length of the names, from shortest to longest. Here's how you can do it:

1. Select a blank cell where you want to display the sorted list.
2. Type the following formula: =SORT(A2:A10,LEN(A2:A10),1)
3. Press Enter.

The formula will sort the list of names in the range A2:A10 based on the length of the names in ascending order. The resulting sorted list will be displayed in the cell where you typed the formula.

Example 5 : Sort by Day of the Week

Suppose you have a table of data that includes a column with dates, and you want to sort the data by the day of the week, from Monday to Sunday. Here's how you can do it:

1. Select a blank cell where you want to display the sorted data.
2. Type the following formula: =SORT(A2:C10,WEEKDAY(A2:A10),1)
3. Press Enter.

The formula will sort the data in the range A2:C10 based on the day of the week in ascending order. The resulting sorted data will be displayed in the cell where you typed the formula.

Example 6 : Sort by Custom List

Suppose you have a list of cities in column A, and you want to sort them according to a custom order that you've defined. Here's how you can do it using the "Sort" formula:

1. Select a blank cell where you want to display the sorted data.
2. Type the formula: = SORT(A2:A10,MATCH

   (A2:A10,{"New York","London","Paris","Tokyo","Sydney"},0))
3. Press Enter.

The formula will sort the data in column A2:A10 according to the order you've defined in the curly braces. The resulting sorted data will be displayed in the cell where you typed the formula.

In conclusion, the "Sort" formula in Excel 365 is a powerful tool that allows users to sort data automatically based on specific criteria. There are various sorting options available, including sorting by values, dates, text and multiple columns. By using the "Sort" formula in Excel, users can quickly and efficiently organize and analyze their data.

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India to capitalize on fall in Crude oil and Industrial metal prices

CA.KANDASWAMY

The failure of Silicon Valley Bank and Signature Bank, brought to light the vulnerabilities in regional banks of US, amidst rising interest rates. But unlike the inaction / inadequate action during the Lehman Brothers collapse, there has been a series of concerted and quick efforts by the Central Banks in US and European Union to arrest the contagious fall of smaller banks. This is a redeeming feature, and has helped in restoring confidence of the public in the Banking and Financial System, sofar.

The crisis at the Regional banks in advanced markets is perhaps ushering in Regulator backed / forced merger of these banks with larger banks at a fraction of the valuations that the former commanded before the failure of Silicon Valley Bank and Signature Bank. As a result, many other banks like Credit Suisse are also being at a heavy discount to larger banks.

While Indian Banking sector remains solid, the fall out of the above is on two fronts for India – Firstly, already sluggish Indian equities took a further beating, and Secondly, the funding for start ups has dried up, as Silicon Valley Bank was quite active on this front in India. Some Indian companies with surplus funds have parked in this bank, and many start ups have taken funding from this bank. Both these categories of Indian companies are going to be affected.

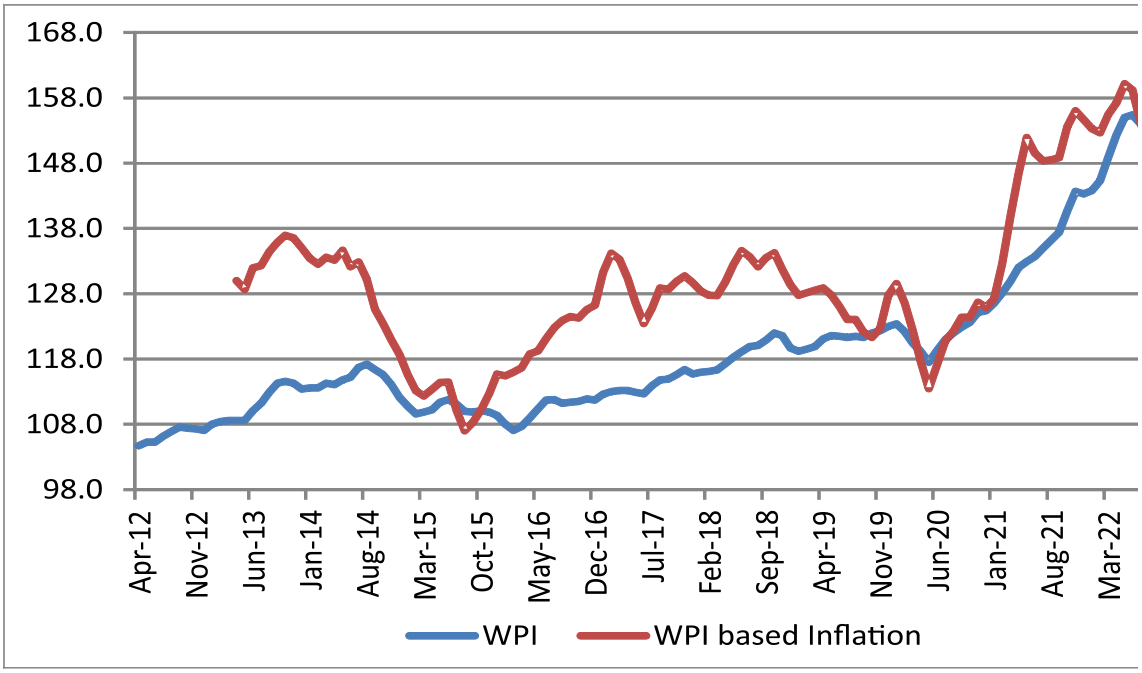
The third dimension of the effect is the contagion but mild effect on Indian IT / ITES sector. Many of the frontline listed entities garner about 50% of their revenues from BFSI (Banking, Financial Services and Insurance) sector, and their

exposure to regional US Banks have the potential to dampen the pace of growth in their BFSI revenues!

The blessing in disguise of the failure of regional banks in advanced markets is that the pace of rising interest rates has given way for moderation in the pace of further hike in interest rates. Perhaps, these bank failures have jolted the thought process at the Central Bank level and they appear considerate to moderate the pace of rise in interest rates, and just need some more moderation in inflation, in order to shift the stand from hawkish to dovish!

Indian WPI based inflation is on a downward trajectory

For nine months in succession, the WPI based inflation, on y-o-y basis, has been decelerating at a faster pace from 16.6% in May 2022 to 3.9% in February 2023. The Whole Sale Price Index at 155.4 was recorded in June 2022, which is the highest in any single month, in the 10+ year data available since April 2012!



India has become the worst performing equity market in Calendar Year 2023 sofar, with huge net outflow of FII funds. The sell offs in Indian Equities accelerated with the rout in the valuation of Adani Group Companies, followed by the failure of regional banks in United States. But then, it is too early to write off India, which has the potention to erase the losses and is hopeful that the coutry will not remain the worst performing market amongst major equity markets in the Globe!

India recorded 5.4% growth in Index of Industrial Production in the 10 months ended January 2023, thanks to double digit 10.1% rise in power generation, followed by 5.8% increase in mining output. The manufacturing sector was relatively sluggish with mere 4.8% increase in production during this period.

From an use based classification, we find that the pain points are at consumer non durables that recorded 0.4% fall in production, consumer durables, that recorded mere 2.2% increase in production and intermediate goods, that recorded 4.1% growth in production in the 10 months ended January 2023. Capital goods recorded healthy 13.6% growth in production in the 10 months ended January 2023, but this still represents massive deceleration from robust 21.3% growth in production in the 10 months ended January 2022!

The potential of El Nino on Indian Agricultural output remains to be seen. With over 50% of the population dependent on agriculture on the one hand, and sluggishness in demand for consumer goods (from Rural India) on the other, the third dimension comes from the likely impact of fall in agricultural production on domestic food based inflation.

In this background, the elevated inflation levels have had the potential to moderate the pace of rise in demand for and prices of, housing and Real Estate in India. Meanwhile, the recent expectation that there will be pace of moderation in the pace of rise in interest rates, which may give in for a pause in near future, is positive for the Indian Real Estate Sector, which has been witnessing good demand in the premium segments in major metros. Real Estate sector has excellent forward and backward economic linkages with various other sectors, and to this extent the beneficial effect of recovery in real estate prices can bring usher in better growth prospects to many other sectors.

The accelerated pace of increase in the share of new and renewable energy in the total power generated in the country, augurs well from an environment point of view, and it makes business and economic sense too, with lowering cost of power through these sources!

For now, the China + 1 policy of the Western World, and the green energy based move up the value chain, be it e-vehicles or green hydrogen, together helps India take the leap forward to significantly improve its global competitiveness, both in the domestic market (increasing share of domestic players in the domestic market) and global markets (accelerated pace of exports) remains to be seen.

The scrapping of vehicles policy, can add further impetus to demand for new vehicles on the one hand, and scale down the pollution levels on the other hand. The third dimension to this is that the share of domestically produced scrap in the total steel scrap requirements can also scale up, bringing in the economies of scale, and improving our domestic competitiveness.

India's GDP is estimated to have recorded 8.7% growth in FY 2021-22, which is set to decelerate to 7.0% growth in FY 2022-23, as per first Advance Estimates from the National Statistical Office of Ministry of Statistics and Programme Implementation, Government of India. The deceleration is set to continue, as RBI has forecasted India's GDP growth to decelerate further to 6.4% in FY 2023-24. How and to what extent the global regional banking crisis is going to affect (a) the Indian stock market valuations (b) its effect on moderating the pace of growth in Indian IT/ITES sector, and (c) its potential to dampen the pace of growth in Startups, remains to be seen.

While the short term gyrations of the markets are intricately intertwined with advanced markets in general and the vulnerability of Regional Banks in US, the medium term prospects of the Indian economy in general, and Indian equity markets in particular have strengthened.

With crude oil prices remaining low, the possibility of cut in the domestic retail diesel and petrol prices, and polymer / petrochemical prices cannot be ruled out. This coupled with softening of industrial metal prices together can help India tame inflation, and can gradually facilitate RBI to move from Hawkish to Dovish stance. Confluence of many of the above beneficial factors, as well as demographic dividend and massive capacity additions, together can usher in the strengthening of India's global competitiveness.

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TAXING OF EDUCATIONAL INSTITUTIONS - A CHANGED LANDSCAPE

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Education as a sector has witnessed a sea change in profile from being a traditional set up that only imparted knowledge through classroom teaching to being engaged in multitude of activities like research, leasing out infrastructure, providing consulting services to other institutions or business organisations, facilitating further education or employment of its students, dissemination of online course content to other institutions for a fee so on and so forth.

Education, considered the backbone for development of every economy, certainly needed a special recognition under fiscal laws and cannot be taxed on par with any other commercial venture. This position holds good even today, notwithstanding the sectoral transformation that has been witnessed in the last two decades or so. The special status for education has been accorded under the Income tax law right from the 1922 legislation which exempted incomes from properties held for charitable purposes including that of education.

This exemption continued under the 1961 legislation as well. A separate exemption was granted under clause 22 of Section 10 to educational institutions and universities that existed solely for educational purposes and not for the purposes of profit. With time, considering the pitfalls of granting an unconditional exemption without checks and balances, the law underwent series of amendments which began with omission of clause 22 entirely and

the exemption couched therein was incorporated into a new clause 23C. The new clause culled out different categories of educational institutions and the exemption was available as long as the institution was engaged 'solely' in the activity of education.

While educational institutions enjoyed a specific exemption under Section 10, such institutions could also avail exemption contained in Section 11 of the 1961 Act which granted a conditional exemption to property held in trust for charitable or religious purposes. The definition of charitable purposes specifically includes 'education'. Therefore, it was possible for an education institution to claim exemption both under Section 10 and Section 11 at the same time.

The provisions granting exemption under Section 11 and that under Section 10(23C) were initially not pari materia. Thereafter, the law underwent a series of amendments. As the law stands today after considering the amendments proposed under the Finance Bill, 2023, the conditions under Section 10(23C) and Section 11 are made pari materia to each other.

It is also relevant to note that amendments have also been brought into the statute to prevent simultaneous claim of exemption under Section 10(23C) and Section 11. Registration is a pre-requisite under both the sections. In a scenario where an educational institution had registration for the purposes Section 11 (obtained under 12AA/12AB) and Section 10(23C) as on June 1, 2020, the registration under 12AA/12AB would cease to operate. After June 1, 2020, an educational institution registered under Section 12AA/12AB, subsequently obtains registration under Section 10(23C), then on and from such date, the registration under 12AA/12AB shall cease to operate. The registration which is made inoperative by operation of law is permitted to be revived once. Once the registration

under Section 12AA/12AB is revived, then the registration under Section 10(23C) will cease to have any effect[1]. In other words an educational institution which simultaneously possesses registration both for the purposes of Section 11 and Section 10(23C) as on June 1, 2020 or an educational institution which having already in place registration under Section 12AA/12AB, subsequently obtains registration under Section 10(23C) post June, 1 2020, will be entitled to claim exemption only under one of the two sections. However, the statute is silent on what consequences ensue in a scenario where an educational institution has registration only under Section 10(23C) as on June 1, 2020 and subsequently obtains registration under Section 12AA/AB. While amendment has been brought in Section 11 to address scenarios where registration under Section 12AA/AB is already in place, corresponding amendment is absent in Section 10(23C). Be that as it may, it will be interesting to see if the tax department will grant fresh registration under section 12AA/AB to an educational institution, which was claiming exemption under Section 10(23C) as on 01.06.2020. Even assuming that simultaneous registration under section 10(23C) and section 12AA/AB is still possible, at a given point in time, the educational institution may be able to claim exemption under only one of the two provisions i.e., 11/10(23C).

The position regarding claim of exemption for educational institutions not only underwent statutory changes by way of amendments in law but equally through decisions of the judiciary. In a recent decision of the Apex Court in New Noble Education Society[2], it was held that exemption under Section 10(23C) would only be available where the expression 'solely' is adhered to in letter and

[1]These provisions are contained in provisos to Section 11(7) of the 1961 Act
[2][2022] 448 ITR 594 (SC)

spirit, thereby meaning that all activities of educational institution must either be in the field of education or must be incidental to the field of education. This decision though expressly made applicable prospectively by the Apex Court has put a daunting task on all educational institutions to review all their activities with an objective to identify those that are likely to fail the test of 'solely' and consequently, put to question the exemption under Section 10(23C). The decision has reversed an otherwise settled position laid down by the judiciary earlier that as long as the activities are predominantly in the field of education, the exemption must be available. It would now be interesting to see how jurisprudence evolves from now on in applying the ratio of the Apex Court to practical situations of activities carried on by educational institutions. While the decision has not done anything to alter any debate surrounding the term 'education', what was earlier permissible considering the doctrine of predominance may now not be possible considering the strict meaning of the term 'solely'.

The need to relook at the entire transaction model in light of the Apex Court decision is, therefore, inevitable for all educational institutions. A decision to continue or discontinue certain transactions or alternatively switch to claiming exemption under Section 11 may also need to be explored

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RECENT CASE LAWS IN INSOLVENCY AND BANKRUPTCY CODE

NCLAT

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1. IBC proceeding cannot be used for recovery of Success Fee/Brokerage Fee where the Corporate Debtor denies the claim by giving notice of disputes – BNK Securities Pvt. Ltd. Vs. Sebacic India Ltd. – NCLAT New Delhi

This appeal was filed against the order issued by the adjudicating authority (NCLT Ahmedabad) on January 11, 2023, on the ground of pre-existing dispute under section 9 of the IBC the appellant's application is rejected. According to the appellant, he and the corporate debtor have a Success Fee Agreement, and following the completion of his part, the appellant sent the corporate debtor an invoice. But because no payment was made, a notice under Section 8 of the IBC was given on February 18, 2019, and a section 9 application was filed. On February 28, 2019, the Corporate Debtor responded right away to the Section 8 Notice and denied the Appellant's claim. A Section 9 Application filed by the applicant is dismissed. Every assertion made by the Appellant was disputed by the Corporate Debtor, who also stated that the Appellant's invoice was refused by the Corporate Debtor. The NCLT held that there is Pre-existing dispute and that the

adjudicating authority did not err in rejecting the Section 9 Application. IBC proceedings cannot be used in the current situation, where the Corporate Debtor has notified the Appellant of any disputes, to collect Success Fees or Brokerage Fees.

2. **The National Company Law Tribunal held in the case of Jain Irrigation Systems ltd. vs. Pragyawan Technologies Pvt ltd. that when the dispute made by the parties arises out of a contract that can be arbitrated, it will not be proceeding under the Section 9 Proceedings.**

The Scheme for insolvency proceedings stipulates that the proceedings will continue in the event of an admitted debt and default; it is not the duty of the forum to resolve contractual dispute between the parties". In the instant case, the Corporate Debtor had already sent letters before the Section 8 Notice, and in response to the Section 8 Notice, a detailed reply had been submitted, rejecting the appellant's claim. The claim being contested, the instant case did not qualify for admission under Section 9, and the adjudicating authority correctly denied the Section 9 Application.

3. **The word used in CIRP Regulation 9(2) is 'may' as against 'shall' in Regulation 9(1) which means that Regulation 9(2) is provided more as a matter of convenience for the workmen or employees but still demands a declaration in respect of claim with proof and verification of the Form 'Particulars' mentioned therein – Fort Gloster Industries Ltd. Vs. Resolution Professional,**

Fort Gloster Industries Ltd.– NCLAT New Delhi

First of all, the application CA (IB) No. 650/KB/2019's Annexure B attests that no such claims have been made by the workers/employees separately in accordance with Regulation 9(1) of the Regulations by using form-D. Additionally, the Respondent has made the case that even this list was never delivered to the RP because it was stated in the letter dated 11.03.2019 (Annexure A4) that the office holders of the Appellants were to send the list by registered mail. However, there is no evidence on file to support this claim, and the RP has categorically denied it in an affidavit. Evidently, Regulation 9(1) of the Regulations is completely disregarded. In a similar vein, Annexure A4 dated 11.03.2019 does not in any way constitute an authority granted to the "authorised representative"; rather, it is more of a covering letter from the office bearers of the trade unions of the workmen and the clerks association, which is in violation of Regulation 9(2) of the Regulations. As a result, even the requirements of Regulation 9(2) of the Regulations have not been followed. Contrarily, it is documented that the RP satisfied the claims of all 11 employees who had submitted their applications in Form-D in accordance with Regulation 9(1) of the Regulations and even took into account the claims of four workers who had submitted their applications after the 90-day deadline. However, it cannot be said that the amount that has been admitted has not been paid or made a provision in the resolution plan by the RP/SRA.

It has also come to light that a provision has been made to the extent of 20% of the total amount of Rs. 12.78 Crore in order to satisfy any amount in the future which is yet to be claimed.

4. If an incomplete or improper authorisation is found in CIRP application, Adjudicating Authority, incompliance of proviso to Section 7 of IBC, 2016 is required to issue notice and provide an opportunity to rectify the defects – Rupesh Anand Vs. Anup Tripathi – NCLAT Chennai

Legal action could be rendered invalid by an incomplete or improper authorization, which would invalidate the entire process. Rectification is therefore considered to be of the utmost significance and is something that cannot be overlooked. In accordance with Section 7 of the Code, the application must be complete in all material respects, and if there are any defects, the adjudicating authority (Tribunal) shall afford the applicant a reasonable chance to correct such defects before accepting or rejecting the application.

The contested order is cryptic, devoid of qualitative or numeric discussions, and smacks of a speaking order. It is therefore obviously unsustainable. Even the Respondents in this case haven't given any information to clarify the questions posed by the Appellant in this case, either in the appeal or in the reply/rejoinder in the original petition before the adjudicating authority.

Based solely on the evidence presented and in light of the provisions of the I & B Code, 2016, the contested order cannot be upheld on this specific issue of defects. As a result, the contested order, dated October 20, 2022, in CP No. 122/BB/2021, issued by the Adjudicating Authority (NCLT), Bengaluru Bench, deserves to be reversed and is as a result overturned in order to further the interests of justice.

5. An Unsuccessful Resolution Applicant has no locus to assail a Resolution Plan or its implementation – M.K. Rajagopalan Vs. S. Rajendran, RP Vasan Health Care Pvt. Ltd. – NCLAT Chennai

Due to the forthcoming fact that the Petitioner/Appellant is an Unsuccessful Resolution Applicant and is not a Stakeholder under Section 31(1) of the IBC, 2016 in relation to the Corporate Debtor, this Tribunal concludes without any hesitation that the Petitioner/Appellant is not an aggrieved person falling under Section 61(1) of the IBC, 2016, especially in light of the fact that he is not a Stakeholder.

6. The negligence on the part of Corporate Debtor not to have executed lease deed cannot be allowed to become a ruse for fraudulent transaction u/s 43, 49 and 66 of IBC – Jagdish Kumar Parulkar, Liquidator for Kapil Steels Ltd. Vs. M/s Indore Steel & Alloys Pvt. Ltd. – NCLAT New Delhi

It cannot be overlooked or allowed to be used as an excuse for a fraudulent transaction that the Corporate Debtor was negligent in failing to perform the lease deed. This

Bench will refrain from recording a finding of a preferential or fraudulent transaction solely based on a likelihood of a possible collusion without evidence in the record. The current transaction between MPIDCL and ISAPL/Respondent No. 1 is not illegal and does not involve any procedural or substantive irregularities, so we are satisfied with the Adjudicating Authority's findings that the Appellant is not permitted to disrupt the transaction by invoking Sections 43, 49, and 66 of the IBC, or to interfere with the possession of or affect the leasehold rights of Respondent No. 1.

7. There is no power to enjoin upon NCLAT to condone even a single day beyond the condonable period prescribed as per Section 61 of the Insolvency and Bankruptcy Code, 2016 – Employees Provident Fund Organisation Vs. Nethi Mallikarjuna Setty – NCLAT Chennai

Given the crystal-clear position of Section 61(1) of the Insolvency and Bankruptcy Code and Rule 150 of the NLCT, NCLAT held that the delay of 289 days provided by the Petitioner/Appellant from 10.03.2022 to 23.12.2022 in filing the instant Company Appeal cannot be excused because there is no power to enjoin upon this Appellate Tribunal to excuse not even a single day beyond the condonable period prescribed as per section 61 of IBC,2016.

8. Nclt An application under Section 9 of the Code is only maintainable when the contention of the defendant is rejected in its entirety in the civil matter and goes past the

appellate stage – M/s Damani Shipping Ltd. Vs. M/s Hindustan Zinc Ltd. – NCLT Jaipur Bench

When the defendant's claim is completely rejected in the civil case and moves past the appellate stage, it is assumed that there are no legal issues at issue between the parties, and only then is an application under Section 9 of the Code maintainable. The Operational Creditor's actions show recovery as the driving force behind the instant application as a dual opportunity to recover debts. Whatever the result of the lawsuit between the parties, the existence of a pending dispute is an undeniable reality. This Adjudicating Authority does not need to consider the grounds of the pre-existing dispute, and the claim of the Operational Debt cannot be brought up in front of this Adjudicating Authority for CIRP of the Respondent Company.

NCLT

9. The word "may" used in Section 30(4) of IBC is directory and not mandatory and it is only an enabling provision and does not impose any mandate on the CoC to distribute payments to creditors based on the value of security held by them – Canara Bank Vs. Sri. Nitin Vishwanath Panchal RP of M/s. Galada Power and Telecommunication Ltd. – NCLT Hyderabad Bench

While examining the language used by the Legislature in the amended Section 30(4) with regard to taking the security interest into consideration demonstrates that the word

"may" is directory instead of mandatory. Apart from that, the mentioned provision serves only as an enabling provision and doesn't require the COC to pay creditors based on the worth of the security they hold. While approving the resolution plan, Section 30(4) of the IB Code only authorizes the COC to decide on the order of priority among creditors as stipulated in sub-section (1) of Section 53 of the IB Code, including the priority and value of security interests of secured creditors. As an outcome the argument that the impugned resolution plan is not valid as the COC failed to consider the pre-CIRP preferential financial bargains made by the Applicants with the Corporate Debtor is not supported. As a consequence, it is significant to note from the finding that under the 2016 IB Code's Scheme, any dissatisfaction, including that of the Applicants in this case, does not have the status of a legal grievance and cannot be raised as a basis for an appeal. Accordingly, the widely recognized legal position regarding the priority in payment among different categories of creditors, which is essentially the Committee of Creditors' commercial judgment, and a dissenting secured creditor like the Applicants herein cannot seek a greater sum to be paid to them on the basis of the value of their security interest by claiming dissatisfaction.

10. The filing of suits and proceedings does not restrict the financial creditor for initiation of CIRP of the Corporate Debtor – Jammu Kashmir Bank Ltd. Vs. Ace Engineering (India) Pvt. Ltd. – NCLTChandigarh Bench

The petitioner further filed a civil proceeding against the respondent-Corporate Debtor, but this suit is not related to the CIRP proceedings. In view of the decision of the Hon'ble NCLAT in the case of Harkirat S. Bedi vs Oriental Bank of Commerce [2019] ibclaw.in 62 NCLAT and Karan Goel vs. M/s. Pashupati Jwellers & Anr. [2019] ibclaw.in 163 NCLAT, we are of the view that the filing of suits and proceedings does not restrict the financial creditor for initiation of CIRP of the corporate debtor. The liability of the principal borrower and the guarantor(s) is joint and several in a guarantee contract, still Therefore, even if the guarantor or principal borrower has been released, the other party would not stand discharged until the obligation gets fulfilled .

11. A Resolution Plan passed by a CoC, which is comprised of related parties of the Corporate Debtor, is void ab initio as it violates Section 21(2) read with Section 30(2)(e) of IBC, 2016 – M/s. Punjabi Accessoriezz Pvt. Ltd. Vs. M/s. Kredo Beauty Pvt. Ltd. – NCLT New Delhi Bench Court II

According to the adjudicating authority, Without the involvement of any CoC members, a vote by show of hands could not have been conducted to approve an Ordinary Resolution for the appointment or removal of a Director in the Corporate Debtor, Kredo Beauty Pvt. Ltd.We therefore firmly believe that the aforementioned two shareholders, who are also CoC members of the Corporate Debtor, had the ability to influence the make-up of the

Board of Directors of the aforementioned Corporate Debtor. Therefore, we conclude that both the CoC members and the CoC as a whole are "related parties" to the Corporate Debtor in accordance with Section 2(l) of IBC, 2016 and as a result, the entire constitution of the CoC is unlawful in the eyes of the law due to their ability to control the composition of the Board of Directors of the Corporate Debtor. We further understand that a Resolution Plan approved by a CoC made up of associates of the Corporate Debtor is void from the start as it ignores Sections 21(2) and 30(2)(e) of the IBC, 2016.Considering the aforementioned, we are confronted with no alternative option but to deny the present application, IA No. 611 of 2021. We are forced to order the corporate debtor's liquidation because the CIRP period's utmost permissible duration has already passed. arranged suitably.

12. Whether application under Section 43, 44 and Section 66 of IBC would survive in absence of Transaction Audit Report/ Forensic Audit Report – Mrs. Vaishali Arun Patrikar, RP, M/s Panama Systems Pvt. Ltd. Vs. Mr. Hemant Khinvasara, Director (Suspended) of M/s Panama Systems Pvt. Ltd. – NCLT Mumbai Bench

In spite of the Respondent's alleged lack of cooperation, the Applicant took the necessary actions to complete the procedure using the information at her disposal. Additionally, with regard to the concealment of information pertaining to the missing assets (phone, laptops, and desktops),

the Applicant/Liquidator has not conducted any audit to conclusively demonstrate the value of the missing assets as claimed or provided any concrete proof with regard to the determination of the amount claimed for the concealed property/missing assets. Because of the aforementioned facts and circumstances, the bench is of the opinion that the applicant has failed to provide the necessary information or any concrete evidence in support of the claims made. As a result, the bench is holding off on taking any action regarding the conduct of the respondent in the absence of any conclusive evidence.

13. **The object of IBC is to ensure that the insolvent company is put back on its feet and not to disarray a solvent and financially sound company – Prism Johnson Ltd. Vs. Doosan Power Systems India Pvt. Ltd. – NCLT New Delhi Bench Court-II**

A financially sound and solvent business is not object of the IBC rather, it is meant to guarantee that the insolvent company is brought back to its feet. The provisions in the IBC relating to the commencement of CIRP at the request of an Operational Creditor whose dues are undisputed are rigid and inflexible, as it was noted above that the financial strength as well as nature of business of Financial Creditors and Operational Creditors are different, as well as the tenor and terms of agreements/ contracts with Financial Creditors and Operational Creditors. The Corporate Debtor is required to pay any fees that have been acknowledged as owed to the Operational Creditor. A CIRP must be started if it doesn't.

There is a bit more flexibility in the context of a financial debt. The decision on whether or not to approve the Financial Creditor's application has been given to the Adjudicating Authority (NCLT). The Adjudicating Authority has the authority to reject the application or, if the facts and circumstances justify it, keep the admission under suspension. Of course, in the event of rejection of an application, the Financial Creditor retain the right to reapply for the initiation of CIRP if its dues stay unpaid.

Supreme court

14. The Hon'ble Supreme Court in the case of –Srei Multiple Asset Investment Trust Vision India Fund Vs. Deccan Chronicle Marketeers ruled that the CoC's approval, which was obtained with 81.39% of the vote, makes it clear that the Corporate Debtor has a perpetual, exclusive right to use the brands "Deccan Chronicle" and "Andhra Bhoomi," and that it makes no mention of the Corporate Debtor's ownership of the trademarks/brands "Deccan Chronicle" and "Andhra Bhoomi." But the Adjudicating Authority, in deciding Application I.A. No.155 of 2018, not only upheld the exclusive right to use the trademarks "Deccan Chronicle" and "Andhra Bhoomi," but also stated in its order dated August 14, 2019, that the trademarks belong to Corporate Debtor/DCHL. In our opinion, this was a modification or alteration to the Resolution Plan that was approved, which is unquestionably illegal under the law.

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