



NEWS CHRONICLE

OCTOBER, 2018

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*Failing
To Try Is
Trying
To Fail*

AT A GLANCE

ACQUISORY NEWS CHRONICLE OCTOBER, 2018

➤ *NFRA has been constituted on 1st October, 2018*

- Constituted on 1st October, 2018, the National Financial Reporting Authority (NFRA) is a body under the Companies Act 2013 established for the purpose of implementation and enforcement of accounting and auditing standards and oversight of the work of auditors

➤ *MCA Amends disclosure requirement in Balance Sheet & P&L Statement of NBFCs as per IND As Schedule III.*

- Applicable to NBFCs covered under the purview of IND AS.

➤ *MCA extends last date of Filing Annual ROC Returns to 31st December, 2018*

- Applicable on additional fees wherever payable by companies on e-forms AOC-4, AOC (CFS), AOC (XBRL) and MGT 7.

➤ *Revised Form 13 & Procedures for Lower/ Nil Rate TDS/ TCS certificate notified by CBDT*

➤ *CBIC extends due date of filing Form GST ITC-04 to 31st December, 2018*

➤ *ECB norms relaxed for Public Sector Oil Marketing Companies for working capital requirements*

- Any recognized lender can lend to PSU OMCs through ECB route
- Individual OMC ceiling is fixed at USD 750 million; and
- Overall ceiling for such ECBs is USD 10 Billion

➤ *RBI Issues Master Circular on Fit & Proper Criteria for Sponsors funder ARC (Reserve Bank) Directions, 2018*

- Existing and proposed sponsors of ARCs will now be covered under the new RBI directions on Fit and Proper Criteria for sponsors under SARFAESI Act 2002.

➤ *Government of India has notified Sessions Court as designated presiding courts under Benami Property Act, 1988*

➤ ***ECB Policy Liberalised for public sector Oil Marketing Companies***

- RBI has decided to permit public sector Oil Marketing Companies (OMCs) to raise ECB for working capital purposes with an average maturity period of 3 or 5 years from all recognized lenders under the automatic route.
- Further, the individual limit of USD 750 million or equivalent and mandatory hedging requirements as per the ECB framework have also been waived for borrowings under this dispensation. However, OMCs should have a Board approved forex market to market procedure and prudent risk management policy, for such ECBs.
- The overall ceiling for such ECBs shall be USD 10 billion equivalent and the said facility will come into effect from the date of this Circular.

➤ ***RBI issues Master Direction on Fit and Proper Criteria for Sponsors - Asset Reconstruction Companies (Reserve Bank) Directions, 2018***

- RBI issued Directions on Fit and Proper Criteria for Sponsors of Asset Reconstruction Companies (ARCs) registered under the SARFAESI Act, 2002.
- The provisions of the Directions shall apply to the existing and proposed sponsors of the ARCs.
- In determining whether the sponsor is fit and proper, the RBI shall take into account all relevant factors, as appropriate, including, but not limited to, the following:
 - (i) The sponsor's integrity, reputation, track record and compliance with applicable laws and regulations;
 - (ii) The sponsor's track record and reputation for operating business in a manner that is consistent with the standards of good corporate governance, integrity, in addition to the similar assessment of individuals and other entities associated with the sponsor
 - (iii) The business record and experience of the sponsor;
 - (iv) Sources and stability of funds for acquisition and the ability to access financial markets;
 - (v) Shareholding agreements and their impact on control and management of the ARC.

[https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11402
&Mode=0](https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11402&Mode=0)

MCA Updates

➤ **MCA Notifies Constitution and sub sections of NFRA**

Notification

- MCA has notified 1st October, 2018 as the date of constitution of the National Financial Reporting Authority (NFRA).

Section 132 Subsections

- The provisions of sub-section 1 and 12 of Section 132 of the Companies Act 2013 will also come into force from the same date.
- The provision of these sub-sections are related to constitution of NFRA and provides for matters relating to accounting and auditing standards under this act.
- MCA on 24th October, 2018 has notified the remaining provisions of constitution of NFRA. Provisions of sub-section (2), (4), (5), (10), (13), (14) and (15) of Section 132 of the Companies Act, 2013 shall come into force.

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_04102018.pdf

➤ **IBBI (Insolvency Resolution Process For Corporate Persons) (Fourth Amendment) Regulations, 2018**

The IBBI has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018.

- The amendment now requires an RP to circulate the minutes of the meeting by electronic means to authorized representative(s) also apart from all C-o-C members. It further requires the authorized representative to circulate the minutes of the meeting received from the resolution professional to the financial creditors.
- The amendment has added that the amount due to operational creditors under the resolution plan shall be paid in priority over financial creditors..
- The amendment mandates the RP to preserve the physical and electronic copy of the records relating to IRP of the corporate debtor as per the record retention schedule.
- The amendment Regulations are effective from 5th October 2018.

➤ **Valuation under the IBC, 2016**

- IBBI vide Circular dated October 17th, 2018 has clarified that every valuation required under the IBC or any of the

regulations made thereunder is required to be conducted by a 'registered valuer', that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017.

- It also directs that with effect from February 1st, 2019, no IP shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

➤ **MCA Amends disclosure requirement in Balance Sheet & P&L Statement for Companies/NBFCs as per IND AS**

- i. MCA has amended Instructions for Preparation of Balance Sheet and Statement Of Profit And Loss of NBFCs as per IND AS procedures and regulations
- ii. MCA has also amended the existing Division I (Indian GAAP) & Division II (Ind AS) Schedule III. Ind AS Schedule III changes require companies preparing Ind AS financial statements to give additional disclosures related trade receivables, loans receivables and trade payables and also comply with the disclosure requirements under the Micro, Small and Medium Enterprises Development Act, 2006.

http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf

➤ **IBBI amends 3 Insolvency Regulations**

- a) The IBBI (Insolvency Professional Agencies) (Amendment) Regulations, 2018 provide that no person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an (IPA).
- b) The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018 provide for composition of the Governing Board of an IPA and its managing director.
- c) The IBBI (Information Utilities) (Second Amendment) Regulations, 2018 have made similar provisions, as provided for IPAs above, in respect of an information utility (IU).
- d) An IPA and an IU registered with the IBBI, as on date of the commencement of the amendment regulations, shall comply with the regulations, within one year.

MCA Updates

➤ ***MCA extends due date of Filing Annual ROC Returns to 31st December, 2018***

MCA has decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS), AOC (XBRL) and e-form MGT 7 upto 31st December, 2018, wherever additional fees is applicable.

➤ ***Financial Service Providers Outside Purview of Insolvency and Bankruptcy Code: NCLAT***

- The NCLAT has held that financial service providers such as NBFCs are outside the purview of the Insolvency and Bankruptcy Code.
- The order was issued by Justice SJ Mukhopadhaya (Chairperson) and Justice Bansi Lal Bhat (Judicial Member), in Randhiraj Thakur, Director, Mayfair Capital Private Ltd versus Jindal Saxena Financial Services and Mayfair Capital Private Ltd.

➤ ***IBBI (Mechanism for Issuing Regulations) Regulations, 2018***

IBBI notifies the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 to govern the process of making regulations and consulting the public.

The Issuing Regulations provide that for the purpose of making or amending any regulations, the IBBI shall upload the following, with the approval of the Governing Board, on its website seeking comments from the public-

- i. draft of proposed regulations;
- ii. the specific provision of the Code under which the Board proposes regulations;
- iii. a statement of the problem that the proposed regulation seeks to address;
- iv. an economic analysis of the proposed regulations;
- v. a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- vi. the manner of implementation of the proposed regulations; and
- vii. the manner, process and timelines for receiving comments from the public.

➤ ***Revision of E-Forms***

Forms DIR-11, GNL-2, INC-4, SH-8, SH-9, I-XBRL, CHG-8, GNL-1 and 21A are likely to be revised on MCA21 Company Forms Download page w.e.f 25th October , 2018.

Tax Updates

➤ **Cabinet approves appointment of Adjudicating Authority and establishment of Appellate Tribunal under Prohibition of Benami Property Transactions Act, 1988**

- Appointment of an Adjudicating Authority, along with the three additional Benches will be established along with establishment of the Appellate Tribunal under the PBPT Act;
- To provide for adequate workforce to the Adjudicating Authority, Benches of the Adjudicating Authority and Appellate Tribunal by diverting the existing posts at the same level/rank from the I T Department / CBDT;
- The Adjudicating Authority and Appellate Tribunal shall sit in the National Capital Territory of Delhi (NCTD). Benches of Adjudicating Authority may sit in Kolkata, Mumbai and Chennai, and the necessary notification in this regard shall be issued after making consultation with the Chairperson of the proposed Adjudicating Authority.

➤ **Government notifies Special Courts under Benami Property Act**

- i. The GoI, in consultation with the Chief Justices of respective High Courts, has notified Sessions courts in 34 states and Union Territories, to act as special courts for trial of offences under the benami transaction law.
- ii. Under the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), trial of offences punishable under the provisions of the Act, will be conducted under the auspices of the Sessions Courts.
- iii. In case of National Capital Territory of Delhi, Courts of Additional Sessions Judge 02 in each district have been designated as special court.

➤ **Revised Form 13 & Procedure for Lower/ Nil Rate TDS/ TCS certificate**

- CBDT notifies substituted new form 13 related to Application by a person for a certificate under section 197 and/or sub-section (9) of section 206C of the Income-tax Act, 1961, for no deduction of tax or deduction or collection of tax (TDS/TCS) at a lower rate,
- Substituted new rule 28 related to Application for grant of certificates for deduction of income-tax at any lower rates or no deduction of income-tax,
- Substituted Rule 37G related to Application for certificate for collection of tax at lower rates under sub-section (9) of section 206C and;

- Amended Rule 28AB, 28AA and 37H of Income Tax Rules.

➤ **CBDT amends Form No. 36 & 36A of Appeal & Cross Appeal with ITAT**

CBDT vide Notification No. 72/2018 amends Form No. 36 - Form of appeal to the Appellate Tribunal and Form No. 36A - Form of memorandum of cross-objections to the Appellate Tribunal.

GST Updates

➤ **Extension of due date of filing Form GST ITC-04 to 31st December, 2018 for period July, 17 to Sep, 18**

CBIC extends the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31st December, 2018.

➤ **GST registration cancelled before 30th September, 2018 – affected persons can furnish GSTR-10 till 31st December, 2018: CBIC**

- CBIC has notified the persons whose registration under the GST Act has been cancelled by the proper officer on or before the 30th September, 2018, as the class of persons who shall furnish the final return in FORM GSTR-10 of the said rules till the 31st December, 2018.
- CBIC issues Clarification on Standard Operating Procedure for Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16.

Tax Updates

➤ **Clarification on the manner of filing the Quarterly Return by Composition Dealers in FORM GSTR-4**

- i. It has been brought to notice that doubts regarding the manner of filing the quarterly return by Composition Dealers in FORM GSTR-4 in the absence of auto-population of the details of inward supplies (other than supplies attracting reverse charge) received from registered suppliers exist amongst taxpayers.
- ii. In this regard, it is to clarify that the taxpayers who have opted to pay tax under the composition levy shall not furnish the data in serial number 4A of Table 4 of FORM GSTR-4.

➤ **Clarifications of issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor**

1. It is clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.
2. As per section 27 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by casual taxable person is 90 days with provision for extension of same by the proper officer for a further period not exceeding 90 days.

Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.

- a. It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.
- b. While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.
- c. In such cases he would not be required to pay advance tax for the purpose of registration.
- d. He / she can surrender such registration once the exhibition is over

3. Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act.
 - a. According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.
 - b. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03.
 - c. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in
 - d. such cases.
 - e. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.

Glossary

CBDT	Central Board of Direct Taxes	MCA	Ministry of Corporate Affairs
CGST	Central Goods and Service Tax	MoU	Memorandum of Understanding
CA 2013	Companies Act 2013	MSME	Micro Small and Medium Enterprises
DIN	Director Identification Number	NCLAT	National Company Law Appellate Tribunal
ETF	Exchange Traded Fund	NCLT	National Company Law Tribunal
FPI	Foreign Portfolio Investors	NBFC	Non Banking Financial Company
FRDI	Financial Resolution & Deposit Insurance	NPA	Non-Performing Assets
FDI	Foreign Direct Investment	NRI	Non resident Indian
FEM	Foreign Exchange Management	OTP	One Time Password
GST	Goods and Services Tax	OCI	Overseas Citizens of India
GIC	GST Implementation Committee	PAN	Permanent Account Number
IBBI	Insolvency and Bankruptcy Board of India	PIO	Person of Indian Origin
IGST	Integrated Goods and Services Tax	RBI	Reserve Bank Of India
ITC	Input tax Credit	ROC	Registrar of Companies
IFRS	International Financial Reporting Standards	SEBI	Securities and Exchange Board of India
ITR	Income Tax Return	TAN	Tax Account Number
IBC	Insolvency and Bankruptcy Code	UTGST	Union Territory Goods and Service Tax
IPs	Insolvency Professionals	VAT	Value Added Tax
Ind AS	Indian Accounting Standards	IEPF	Investor Education and Protection Fund
ICDS	Income Computation and Disclosure Standards	ISD	Input Service Distributer

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- Solution

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