Prakash Sachin & Co | Newsletter | Volume II

September 2021

Prakash Sachin & Co

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We are a full service professional Chartered Accountants Firm offering services in:

1. Risk & Assurance,
2. Fiscal and Tax Advisory, compliance and litigation Support,
3. Corporate Laws, fiscal statute and regulatory support through advisory, Compliance & litigation,
4. Business development Support through guidance on various regulatory matters.
5. Business Processes Support by way of process audit, SOP and system compliance.

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COMPLIANCE CALENDAR

Income Tax/PF/ESI

S. No.	Particulars	Due Date
1	Due date for deposit of Tax deducted/collected for the month of Aug, 2021	07.09.2021
2	Due date for deposit of Equalization Levy for the month of Aug, 2021	07.09.2021
3	Due date for issue of TDS Certificate for tax deducted u/s 194-IA, 194-IB, 194-M for the month of July, 2021	14.09.2021
4	Due date for deposit of PF, ESIC for the month of Aug, 2021	15.09.2021
5	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of Aug, 2021 has been paid without the production of a challan	15.09.2021
6	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of Aug, 2021	15.09.2021
7	Second installment of advance tax for AY 2022-23	15.09.2021
8	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M for the month of Aug, 2021	30.09.2021

9	Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 without additional charge	30.09.2021

Goods & Services Tax

S. No.	Particulars	Due Date
1	GSTR 7: A return to be filed by the persons who is required to deduct TDS (Tax deducted at source) under GST for August, 2021	10.09.2021
2	GSTR-8: A return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST for August, 2021	10.09.2021
3	GSTR-1: Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return for August, 2021	11.09.2021
4	GSTR 1 IFF (QRMP): GST return for the taxpayers who opted for QRMP scheme (Optional) for August 2021	13.09.2021
5	GSTR 6 by Input Service Distributors (ISDs) for August, 2021	13.09.2021
6	GSTR-3B: Taxpayers having an aggregate turnover of more than Rs. 5 Crores or opted to file Monthly Return for August, 2021 with NIL interest and No Late Fee	20.09.2021
7	GSTR 5 & 5A: Return by Non-Resident Taxpayers and ODIAR services provider for August, 2021	20.09.2021
8	GST Challan Payment if no sufficient ITC for August, 2021 (for all Quarterly Filers)	25.09.2021

Companies Act

S. No.	Particulars	Due Date
1	E-Form DIR-3 KYC/ Web DIR-3 KYC: Director KYC submission for DIN holders as on 31 March 2021 and the status of the DIN is '**Approved**'	30.09.2021
2	Notice & Agenda of **Annual General Meeting (AGM)** and Annual Report for the financial year ended on 31.03.2021.	Atleast 21 Clear Days before the AGM
3	Due Date of AGM: AGM for the financial year ended on 31.03.2021. (AGM shall be held within 06 month from closure of F.Y. subject to the 15 Months from Previous AGM)	30.09.2021 (Subject to 15 Months from Previous AGM)
4	E-Form FC-3: Every **Foreign Company** shall file to RoC, the financial statement and a list of all the business places established in India as on the date of balance sheet.	30.09.2021 (Within a period of Six months from the Close of FY)

INCOME TAX ACT

Relevant Judgments and updates of the week;

Extension of Time Lines for filing of Income Tax Returns and various reports of audit for the AY 2021-22 (Circular No. 17/2021 dated 09.09.2021)

The CBDT, in exercise of its powers u/s 119 of the Act, provides relaxation in respect of the following compliances:

SN.	Taxpayers	Due Date	Extended Date
1	ROI by Individual / HUF / Firm / Trust (where Tax Audit is N/A)	31.07.2021	31.12.2021
2	Tax Audit Report u/s 44AB or Form 10B	30.09.2021	15.01.2022
3	Transfer Pricing Report u/s 92E i.e., Form 3CEB	31.10.2021	31.01.2022
4	ROI by Company or Individual / HUF / Firm / Trust (where Tax Audit is Applicable)	31.10.2021	15.02.2022
5	ROI by Taxpayers where Transfer Pricing Audit i.e., Form 3CEB is applicable	30.11.2021	28.02.2022
6	Belated / Revised Return of Income	31.12.2021	31.03.2022

CBDT amends Income-tax Rules, 1962 to ease authentication of electronic records submitted in faceless assessment proceedings (Press Release dated 07.09.2021)

For easing the process of authentication of electronic records in faceless assessment proceedings, the Government has amended Income-tax Rules, 1962 vide notification no. 101/2021 dated 06.09.2021. The amended Rules provides that electronic records submitted through registered account of the taxpayers in the Income-tax Department's portal shall be deemed to have been authenticated by the taxpayer by EVC. Therefore, where a person submits an electronic record by logging into his registered account in designated portal, it shall be deemed that the electronic record has been authenticated by EVC for the purposes of sec 144B(7)(i)(b) of the Act. However, under the existing provisions of section 144B(7)(i)(b), this simplified process of authentication by EVC is not available to certain persons (such as companies, tax audit cases, etc.) and they are mandatorily required to authenticate the electronic records by digital signature. In order to provide the benefit of the simplified process of authentication by EVC to these persons, it has been decided to extend the simplified process of authentication by EVC to these persons also. Hence, the persons who are mandatorily required to authenticate electronic records by digital signature shall be deemed to have authenticated the electronic records when they submit the record through their registered account in the portal.

Land sold after decade indicates that it was held for investment; profit would be tax under head 'capital gains'

ITAT (Mujib Salmanbhai Pathan v. ACIT dated 24.06.2021, AY 2015-16)

FACTS:

1. The appellant is an individual engaged in the business of builders and land developers. The return of income for the AY 2015-16 was filed through e-filing on 25.03.2016 declaring a total income of Rs.

49,64,470/-. Against the said return of income, the assessment was completed by the AO vide order dated 28.12.2017 passed u/s 143(3) of the Act at a total income of Rs. 1,01,58,080/-. While doing so, the AO made addition of Rs. 1,00,85,013/- being the profits arising out of the sale of land, treating as an income from business as against the claim of the appellant that it is a nature of capital gains. The factual background leading to the above additions as follows:

2. The appellant along with one Shri Sadik F. Kachchhi purchased a land bearing Khasara No. 73/1, Area 0.60 Hectare for a consideration of Rs. 2,00,000/- on 25.05.2005. The cost of investment on the said land was shown in the balance sheet as on date of acquisition and continued to be shown so till the date of sale. During the previous year relevant to the assessment under consideration, the said land was sold to 21 different parties for a consideration of Rs. 1,01,44,000/- and, accordingly, the appellant had computed the capital gains and sought exemption on the capital gains on investment in the residential property as prescribed under the provisions of section 54F of the Act. The claim for exemption u/s 54F of the Act was denied by the AO on the following grounds:

i. The appellant is engaged in the business of builders and developers and a dealer of land.

ii. The appellant had indulged into transactions of purchase and sale of land in the earlier years also and same was treated as business income.

iii. The land was sold to 21 different parties after dividing the plots into 21 pieces, which according to the AO indicate the intention of the appellant is only to hold it as business asset.

iv. The AO also held that the mere reflecting concerned asset as investment in fixed asset in the balance sheet does not conclusively prove that it is investment not stock in trade and there was no agricultural activity on the said land was carried out.

3. The assessee also held other asset of investments. The sum and substance of the conclusion of the AO is that since the appellant is a dealer in land and sold the land by dividing plots into 21different pieces, the land was only as business assets and, therefore, the profit arising on the sale of said land only results in the business profits not as capital gains. The AO also referred to the decision of the Hon'ble SC in the case of G. Venkataswami Naidu & Co. v. CIT [1959] 35 ITR 594 in support of the proposition that when the land was purchased with the intention of re-sell of profits, it is a transaction in the nature of trade and, accordingly, the AO assessed the profits arising on sale of said land as "business profits" as against the claim of the appellant that the profits are in the nature of "capital gains". Accordingly, denied the claim of exemption u/s 54F of the Act.

4. On an appeal before the Ld. CIT(A), the CIT(A) after referring to the plethora of judgements upheld the findings of the AO. Being aggrieved, the appellant is before is in the present appeal.

5. The ld. AR submitted that the asset was purchased in the year 2005 and was shown as a part of the fixed asset in the balance sheet. It is contended that the finding of the AO that the assessee himself had divided the land into pieces is contrary to the facts as the layout of the said land was approved by local authority much before the acquisition by the appellant. He also filed the copy of the permission of the local authorities. He further contended that:

   i. The land was continued to be investment in the books of account till the date of sale.

   ii. The assessee is entitled to hold two different portfolios i.e. (i) stock in trade and (ii) investment.

   iii. The fact that the land was sold after gap of decade, no borrowed funds were utilized for the purpose of acquiring the said lands indicates the intention of the party to hold against on investment.

This approach of the Ld. CIT(A) while confirming the action of the AO cannot be appreciated as it is settled position of law that the assessee is entitled to maintain two different portfolios i.e. stock in trade as well as the investment. This is also clarified by the CBDT in the context of taxing the profits in respect of sale transaction and shares and securities vide CBDT Circular No. 4 of 2007 dated 04.05.2007.

HELD:

Undisputedly, the appellant had made a distinction between those lands which are stock in trade and those lands which are held by investment. Therefore, none of the factors considered by the AO can militate against the claim of the appellant that it is an investment and the profit arising out of the sale of this land is assessable to tax under the head "capital gains". Therefore, the orders of the lower authorities are hereby reversed and set-aside. Thus, the grounds of appeal raised by the assessee are allowed. In the result, the appeal filed by the assessee is allowed.

The Direct Tax Vivad se Vishwas 'DTVSV' Act, 2020 is an Act to provide for resolution of disputed tax and matters connected therewith or incidental thereto. The emphasis is on disputed tax and not on disputed income.

Govindrajulu Naidu vs. Principal Commissioner of Income Tax, (Central-1), Mumbai

FACTS:

The Assessee, an Individual, had filed return of income for the AY 1987-88 to 1998-99. The assessments were reopened u/s 147 of the Income Tax Act, 1961 and the assessment orders were passed u/s 143(3) r.w.s 147 of the Act. For the AYs 1996-97 to 1998-99, the assessments were finalized u/s 143(3) of the Act by raising substantial demand. The additions made in the said assessments were challenged in appeals before CIT(A), who confirmed the action of the AO. Further, the appeal was preferred before

ITAT contesting the additions confirmed in the appellate proceedings. The ITAT set aside the order of CIT(A) and directed the AO to grant relief.

Pending the appellate proceedings, the TRO initiated the recovery proceedings and the Petitioner to avoid any coercive action handed over the cheques totalling to an amount of Rs.12,43,000/- against the demand raised for the AYs 1986-87 to 1998-99. However, while preparing the challans, the TRO wrongly mentioned only AY 1986-87 in all the challans and adjusted the said amount only against the demand for AY 1986-87 and not for the AYs 1987-88 to 1998-99. After the ITAT order, when the AO gave effect to the same, the demand for all the assessment years had substantially reduced. But, the credit for the taxes recovered was given only in the AY 1987-88, which resulted into refund in the AY 1987-88. Consequently, huge tax and interest demand was created in all the other years i.e. AY 1988-1989 to 1998-99. Thus, the Petitioner sought rectification of the same by moving an application u/s 154 of the Act. However, the same was rejected. The Petitioner therefore, moved an application u/s 264 of the Act for all the AYs 1987-88 to 1998-99.

Pending the application u/s 264 of the Act, the Petitioner preferred to settle the litigation under Direct Tax Vivad se Vishwas Act, 2020. On filing the declaration u/s 4(1) of DTVSV Act, 2020, the Petitioner was asked to justify his claim that there is a 'disputed tax' when there is no 'disputed income' as per the relief sought in the applications filed u/s 264 of the Act. The Petitioner responded to the same and submitted that as per section 2(1)(a)(v), an assessee whose application is pending on the specified date is an 'appellant' for the purpose of DTVSV Act, 2020. The disputed tax in such cases is defined in section 2(1)(j)(F) as the amount of tax payable by the appellant, if such application for revision was not accepted. In the Petitioner's case there are 'tax arrears' as per the definition in section 2(1)(o) of the DTVSV Act, 2020. Thus, the Petitioner determined the amount payable u/s 3(a) of DTVSV Act, 2020. The Designated Authority did not appreciate the said explanation of the Petitioner and rejected the declaration without assigning any reason for the same.

HELD:

The Hon'ble HC observed that the DTVSV Act, 2020 is an Act to provide for resolution of disputed tax and matters connected therewith or incidental thereto. The emphasis is on disputed tax and not on disputed income. It was further held that "from a plain reading of the provisions of the DTVSV Act, 2020 and the Rules set out above, it emerges that the Respondent – Designated Authority would have to issue Form 3 as referred to in section 5(1) specifying the amount payable in accordance with section 3 of the DTVSV Act. In the case of the declarant who is an eligible appellant falling neither under section 4(6) nor within the exceptions in section 9 of the DTVSV Act, 2020, which fact appears to be undisputed". The Hon'ble Court further held that as the Petitioner's case is covered by the definition of disputed tax as per section 2(1)(j)(F) of the DTVSV Act, 2020, the Designated Authority is not justified in rejecting the declaration of the Petitioner.

GST AND OTHER INDIRECT TAX LAWS

Relevant Judgments and updates of the week;

CBIC issued clarification regarding extension of time limit to apply for revocation of cancellation of registration

The date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) and (c) of sub-section (2) of section 29 of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. Clause b and c of section 29 states that a person paying tax under section 10 has not furnished returns for three consecutive tax periods and any registered person, other than a person specified in clause (*b*), has not furnished returns for a continuous period of six months and whose registration has been cancelled between 1st March, 2020 to 31st August, 2021 can file the revocation application till 30th September, 2021.

It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer/Appellate authority or has already been rejected by the proper officer/Appellate authority.

Assessee entitled to claim refund of ST paid belatedly under RCM after implementation of GST

CESTAT: NSSL (P.) Ltd. *v.* Commissioner of Central Excise, CGST & CE, Nagpur

FACTS:

Appellant is engaged in the manufacture of Industrial valves, spares parts of valve and components etc. During the disputed period, the appellant had availed the services namely, GTA, Manpower Supply Agency, legal services, security agency services etc., for its business requirement and was liable to discharge the service tax liability under Reverse Charge Mechanism, in the capacity of recipient of such service. However, the appellant did not discharge the service tax liability during the stipulated time and paid the same into the central government account belatedly. The Finance Act, 1994 was repealed and replaced with the GST Act in 2017 and as a consequence, the appellant had filed refund application on 4-6-2018, claiming refund of service tax paid by it under the Reverse Charge Mechanism. The refund applications filed by the appellants were returned by the Jurisdictional service tax authorities on the ground that input tax credit can only be claimed under the GST/CGST Act, 2017 and not otherwise. Feeling aggrieved with the communication dated 12-6-2018 of the Deputy Commissioner, CGST, the appellant had preferred appeals before the Commissioner (Appeals). Commissioner rejects the appeal. Being aggrieved with the impugned order, the appellant has preferred these appeals before the Tribunal.

HELD:

As per section 142, every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law.

Therefore, CESTAT setaside the order and held that an assessee can file the application, claiming refund of the amount of CENVAT credit after the appointed day and that the said application shall be disposed of by the authorities in accordance with the erstwhile statute.

CESTAT allowed assessee to claim refund of transitional credit available after filing of revised Service Tax return

Bangalore CESTAT: Punjab National Bank *v.* Commissioner of Central-tax

FACTS:

The appellant is a Scheduled Commercial Bank and registered under the category of "Banking and other Financial Services" under Service Tax. The appellant filed the service tax return on 31.08.2017 with NIL CENVAT credit and accordingly filed the Trans-1 return with NIL transitional credit. After that, appellant observed that due to an inadvertent error, the appellant forgot to avail eligible cenvat credit to the tune of Rs. 16,50,384/- and therefore appellant revise the S.T. return on 04.09.2017. Thereafter, the appellant filed a claim for refund fo Rs. 16,50,384/- on 30.07.2018

The original authority after following the due process, rejected the refund claim on the ground that the same has been filed beyond the time limit of one year from the relevant date i.e from the date of invoice and the claimant has failed to utilize the opportunity of claiming cenvat credit in Form GST Tran-1 and has not furnished the original invoices evidencing payment of taxes to the extent of refund claimed. Being aggrieved by the order, appellant filed the appeal before Commissioner (Appeals) and Commissioner (Appels) also rejected the appeal on time-bar and on the ground of non furnishing the invoices and further on the ground that the appellant has filed the revised return ST-3 beyond the time limit prescribed under Rule 7B of Service Tax Rules, 1994. Hence, the present appeal.

HELD:

Section 142(9)(*b*) of CGST Act, 2017 states that where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or Cenvat credit is found to be

admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

HC find that it is a settled legal position that if there is a conflict between the substantive provision of the statute and the Rules framed thereunder then it is the statute which will have an overriding effect and in the present case section 142(9)(*b*) has an overriding effect over section 11B of the Central Excise Act, 1944.

The words "notwithstanding anything contrary contain in said law" means that the provisions of this Section will prevail over provisions of existing law except provision of section 11B(2) of Central Excise Act, 1944. The section 11B(2) of Central Excise Act, 1944 contains provisions relating to granting of refund in case of unjust enrichment. Thus, as far as conditions of section 142(9)(*b*) of CGST Act, 2017 is concerned, the appellant has fulfilled the said conditions and hence is entitled for refund.

Therefore HC set aside the order of original authority and Commissioner (Appeals) and for the purpose of verification of original invoices/documents, HC remand the case back to the original authority for the limited purpose of verification of the invoices/documents.

CORPORATE AND OTHER LAWS

CORPORATE LAW UPDATES: -

Sensitizing general public about Nidhi Companies.

Under section 406 of the Companies Act, 2013 (CA, 2013) and Nidhi Rules, 2014 (as amended), companies incorporated as Nidhi Companies need to apply to the Central Government (CG) in form NDH-4 for declaration as a Nidh Companies. It has been observed that companies have been applying to the CG for declaration as Nidhi under the CA, 2013 but of the 348 number of forms scrutinized upto 24.08.2021 not a single company could satisfy the requisite criteria for it to declared as a Nidhi Company by the Central Government. There are large number of companies which though functioning as Nidhi company have not yet applied to the CG for declaration as Nidhi Company which is violation of the CA, 2013 and Nidhi Rules, 2014.

Stakeholders are as advised to verify the antecedents of the company functioning as Nidhi Company and ensure that the company has been declared as Nidhi Company by the CG before becoming its member and depositing /investing their hard earned money in such companies.

SEBI UPDATES: -

SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 (September 7, 2021)

- SEBI vide gazette notification dated September 07, 2021 amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.
- The amendments, inter-alia, provides the "'non-convertible debt securities', 'non-convertible redeemable preference shares', 'non-convertible securities', 'perpetual debt instrument' and 'perpetual non-cumulative preference share' shall have the same meaning as defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

- Further, the regulation 15, and regulation 16 to regulation 27 w.r.t. the Corporate Governance provisions shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed nonconvertible debt securities of Rs. 500 Crore and above.
- However, in case an entity that has listed its nonconvertible debt securities triggers the specified threshold of Rs. 500 crore during the course of the year, it shall ensure compliance with these provisions within six months from the date of such trigger.

Introduction of T+1 rolling settlement on an optional basis (September 07, 2021)

- SEBI has introduced T+1 rolling settlement on an optional basis. With effect from January 01, 2022, a Stock Exchange may choose to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and also disseminating the same on its website.
- After opting for T+1 settlement cycle for a scrip, the Stock Exchange shall have to mandatorily continue with the same for a minimum period of 6 months. Thereafter, in case, the Stock Exchange intends to switch back to T+2 settlement cycles, it shall do so by giving 1-month advance notice to the market.
- T+1 means that settlements will have to be cleared within one day of the actual transactions taking place.

Position Limits for Currency Derivatives Contracts (September 07, 2021)

This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in Securities and to promote the development of, and to regulate the securities market.

Through this circular, SEBI has revised the client level position limits for Currency Derivatives Contracts, per stock exchange. The revised position limits shall also apply to Non Resident Indians (NRIs) and Category-II FPIs that are individuals, family offices, and corporates.

The position limits for Category-I FPIs and Category-II FPIs (other than individuals, family offices, and corporates) shall continue to remain the same as specified by SEBI.

Stock Exchanges/ Clearing Corporations are advised to specify additional safeguards/ conditions, as deemed fit, to manage risk and to ensure orderly trading.

Linking of PAN with Aadhaar (September 03, 2021)

As per Central Board of Direct Taxes (CBDT) notification G.S.R 112(E) dated February13, 2020, the Permanent Account Number (PAN) of a person allotted as on July 01, 2017 shall become inoperative if it is not linked with Aadhaar by September 30, 2021 or any other date specified by CBDT.

Since, PAN is sole identification number for all transactions in the Securities Market, in view of the said CBDT notification, all SEBI registered entities including Market Infrastructure Institutions (MIIs) should ensure compliance of said notification and accept only operative PAN (i.e., linked with Aadhaar number) by the client while opening new accounts post September 30, 2021 or any other date specified by CBDT.

Also, all the existing investors are advised to ensure linking of their PAN with Aadhaar number prior to Sept 30, 2021 or any other date specified by CBDT for continual and smooth transactions insecurities market and to avoid any consequences of noncompliance of said notification on their transactions in securities market.

SEBI bans 85 entities from capital markets for fraudulent trading (September 06, 2021)

SEBI barred total 85 entities, including Sunrise Asian Ltd, from the capital markets for up to one year for manipulating the company's share price. In its order, the regulator restrained Sunrise Asian and its then five directors from the capital markets for one year and the 79 connected entities for six months.

The SEBI had conducted an investigation in the scrip of Sunrise Asian for the period from October 16, 2012 to September 30, 2015, based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. In its probe, SEBI found that pursuant to allotment of shares under the scheme of amalgamation, Sunrise Asian and its then directors had devised an arrangement whereby 83 connected entities had manipulated the price of the scrip in four patches of trading during the investigation period, thereby violating Prohibition of Fraudulent and Unfair Trade Practices norms.

IBC UPDATES: -

Amendment to the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 (September 03, 2021)

In exercise of powers under section 196(1)(aa) of the Code read with regulation 5(b) and clause (ba) of subregulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses (a) and (e) of sub-rule (2) of rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017, the Insolvency and Bankruptcy Board of India hereby extends the validity of the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 31st December, 2021.

FOREIGN TRADE POLICY: -

Inclusion of Ports of Import in continuation to Notification 20/2015-20 dated 24.08.2021 (September 03, 2021)

In exercise of powers conferred by Section 3 read with Section 5 of FT(D&R) Act, 1992 and paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the provision in Para 3 of Notification no. 20/2015-20 dated 24th August 2021 as under—

The following (3) ports are included in addition to the existing (2) ports of Nhava Sheva (INNSA1) port and LCS Petrapole (INPTPB) –

(i) Mumbai Sea Port (INBOM1);

(ii) Tuticorin Sea Port (INTUT1);

(iii) Vishakhapatnam Sea Port (lNVTZ1);

CASE LAW: -

Navinchandra Steels Private Limited (Appellant) vs. SREI Equipment Finance Limited & Ors. (Respondents) [Supreme Court of India]

Insolvency Proceedings are maintainable even if Winding-Up petition is pending against the Corporate Debtor.

Fact of the Case:

- The Appellant is an operational creditor of Respondent No.2 herein – M/s. Shree Ram Urban Infrastructure Limited ["SRUIL"], the company under winding up.
- In this petition, the Appellant contended that post admission of a winding-up petition, no petition under Section 7 of the IBC can be filed.
- The argument was on the fact that in accordance with Section 446 of the Companies Act, 1956 (which is equivalent to Section 279 of the Companies Act, 2013) no suit or other legal proceeding can be initiated once there is admission of a winding up petition.
- Another contention raised was that the SREI has suppressed the winding up proceeding in its application under Section 7 of the IBC before the NCLT and has resorted to Section 7 of the IBC only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding up proceeding.

Judgment:

The Supreme Court observed that: -

- The IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail vis-a-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red.
- The IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail.
- A petition either under Section 7 or Section 9 of the IBC is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. It is, thus, not possible to accede to the argument of the Appellant that given Section 446 of the Companies Act,

1956/Section 279 of the Companies Act, 2013, once a winding up petition is admitted, the winding up petition should trump any subsequent attempt at revival of the company through Section 7 or Section 9 petition filed under the IBC.

- For all these reasons, therefore, the present appeal is dismissed.

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