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FROM PAPER TO PIXELS: THE DIGITIZATION OF INDIA'S COURTS

N K Gupta
Founder & Managing Partner

India is currently undergoing a significant transformation in its legal landscape, with a clear government initiative to digitize the country's courts. This ambitious endeavour is not without its challenges, including the need for substantial infrastructure investments, comprehensive training programs, and overcoming resistance from various stakeholders. However, the opportunities presented by this digital transformation are equally substantial, promising improved access to justice, reduced costs, and enhanced efficiency.

Chief Justice of India, Justice DY Chandrachud, has underscored the importance of reaching out to citizens by enabling the live streaming of court proceedings, a step set to be launched nationwide in the near future.

The journey toward digitizing India's judicial system commenced in 2005 with the establishment of the Supreme Court of India's e-Committee. Nearly two decades later, Phase-II of the e-Courts Project is on the cusp of completion. This phase has focused on providing citizen-centric e-services while digitizing 18,735 courts and connecting them through Wide Area Networks. The e-Committee has also approved a Digital Preservation Standard Operating Procedure for scanning, storing, retrieving, and digitizing court records while preserving legacy judicial data. This procedure is now in the hands of all High Courts across the nation for implementation.

As part of the eCourts project, seven platforms have been created to provide real-time case information, cause lists, judgments, and more to lawyers and litigants through various digital channels, including SMS Push and Pull (2,00,000 SMS sent daily) and email (2,50,000 sent daily), multilingual and tactile eCourts services Portal (35 lakh hits daily), JSC (Judicial Service centres) and Info Kiosks. In addition, Electronic Case Management Tools (ECMT) have been developed, with mobile apps for lawyers (total 1.88 cr. downloads till 30thJune 2023) and JustIS app for judges (19,164 downloads till 30th June 2023), facilitating access to case information and streamlining the judicial process.

Providing judges, lawyers, and court staff with adequate training for e-courts effectively is essential. This will help them to leverage technology to deliver justice more efficiently and effectively.

The Ministry of Law and Justice places this digitization effort on its priority list for several compelling reasons. Historically, many people couldn't access the courts due to the high costs of travel, accommodation, and legal fees. However, digitization can significantly lower these barriers by enabling online case filing and remote participation in hearings. Moreover, digitization can reduce operational costs by curbing expenses related to paper usage and physical courthouse maintenance.

Efficiency gains are also one of the horizons of digitization that streamlines case management, reducing the time required to resolve disputes and facilitating seamless communication among judges and lawyers. The eCourts project was launched in 2005, and it is at the forefront of this digitization endeavour, with over 99% of court complexes in India connected to the Wide Area Network (WAN) and the National Judicial Data Grid (NJDG) now containing data on over 23 crore cases.

While remarkable progress has been made, several challenges remain. Investments in infrastructure and training are necessary, as many courts lack the required hardware and software, and legal professionals need training on digital tools. Resistance from stakeholders concerned about the impact of digitization on their livelihoods is another obstacle that needs to be addressed.

Despite these challenges, digitization has already brought notable benefits to India's judicial system:

- Virtual hearings: Virtual hearings have become more common, enabling continuous case proceedings during court closures and travel restrictions.
- E-filing: E-filing simplifies the process of submitting court documents and tracking case progress.
- Online case status: Online case status updates provide litigants with real-time information,
- Publication of judgments: Publication of judgments online enhances transparency and accountability.
- In summary, India's ongoing effort to digitize its courts is a positive development that is delivering numerous benefits to litigants, lawyers, and the entire judicial system.

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INTEGRATION OF AI IN CORPORATE OPERATIONS

Prem Chandra Vaish
Senior Mentor

Artificial intelligence (AI) is rapidly transforming the corporate world, disrupting traditional business models and creating new opportunities for innovation and growth. As AI becoming inalienable part of the operations. The managing bodies of Companies are now taking critical decisions to adopt and integrate this transformative technology into their operations.

The recent directive signed by President Joe Biden to regulate generative AI and ensure public safety aligns with the ongoing endeavors of corporations, in integrating AI into their operations. The Biden administration's order focuses on several crucial objectives including safety, security, privacy, fairness, consumer protection, worker support, innovation, and responsible government use in AI development. Biden administration's objectives to protect consumers and workers from AI-related risks.

The Biden administration's directive underlines the necessity for a structured approach to regulate AI, focusing on safety and ethical considerations. Wipro's initiatives in becoming an AI-first company reflect a proactive stance in ensuring responsible AI adoption, in line with the government's objectives.

A Beacon for the Industry

Wipro's comprehensive adoption of AI across all its solutions is a significant milestone for the company and a beacon for the industry as a whole. Wipro's commitment to transparency, ethical deployment, and responsible AI adoption serves as an exemplary model for businesses embarking on similar journeys.

As other corporations observe and learn from Wipro's experiences, we can expect to see a rapid acceleration in the adoption of AI across the corporate landscape. This will lead to a wave of innovation, efficiency gains, and new product and service developments that will transform the way we live and work.

Legal and Ethical Considerations

As AI adoption continues to grow, it is important to be aware of the associated legal and ethical considerations. Some of the key issues to consider include:

Data privacy and security: AI systems rely on large amounts of data to train and operate. Corporations must ensure that they are collecting and using data in a responsible and ethical manner, consistent with all applicable privacy laws and regulations.
Liability: As AI systems become more autonomous and capable of making complex decisions, it is important to consider who is liable for any errors or omissions that occur. Corporations should develop clear policies and procedures to address potential liability issues.

Responsible AI Adoption

Corporations that adopt AI responsibly can reap significant benefits, including increased efficiency, improved decision-making, enhanced customer service, and new product and service development. However, it is important to be mindful of the associated legal and ethical considerations. By taking steps to mitigate bias, protect data privacy and security, and address potential liability issues, corporations can ensure that they are using AI in a responsible and ethical manner.

Conclusion

AI adoption is essential for corporations that want to remain competitive and thrive in the digital age. However, it is important to be aware of the associated legal and ethical considerations.

Other corporations are also accelerating their AI adoption. For example, **Google Cloud announced in June 2023 that it is investing $10 billion in AI research and development over the next five years. Amazon Web Services (AWS) also announced in June 2023 that it is launching a new AI service called Amazon SageMaker Canvas, which makes it easier for businesses to build and deploy AI models without writing any code.**

DENIAL OF ITC ON ACCOUNT OF MISMATCH IN GSTR-3B & GSTR 2A/2B- AN ANALYSIS

Puneet Agrawal
Sr. Partner

Introduction

Under the scheme of the Central Goods & Services Act, 2017 (hereinafter "CGST Act"), an assessee is allowed a seamless flow of credit of input tax paid by it on the supply of goods or services. The input tax credit ("ITC") is available to an assessee with the objective to minimise the cascading effect of taxation. However, the right to avail ITC is not absolute and is subjected to the conditions and restrictions as laid down under the CGST Act.

Since the introduction of the GST regime, there have been instances where ITC is denied to the assessee on account of non-communication of the same in Form GSTR-2A, because of the default by the supplier in filing its return in Form GSTR-1. Similarly, the department has also arbitrarily denied ITC to several assessees, pending investigation/inquiry against their suppliers. In this light, it becomes imperative to analyse the scope and legality of the denial of ITC to the assessee merely on the ground of alleged default on the part of its supplier.

Legal Provisions

It is pertinent to note, that one of the conditions for availing ITC as per the s. 16(2)(aa), w.e.f 1.01.2022 is that the supplier has filed its return u/s 37 of the Act i.e. is in Form GSTR-1, uploading the details of the relevant invoices and the same has been communicated to the recipient of such supply. Failure of the supplier to file its return of outward supply results in non-reflection of the ITC in Form GSTR-2A/2B of the assessee. Furthermore, Rule 36(4) of the CGST Rules, 2017(as it stands today) lays down that:

> "(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-
>
> > (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60."

A bare reading of the above provisions shows that the eligibility of ITC is apparently subjected to the actions of the supplier which are beyond the control of an assessee. The courts have taken strict views against the denial of ITC to an assessee merely on account of the ITC not being shown in GSTR-2A because of the default of the supplier.

Judicial Pronouncements

1. Diya Agencies vs. STO & Ors., W.P(C) 29769 of 2023- The Hon'ble Kerala High held that merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The matter was accordingly remanded to the AO for fresh consideration by giving an opportunity to the assessee to submit the genuineness of its claim with supporting documents.
2. Suncraft Energy Pvt. Ltd. & Anr. vs. ACST & Ors., MAT 1218 of 2023- The hon'ble Calcutta HC while setting aside the order requiring the Petitioner to reverse excess credit availed in Form GSTR-3B as compared to Form GSTR-2A, held that the demand notice issued to the assessee for reversing the ITC could not be sustained without proper inquiry into the supplier's actions.
3. Union of India v. Bharti Airtel Ltd. and Ors. (2022) 4 SCC 328- The Hon'ble Apex Court held that Form GSTR-2A is only a facilitator for taking a confirmed decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit the return based on such self-assessment in Form GSTR-3B manually on electronic platform.

Conclusion

The current conditions as provided u/s 16(2) on the availment of ITC, come with certain shortcomings, as availment of ITC by a bonafide assessee is subjected to the actions of its suppliers. Reflection of ITC in the GSTR-2A/2B cannot be the sole condition for the denial of ITC. An assessee who has paid the tax on the inputs purchased by it cannot be subjected to the hardship of ensuring compliance by its suppliers. Moreover, in case of non-furnishing of details in statutory returns by a supplier, may warrant an action into its affairs, but could not be used as a tool to harass genuine claim of ITC by the recipients of such goods. In such cases, assessees would have to challenge the provisions of law as being arbitrary and unreasonable, before the jurisdictional high court by filing writ petition.

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IMPLICATIONS OF GST ON THE CORPORATE GUARANTEE

Rakesh Garg
Sr. Mentor

The GST Council, in its 52nd meeting, has recommended that corporate guarantees provided by parent companies to their subsidiaries for bank loans will attract an 18% GST. However, there will be no GST if a director provides a personal guarantee for a loan from a bank or any financial institution to his/her own company.

Rule 28(2) of the CGST Rules, inserted vide the Notification No. 52/2023-CT dated 26.10.2023, specifies that the 18% GST will apply to corporate guarantees between parent and subsidiaries and other related parties either on the financial consideration charged by the guarantor for that service or 1% of the value of the guarantee, whichever is higher.

"The value of supply of services by a supplier to a recipient who is a related person, by way of providing a corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one percent of the amount of such guarantee offered, or the actual consideration, whichever is higher."

The main issue is whether the entities could claim the input tax credit on GST paid on corporate guarantees given. Input tax credit is generally available on GST paid on goods and services used for making taxable supplies. If the answer is "yes", then there is hardly any issue, since the Company would pay GST and claim input tax credit

However, in these cases, the guarantees are given for the furtherance of business of another Company and not for the own business of the Company giving the guarantee, hence the GST Department may challenge/litigate the eligibility of the input tax credit at the threshold itself under section 16(1) of the CGST/SGST Act.

Thus, the GST Council's decision may increase the cost of doing business and make it more difficult for companies to raise capital, while others have said that it is a necessary step to bring the GST regime on par with international standards.

Also, this move will make it more expensive for companies to raise debt particularly if input tax credit is not available. When a company takes out a loan, the bank or financial institution typically requires a corporate guarantee from the parent company. Under the GST regime, the parent company will have to charge GST on this guarantee, which will increase the cost of the loan for the subsidiary company. Another concern is that the new GST will make it more difficult for companies to attract foreign investment.

Further, there are certain ambiguities in the levy which are not addressed even in the Circular No. 204/16/2023-GST dated 27.10.2023; these are:

1. Whether the present levy is applicable retrospectively? In our opinion, in the absence of related valuation rules, GST should not be levied before the date of the present notification.
2. Whether GST is payable on continuing guarantee on the date of this notification? In our opinion, time of supply is the date of execution of guarantee; hence GST should not be applicable.
3. Whether the one percentage valuation is applicable for an annum or for the total term/duration of the guarantee. In our opinion, it should be applicable to the total term of the guarantee.
4. If the loan limit is renewed and fresh documents are executed, whether GST is payable on the guarantee at that time.

However, pending these clarifications, the new GST was a necessary step to bring the GST regime on par with international standards. In many countries, corporate guarantees are subject to GST or VAT. The GST Council's decision to levy GST on corporate guarantees will bring India in line with these international standards.

MAHADEV ONLINE BETTING SCAM

Tarun Rohatgi
Sr. Mentor

The Mahadev Online Betting Application has garnered attention on all fronts. Private jets, extravagant functions, and the presence of celebrities; This marked Sourabh Chandrakar's (Founder of Mahadev Betting) royal wedding, paid for completely in cash. However, the lavish arrangements drew the focus of the Enforcement Directorate on Sourabh Chandrakar's source of income.

Whether it is the seizure of assets worth Rs. 417 crore or the summoning of celebrities including Ranbir Kapoor, and Shraddha Kapoor, the Mahadev Online Betting Scam continues to unfold in peculiar ways.[1] The scam has also brought the gaps of the Indian gambling laws to the forefront. Therefore, this article will attempt to analyze the need for change in the Indian gambling laws.

What is the Scam?

The application was founded by two Indians based in UAE in a typical 'rags to riches' fashion. Sourabh Chandrakar and Ravi Uppal both belong to Chhattisgarh, where they owned a juice shop and a tyre shop respectively. Both were gamblers who shifted to the UAE and set up the Mahadev Betting Application. They operated across jurisdictions such as Nepal, Thailand, Sri Lanka through a group of individuals, called the panel members.[2]

The panel members were merely individuals from low income backgrounds who were responsible for the operation of the application. They ensured that the games were rigged, and the users did not profit from the bets they made. Further, they were also responsible for the transfer of money from users to offshore and benami bank accounts. In return, the panel members earned money through a commission they took from the users. [3]

[1] Sayantani Biswas, 'How is Ranbir Kapoor Linked to Mahadev Betting App Scam? Key Details Revealed' (Livemint, 5 October, 2023) <https://www.livemint.com/news/india/how-is-ranbir-kapoor-linked-to-rs-200-crore-mahadev-app-scam-issue-11696513580877.html> accessed 18 October 2023.
[1] 'Mahadev Betting Case: What Is It And Why Ranbir Kapoor Has Been Summoned?' (Business Standard, 6 October 2023) < https://www.business-standard.com/india-news/mahadev-betting-case-what-it-is-and-how-actor-ranbir-kapoor-is-involved-123100600935_1.html> accessed 18 October 2023.
[1] Id.

The founders had a two-fold responsibility; First, they organized promotions from celebrities such as Ranbir Kapoor, Kapil Sharma, Huma Qureshi. This made the organization seem legitimate to its users. As celebrities are being summoned for questioned, it is important to highlight the Advertising Standards Council of India (ASCI) guidelines for celebrities. The recently introduced guidelines put an emphasis on the responsibility of celebrities to conduct due diligence before they promote a product.[4] Here, whether the celebrities have failed to do so, would be a relevant question to be asked by the regulators.

Secondly, the founders bribed police officials to turn a blind eye to their operations. This ensured the smooth operation of their application. The Enforcement Directorate (ED) has arrested four people so far. However, the ED is only focusing on the money laundering aspects of the scam.[5]

Relevance of the Scam vis a vis the Indian Gambling Laws

The Mahadev Betting Scam showcases the lucane in the Indian Gambling Laws. Before analyzing the Indian Gambling laws, it is important to note the significant features of the Mahadev Betting Application. Firstly, the application facilitated online betting, which is largely unregulated in India. Secondly, the application operated across jurisdictions, which increased the vast scope of the scam. Thirdly, the application easily gained legitimacy through its promotional tactics.

At present, gambling is a state subject. Consequently, the gambling laws differ in each state. The most important distinction in gambling laws is the one between games of chance and games of skill. Games of skill are those games where success depends on the knowledge and training of the player. On the other hand, in games of chance, luck is a determinant factor of success. Games of skill are generally excluded from the scope of gambling laws. Whereas, betting on games of chance is largely prohibited.[6] Here, it is evident that the Mahadev Betting Scam did not only include games of skill such as poker or cricket but also included games of chance. Prima facie, the inclusion of games of chance within the Mahadev Betting Application made it illegal in most states at the first instance. It is important to note that some states such as Sikkim, Goa, and Meghalaya allow for betting on games of chance both online and offline. However, all gaming organizations or casinos have to be issued a license to legally conduct gambling activities. Whether Mahadev Betting application obtained a license to operate in these states is a question of fact.

[4] Raghav Aggarwal, ' 'Conduct Due Diligence': ASCI Releases New Guidelines For Celebrities' (Business Standard, 9 August 2023) <https://www.business-standard.com/industry/news/conduct-due-diligence-asci-releases-new-guidelines-for-celebrities-123080900442_1.html> accessed 18 October 2023.

[5] Jayprakash S Naidu, 'ED Summons Ranbir Kapoor: What Is The Mahadev Online Betting Racket?' (The Indian Express, 5 October, 2023) < https://indianexpress.com/article/explained/ed-ranbir-kapoor-mahadev-online-betting-racket-8968193/> accessed 18 October 2023.

[6] Dr. R. K. Lakshmanan v State of Tamil Nadu, (1996) 2 SCC 226.

The use of internet to perform gambling activities vastly increased the scope of operation of the Mahadev Betting Application. The panel members merely required a computer and access to the internet to make the system functional. Online gaming activities are not specifically addressed in most state legislations. The internet facilitates the expansion of gaming activities across states. Regulation of online gaming would require not only collaboration within different states of India, but also international collaboration. The lack of uniform guidelines in India exacerbates the issue of implementation of gambling laws. For instance, in 2022, in contrast to states such as Sikkim and Goa, Karnataka banned all online gaming activities, including games of skill. The Karnataka High Court has already struck down the blanket ban on all online gaming activities.[7] However, this highlights the lack of harmonization of laws in India. This may pose significant compliance obstacles for gaming organizations which operate across several states.

In April 2022, the central government introduced the Online Gaming (Regulation) Bill The bill was aimed with the objective of preserving integrity in online gaming and introducing a regulatory regime for online gaming.[8] It envisages the establishment of an Online Gaming Commission to oversee the functions of online gaming websites, suspend or revoke licenses, etc. This is a step in the right direction. This will harmonize the different state laws, regulate online gaming, and provide legitimacy to gaming organizations under an official licensing regime. At the same time, the bill has failed to distinguish between games of skill and chance. Further, as noted before, gambling is a state subject. The enactment of a central legislation for a state subject may pose the question of which laws take precedence.[9] The Mahadev Betting Scam has provided the government with the right opportunity to focus on the peculiar issues that this scam brings out.

Assisted by Ishi Rohatgi, LLB , LLM

[7]Ashima Obhan & Vrinda Patodia, 'India: Karnataka High Court: Blanket Ban on Online Gaming is Unconstitutional' (Mondaq, 17 February 2022) <https://www.mondaq.com/india/gaming/1162618/karnataka-high-court-blanket-ban-on-online-gaming-is-unconstitutional> accessed 18 October 2023.
[8] Krishti Khandelwal, 'Online Gaming (Regulation) Bill, 2022' (Impact and Policy Research Institute, 22 June 2023) <https://www.impriindia.com/insights/policy-update/online-gaming-bill-2022/> accessed 18 October 2023.
[9] Id.

CBDT EXTENDS DUE DATE FOR FILING OF FORM 56F FOR AY 2023-24 TO DECEMBER 31, 2023

CIRCULAR NO. 18/2023, DATED 20-10-2023

Anil Kuamr Gupta
Sr Mentor

The Central Board of Direct Taxes (CBDT), through notification No. 91/2023, introduced a new Rule 16D into the Income-tax Rules of 1962. This rule stipulates that the report from an accountant, required to be submitted by the taxpayer under section 10AA(8) in conjunction with section 10A(5), should be filed using Form No. 56F.

This form is required to be filed before the specified date prescribed under section 44AB.

To avoid genuine hardship regarding filing the newly notified form on time for the Assessment Year 2023-24, the Board has decided to extend the due date for filing the form to December 31, 2023.

Indium IV (Mauritius) Holdings Ltd. vs. DCIT [2023] 155 taxmann.com 336 (Mumbai Trib.)

Assessee can adopt provisions of Act for one source of Income and apply DTAA provisions for another source:

Assessee-company, a tax resident of Mauritius, was engaged in investment activities in India through the Foreign Direct Investment Route or through subsidiaries. During the year, it had earned gains and incurred losses on the alienation of shares of Indian companies. It had claimed Short Term Capital Gain (STCG) as exempt from tax in India in accordance with article 13(4) of the India Mauritius DTAA. It sought to carry forward the Long Term Capital Loss (LTCL) under section 74(1).

The Assessing Officer (AO) rejected the assessee's claim, observing that since capital gains derived by the assessee in India were exempt, the question of carrying forward capital losses from similar transactions doesn't arise.

On appeal, the CIT(A) upheld the decision of the AO. Aggrieved by the order, an appeal was filed to Mumbai Tribunal.

The Tribunal held that with regard to Choice of Act or Treaty Provisions is qua stream of Income, in terms of section 90(2), the assessee is eligible to apply the provisions of the Act or the Treaty, whichever is more beneficial to it. As per Article 13 of the India-Mauritius Treaty, gains derived by a resident of Mauritius from the alienation of shares shall be taxable only in Mauritius.

It is observed that the classification of capital assets between long-term and short-term is determined depending on the holding period. Further, taxation of Short Term Capital Gain (STCG) and Long Term Capital Gain (LTCG) is also governed under different sections being 111A in case of STCG and 112/112A in respect of LTCG. Accordingly, the scheme of the Act itself recognizes STCG/STCL and LTCG/LTCL to be separate and distinct sources of Income.

This distinction is highlighted upon perusal of section 70 governing intra-head set-off of current-year losses. Section 70 clarifies that the STCL can be carried forward or adjusted intrahead while the LTCL can be carried forward, but intra-head adjustment cannot be made against the STCL/STCG. Therefore, the Legislature has kept this difference in carry forward and intra-head adjustment separate for LTCG/LTCL and STCG/STCL.

On further perusal of section 70 to section 74, it can be seen that the Legislature has recognized LTCG/LTCL and STCG/STCL as two distinct sources owing to computational dissimilarities. Accordingly, the assessee, under the provisions of section 90(2), is eligible to claim the beneficial provisions of the Treaty in respect of STCG and with regard to LTCL, the assessee has the option to apply the provisions of section 74, accordingly chose to carry forward LTCL.
Therefore, the assessee was allowed to claim beneficial provisions of the India-Mauritius DTAA in respect of STCG and carry forward the LTCL as per section 74.

Thamira Green Farm (P.) Ltd. vs. Addl. CIT [2023] 155 taxmann.com 320 (Chennai Trib.)

Section 269SS does not apply to a cash loan obtained by a company from its director :

Assessee-company received loans in cash from its director to purchase lands in its name. Assessing Officer (AO) issued a notice seeking an explanation for receipt of a loan over Rs. 20,000 otherwise than by Account payee Cheque/Bank Draft in contravention of provisions of section 269SS. In response, the assessee contended that it did not have any bank account at the given time, and the land sellers were residing in remote places and insisted on cash payments. However, AO considered invoking section 269SS and continued to levy penalty under section 271D.

On appeal, the CIT(A) sustained the penalty levied by the AO. Aggrieved by the order, the assessee filed an appeal to the Chennai Tribunal.
The Tribunal held that section 273B deals with reasonable cause. If there is a reasonable cause in accepting loans in violation of provisions of section 269SS, then such transactions need to be taken out of the rigorous of section 271D. The assessee's explanation needs to be considered to consider whether there is a reasonable cause in violation of relevant provisions. If the assessee's explanation is bonafide and reasonable, then said explanation needs to be considered in light of reasonable cause as provided under section 273B.
In the instant case, based on the assessee's explanation, there appeared to be a reasonable cause for accepting a loan from the director in contravention of provisions of section 269SS for two reasons. Firstly, the entire amount of the loan was utilized to acquire capital assets for the business of the company. Secondly, the assessee and the director both had disclosed transactions in their books of accounts for the relevant previous year. Further, the director explained the loan source given to the assessee.
Since, all these paramount's were satisfied, the genuineness of the transactions was not in doubt. Moreover, it was a case of loan between the director and the company. Although the company and its director were separate legal entities, they cannot be considered separate for these transactions. If there are transactions between the company and director, then said transactions inter-se cannot be considered as loans or deposits within the meaning of section 269SS. This principle was also supported by the decision of the Delhi High Court in the case of CIT v. M/s. Muthoot Financiers in ITA No. 336/2002, dated 3-2-2015.
Therefore, it was opined that the transactions between the assessee and director were in the nature of current account transactions, which did not come under the purview of loan and deposit as per section 269SS. Accordingly, the penalty levied under section 271D was deleted.

Saif II-Se Investments Mauritius Ltd. vs. ACIT [2023] 154 taxmann.com 617 (Delhi Trib.)

AO can't doubt residential status without being backed by substantive evidence if NR holds valid TRC:

Assessee, a tax resident of Mauritius, operated as an investment company for undertaking various investments. Assessee's holding company acquired 5 per cent unlisted equity shares of NSE transferred to assessee in the year 2009. Assessee received net long-term capital gain on part disposal of said shares and claimed long-term capital gain to be exempt under Article 13(4).

On appeal, the CIT(A) sustained the penalty levied by the AO. Aggrieved by the order, the assessee filed an appeal to the Chennai Tribunal.

Assessing Officer (AO) held that the assessee had no commercial substance and had been set up as a conduit company under a scheme of arrangement to get tax advantage under the India-Mauritius tax treaty. He held that the assessee could not be treated as a tax resident of Mauritius and would not be entitled to treaty benefits.

The Dispute Resolution Panel upheld the decision of the AO. Aggrieved assessee filed the instant appeal before the Tribunal.

The Tribunal held that undisputedly, on perusal of the certificate of incorporation issued by the Registrar of Company, Mauritius, it is observed that the assessee was incorporated on 7-1-2008 as a private limited company. The Category 1 GBL was issued in favour of the assessee by the Financial Services Commission, Mauritius, on 16-1-2009.

Further, from its incorporation, the Mauritius Revenue Authorities have issued TRCs in favour of the assessee. Even in the impugned assessment year, the assessee holds a valid TRC. The AO did not dispute these facts. Once the assessee holds a valid TRC, it proves the residential status of the assessee as resident of Mauritius. Hence, it will be eligible for treaty benefits. The various allegations of AO regarding the residential status of the assessee, lack of commercial substance, etc., were in the nature of vague allegations without being backed by substantive evidence; Unfortunately, DRP has endorsed the view AO expressed without properly analyzing the facts and evidence brought on record. Thus, the capital gain derived by the assessee from the sale of shares would fall within the ambit of Article 13(4) of the tax treaty.

THE POWER OF FORENSIC AUDITS IN IBC: SAFEGUARDING CIRP OBJECTIVES

Jatin Sehgal
Sr. Partner

The Insolvency and Bankruptcy Code 2016 was introduced by the Government of India to expedite the Insolvency and liquidation Processes of Corporate Persons and to complete them in an Efficient and Effective manner.

Time is the essence of the Code thus, it's no surprise it demands a strict adherence to Timelines and strives to complete the Insolvency process within a limited time frame so that two of its main objectives i.e., Preservation of the value of the assets of the Corporate Debtor and Maximization of the value received by the Stakeholders can be achieved.

In order to achieve the abovementioned objectives, the code provides for a number of methods, and one of them is for the avoidance of certain transactions undertaken by the Corporate Debtor (In the 2 Financial years preceding the CIRP Date) to the likes of Preferential, Undervalued, Fraudulent and Extortionate Transactions, commonly known as PUFE Transactions.

What are the PUFE Transactions

In laymen terms, it refers to those transactions undertaken by the Corporate Debtor which prejudicially deprive the rights of Stakeholders, and that is why it's essential to reverse them so that the Stakeholders can receive the actual value of assets they would have actually received if these transactions wouldn't have happened in the first place.

The following transactions are avoided:

1. **Preferential Transactions:** When the Company unfairly makes payments to one creditor over others before insolvency commencement, it is a clear preference given by the company to one party over another.
2. **Undervalued Transactions:** When an asset of the company is sold without consideration or at a value which is significantly below its book/market value before Insolvency, which ultimately leads to a loss to the creditors as they receive less money for their debts.
3. **Fraudulent Transactions:** Any transaction entered into by the company with an intent to defraud the creditors of the company.

4. **Extortionate Transactions:** When a company receives operational or financial debt, the terms of which require exorbitant payments in return.

What is Forensic Audit, and how does it aid in CIRP

A forensic audit is a branch of Auditing which uses extensive research tools and evaluation techniques on a corporate person's financial & public domain data to identify the siphoning of funds and unearth pieces of evidence which can be presented in court.

Although a Forensic Audit is not mandatory in IBC during CIRP, if the RP is of the opinion that the Corporate Debtor may have entered into any PUFE Transactions which can prejudicially affect the creditors, he can appoint a professional to conduct the Forensic Audit of the Company and on the basis of the final report can apply to the Adjudicating Authority for appropriate relief.

The RP has to form an opinion as per Regulation 35A of IBC:

(1) On or before the 75th day of the CIRP commencement date, the RP has formed an opinion on whether the corporate debtor has undertaken any transaction covered under Sections 43, 45, 50 or 66.

(2) Where the RP is of the opinion that the corporate debtor has undertaken any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the 115th day of the CIRP commencement date,

(3) Where the RP makes a determination under sub-regulation 2, he shall apply to the Adjudicating Authority for appropriate relief on or before the 135th day of the CIRP commencement date.

Adherence to the above timelines is paramount for the RP as the Forensic Audit is a time-intensive process, and once the deadlines are missed, no application can be made to the Authority for relief thus, it is always suggested that RP should work on these matters immediately.

Moreover, the approval of COC is not required for the appointment of a Forensic Auditor as the code authorizes the RP to appoint any professional to aid him in managing the affairs of the corporate debtor however to be paid fees to the Forensic Auditor have to be approved by the Concerned COC.

Conclusion

From the above discussion, it suffices to say that the Forensic audit helps the RP immensely by providing legit evidence about the actual financial frauds and discrepancies committed by the previous screwed management of the corporate debtor, which can be reversed so that the Creditors can get a fair value at the end of the CIRP thereby achieving the actual objectives of the IBC.

THE APEX COURT LAID DOWN PRINCIPLES FOR MULTIPLE DYING DECLARATIONS

The Supreme Court recently addressed a crucial matter in the case of **Abhishek Sharma v/s State (NCT of Delhi) Criminal Appeal No. 1473 of 2011,** which involved a murder accusation under Section 302 of the Indian Penal Code. **This case emphasized the need for comprehensive guidelines when dealing with multiple dying declarations.** The Supreme Court, in its discerning judgment, highlighted the lack of conclusive evidence against the accused, as well as discrepancies and weaknesses in the prosecution's case, leading to the appellant's acquittal.

Dying declarations, statements made by individuals on the verge of death explaining the cause of their impending demise, were at the centre of this case. To be considered a dying declaration, the statement must come from a mentally sound individual fully aware of their imminent death. This legal principle is rooted in the Latin maxim **'nemo moriturus praesumitur mentire,' meaning "a man will not meet his maker with a lie in his mouth."**

Section 32 of the Indian Evidence Act, 1872 governs the admissibility of dying declarations. These statements are admissible as evidence when the declarant has passed away and questions arise about the cause of their death. The burden of proving the authenticity of the dying declaration lies with the prosecution, as it can lead to a conviction.

Therefore, the Court stressed the importance of careful scrutiny and outlined three criteria for a valid dying declaration: (i) the declarant should have been in imminent danger of death when making the statement, (ii) they should have been fully aware of their peril, and (iii) their demise should have followed.

In the Abhishek Sharma case, the Trial Court initially found all four dying declarations consistent, voluntary, and reflective of the deceased's sound mental state. Consequently, the appellant was convicted under Section 302 of the IPC. The High Court upheld this decision, but the appellant sought redress from the Supreme Court.

Given the heavy reliance on the deceased's alleged dying declarations in the prosecution's case, the Supreme Court meticulously examined established legal principles surrounding cases featuring multiple dying declarations. It referenced various precedents to highlight the following principles:

Voluntary and Reliable Statements: All dying declarations must be made voluntarily and by a person in a sound state of mind.

Examine Inconsistencies: Inconsistent dying declarations should be examined, distinguishing between material and non-material inconsistencies.

Corroborative Evidence: When multiple dying declarations exist, corroborative evidence should be considered to assess their credibility.

Contextual Analysis: Inconsistencies should be evaluated in the context of surrounding facts and circumstances.

Higher Officer Statements: In cases with inconsistencies, a statement recorded by a higher-ranking officer, such as a Magistrate, is generally considered more reliable unless suspicions about its truthfulness arise.

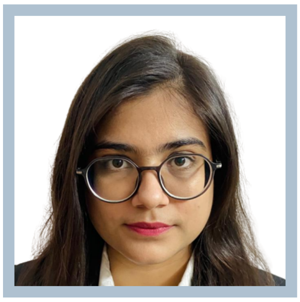
Independent Evaluation: Each declaration should be independently evaluated, determining the most reliable statement based on the case's circumstances.

Physical Condition Matters: The physical condition of the declarant, especially in cases involving burn injuries, is pivotal in evaluating the statement's reliability.

The Court also stressed the importance of **the extent of burn injuries in cases involving them and other relevant factors in assessing the statement's reliability. Past judgments, such as Chacko v. State of Kerala (2003) 1 SCC 112 and P.V. Radhakrishna v. State of Karnataka (2003) 6 SCC 443, underscored the significance of the declarant's medical condition and injury nature.**

In the Abhishek Sharma case, the Court noted inconsistencies, **a dying declaration recorded in the third person, and a lack of medical opinion. Section 32 of the Indian Evidence Act couldn't be invoked, as it was distantly related to the deceased. As a result, the Court had doubts about the appellant's guilt, leading to their acquittal.**

This case sets a significant precedent for handling multiple dying declarations, emphasizing the importance of careful scrutiny and contextual analysis.



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INCORPORATING DEMATERIALISATION NORMS IN PRIVATE COMPANIES: RULES, COMPLIANCE, AND IMPLICATIONS

The Ministry of Corporate Affairs (MCA) has taken a significant stride in modernizing financial practices by extending the scope of dematerialisation norms to encompass private companies. This expansion is the result of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023. Although small companies enjoy an exemption from these regulations, other private companies are now required to issue securities solely in dematerialized form and support the dematerialization of their existing securities. In this article, we will explore the details of these new regulations, their applicability, compliance timelines, and the implications they hold for private companies.

Background

The journey towards dematerialisation norms for unlisted companies commenced on September 10, 2018, with the introduction of Rule 9A by the Ministry of Corporate Affairs (MCA). Rule 9A, effective from October 2, 2018, initially mandated the issuance of securities in dematerialised form by unlisted public companies, with certain exemptions. However, the recent development under the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, has now extended this requirement to private companies as well, with the exception of small companies. This amendment seeks to provide a robust framework for private companies to transition into the dematerialised securities landscape, aligning with contemporary financial practices.

Applicability and Non-Applicability

It's important to note that the requirement for dematerialisation of securities does not apply to specific types of companies, including Nidhi Companies, Government Companies, Wholly Owned Subsidiary Companies of Public Companies, and Small Private Limited Companies.

The new regulations apply to Public Limited Companies from October 2, 2018, and Non-Small Private Limited Companies from September 30, 2024.

Compliance Timeline

Non-small private companies are required to comply with the dematerialisation requirements within 18 months following the closure of the financial year in which they cease to qualify as small companies. For example, if a private company no longer qualifies as a small company based on its audited financial statements as of March 31, 2023, it must adhere to the dematerialisation requirements by September 30, 2024. Similar timelines apply for subsequent years as the company's status changes.

Obligations of Promoters, Directors, and KMPs

Post the compliance due date, private companies intending to make offers, buy back securities, issue bonus shares, or rights offers must ensure that the entire holding of securities of its promoters, directors, and key managerial personnel is dematerialised before making such offers.

Obligations of Private Companies Falling Under Demat Criteria

1. **Dematerialisation Facilitation:** Private companies falling under the dematerialisation criteria must facilitate the dematerialisation of securities by applying to a depository and securing an International Security Identification Number (ISIN) for each type of security.
2. **Information to Existing Security Holders:** These companies are obligated to inform all existing security holders about this facility and guide them on the required actions and consequences of non-compliance.
3. **Timely Fee Payment:** Companies must ensure the timely payment of admission and annual fees to depositories and share transfer agents.
4. **Security Deposit Maintenance:** A security deposit of at least two years' fees must be maintained with depositories and share transfer agents.

5. **Regulatory Compliance:** Compliance with all regulations, directions, guidelines, or circulars issued by regulatory bodies concerning dematerialisation is mandatory.
6. **Restrictions on Defaulters:** Companies defaulting on fee payments are barred from offering or buying back securities or issuing bonuses or right shares until outstanding payments are settled.
7. **Regulatory Application:** Provisions of the Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 2018, and SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 apply to the dematerialisation of securities by such private companies.
8. **Reporting Requirements:** Submission of Form PAS-6 to the Registrar within 60 days from the conclusion of each half-year is required, certified by a practising company secretary or chartered accountant.

These amendments introduced Rule 9B after Rule 9. Rule 9B mandates that every non-small private company shall issue its securities only in dematerialised form and ensure the dematerialisation of all its existing securities with effect from September 30, 2024.
These amendments introduced Rule 9B after Rule 9. Rule 9B mandates that every non-small private company shall issue its securities only in dematerialised form and ensure the dematerialisation of all its existing securities with effect from September 30, 2024.

Impact of Dematerialisation

The dematerialisation of securities has several significant implications for companies. It requires unlisted companies to ensure that the entire holding of securities of their promoters, directors, and key managerial personnel is in dematerialised form. This is crucial for actions such as issuing securities, buy-backs, offering bonus shares, and rights issues.

After September 30, 2024, all new issuances or transfers of securities must be in dematerialised form for non-small private companies. Holders of securities must ensure that their existing securities are held in dematerialised form before engaging in transfers or subscriptions.

Conclusion

The expansion of dematerialisation norms to include private companies is a substantial step toward modernizing financial practices. Private companies must diligently comply with these regulations to smoothly transition into a dematerialised securities regime and meet contemporary financial standards. It is essential for all stakeholders, including promoters, directors, key personnel, and security holders, to understand their respective obligations to avoid compliance-related issues. While small companies are exempt, this development mandates other private entities to issue securities in dematerialised form, aligning with contemporary financial standards.

The compliance timelines are well-defined, ensuring a smooth transition. These changes represent progress in India's corporate compliance, promoting a more modern financial landscape. This development marks a positive shift, enhancing transparency and efficiency in the corporate sector.

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DIGITAL PERSONAL DATA PROTECTION, 2023: IMPACT ON EMPLOYERS

Introduction

The Digital Personal Data Protection Act of 2023 introduces significant changes in how employers in India collect, store, and process the personal data of their employees. The act places new obligations on businesses to ensure the protection and privacy of employee data.

When Does the Act Apply to Employers?

The act applies to employers when they collect, store, or otherwise process personal data of employees for various activities. These activities include but are not limited to:

Background Verification: This involves collecting information such as an employee's name, contact details, ID proof (e.g., Aadhaar card), employment/education history, and marital status.

Health Checks: Medical records, health test results, and insurance claim data fall under this category.

Financial Benefits: This includes data related to bank account details, salary, reimbursements, provident fund (PF), and gratuity.

Internal Tracking: Data like biometrics, CCTV surveillance footage, and internal complaints also come under the purview of the act.

It's important to note that the act does not apply to publicly available data, which includes information made public by an employee (e.g., their social media profiles visible to all) or data required under the law (e.g., court records).

New Obligations for Employers

The act places several obligations on employers when processing personal data of employees. Some of the key obligations include:

Develop Grievance Redressal Mechanisms: Employers must provide an accessible way for employees to communicate grievances regarding data practices. They are also required to respond within the timelines specified by the government. Employers should consider adding a grievance redressal feature to their internal portals and prepare their HR teams to respond within the designated time frame.

Data Breach Safeguard and Notify: Employers need to implement reasonable security safeguards to prevent data breaches. In the event of a breach, they must promptly inform the Data Protection Board and each affected employee using government-approved methods.

This involves designing security systems that account for the specific employee data handled and developing standard operating procedures for breach identification, reporting, and mitigation.

Ensure Data Integrity: Employers must ensure that employee personal data used to make decisions affecting the employee or disclosed to another Data Fiduciary remains complete, accurate, and consistent. To achieve this, employers should request employees to regularly update their details and consider implementing tools like audit logs to track modifications. This ensures data quality and integrity are maintained.

Other Considerations

Apart from the obligations mentioned above, employers should also keep the following considerations in mind:

Data Processor Contracts: If third-party processors are engaged for services like accounting or payroll, employers must establish valid contracts that require these processors to implement security standards to protect employee data.

No Employee Consent Required: In certain situations, employee consent is not required for processing their data. This includes employment-related activities, providing benefits, organizing employee events, and for medical purposes. Consent is also not needed when processing employee data to protect the employer from loss or liability, such as during internal investigations into confidentiality breaches or tracking device activity in cases of suspected corporate espionage.

Other Exemptions: Employers will be exempt from some obligations if employee data is required to enforce a legal right, prevent/investigate legal offenses, or effect authorized mergers and acquisitions or other schemes of arrangement. However, security safeguards to prevent personal data breaches must still be in place.

Conclusion

The Digital Personal Data Protection Act of 2023 places new responsibilities on employers regarding the handling of employee personal data. To comply with the act, employers should implement grievance redressal mechanisms, safeguard against data breaches, and ensure data integrity. It's essential for employers to be aware of the exemptions and considerations outlined in the act to protect both their employees' data and their own legal standing.

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