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N K Gupta
Founder & Managing Partner

UNLOCKING LEGAL SYNERGY: INDIA'S JOURNEY TOWARDS BOUNDLESS GROWTH WITH FOREIGN LAWYERS

The Bar Council of India (BCI) to permit foreign lawyers and law firms to practice in India, specifically in areas like foreign law, international legal issues, and arbitration matters, has been met with a positive response from Indian legal firms.

This move signifies a significant step towards greater openness and collaboration in the Indian legal landscape. By allowing foreign lawyers to practice in specific domains, India can harness their expertise in global legal matters, foster international partnerships, and strengthen its position as a destination for international legal services.

This development holds the potential to enhance the competitiveness and capabilities of Indian legal firms while also promoting knowledge exchange and facilitating the smoother resolution of cross-border legal issues.

But that's not all! **India's economic potential will be turbocharged as foreign lawyers bring their prowess in international business and investment**. With their deep understanding of cross-border transactions, these legal wizards can navigate the complexities of global trade, attracting foreign companies and investors to the Indian market like moths to a legal flame. Moreover, facilitating smoother transactions and providing expert advice on international legal matters will help India emerge as a go-to destination for foreign investments, strengthening its position in the global economy.

Let's remember the power of collaboration and innovation. The entry of foreign lawyers will kindle a spirit of healthy competition among Indian legal firms, igniting a race to enhance skills, professionalism, and service quality. This quest for excellence will push Indian lawyers to innovate, adopt cutting-edge technologies, and embrace progressive legal practices.

In this grand legal tapestry, India will also witness the transformation of legal education and training. Collaborations between Indian and foreign institutions will introduce novel teaching methodologies, curriculum enhancements, and exposure to international legal practices.

This infusion of global perspectives will nurture a new generation of legal professionals armed with a deep understanding of international law and equipped to tackle complex legal challenges with finesse.

Allowing foreign lawyers to practice in India offers numerous benefits to the country.

Firstly, it enables knowledge exchange and expertise by exposing domestic lawyers to different legal systems and practices, enhancing the overall quality of legal services.

Secondly, it attracts international businesses and investments, as foreign lawyers proficient in cross-border transactions can assist in navigating global legal frameworks.

Thirdly, it fosters global legal networks and collaborations, leading to partnerships, joint ventures, and access to international legal resources.

Fourthly, it improves legal education and training programs by introducing diverse teaching methodologies and aligning them with international standards.

Lastly, competition from foreign lawyers drives innovation, encourages the adoption of advanced technology, and enhances competitiveness, ultimately benefiting clients with more efficient legal solutions.

Therefore, striking a balance that safeguards the interests of Indian lawyers and complies with regulatory frameworks is crucial in capitalising on the advantages of foreign legal expertise while preserving the growth of the domestic legal profession.

TECHNOLOGICAL REVOLUTION: INDIAN JUDICIAL SYSTEM'S PASSIONATE PURSUIT OF THE ULTIMATE GAMECHANGER!

Prem Chandra Vaish
Principal Director

The Indian judicial system is igniting the stage with an enthusiastic embrace of revolutionary, game-changing technology. Like a phoenix rising from the ashes, it's capturing the spotlight and leaving traditional courtroom practices in awe of its potential.

Why this sudden eagerness, you may ask? Well, the answer lies in the allure of the new and the promise of progress. The Indian judiciary recognises that it cannot afford to remain stagnant in an era of rapid advancements. Therefore, it craves technology's transformative power, which can catapult it into a new generation of efficiency, accessibility, and justice.

Imagine a courtroom buzzing with AI bots, eloquently defending human clients and offering legal insights that would make even the most seasoned lawyers raise an eyebrow. Visualise judges seamlessly accessing a treasure trove of legal information in various vernacular languages at the click of a button, breaking down language barriers and empowering litigants. **This fervour to adopt game-changing technology stems from a deep-seated desire to enhance the court experience, expedite the resolution of cases, and empower individuals with equal access to justice. It's an audacious leap into uncharted territory, where the traditional meets the futuristic, and the possibilities are boundless.**

So, as the curtain rises on this thrilling technological saga, the Indian judicial system stands poised to embark on an exhilarating journey, driven by the audacity to dream big and the determination to redefine the boundaries of justice. Brace yourself for a spectacle where tradition meets innovation, and the Indian judiciary dances to the rhythm of the new game-changer technology.

For the first time in history, an AI bot will defend a human in court

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The world's first robot lawyer, powered by an app called 'DoNotPay,' is set to revolutionise courtrooms by operating on the defendant's smartphone. **This groundbreaking technology will listen to real-time court arguments and guide the defendant through an earpiece, advising them on what to say.**

While the court's location and the defendant's identity remain undisclosed, the concept of a robot lawyer originated from DoNotPay, a company founded in California in 2015 by Joshua Browder, a computer scientist from Stanford University. Initially designed to combat parking tickets, DoNotPay evolved into an AI-driven platform in 2020. Since its launch, the app has gained popularity across the UK and the US, assisting users with various tasks such as drafting complaint letters, handling insurance claims, and applying for visas. Notably, Do Not Pay's usage experienced a surge during the pandemic, underscoring its significance in providing accessible legal assistance.

By utilising sophisticated algorithms and machine learning capabilities, AI bots have the potential to analyse vast amounts of legal data, statutes, and precedents to construct arguments and provide legal insights. As a result, this innovative approach can enhance the efficiency and accuracy of legal proceedings.

However, it is essential to note that AI bots are not intended to replace human lawyers. Instead, they can be valuable tools to assist legal professionals in research, case preparation, and analysis. Integrating AI in the courtroom raises essential questions about ethical considerations, the role of human judgment, and the boundaries of technology within the legal system.

As this ground breaking event unfolds, it will undoubtedly generate discussions and debates about the future of AI in law and its implications for the justice system.

Conclusion

A seismic shift is underway in the legal realm as AI equipped Chat GPT and other tools transform the judicial system. Advocates, legal professionals, and litigants embrace AI's potential to revolutionise justice delivery. AI-powered systems enable efficient legal research and analysis, empowering advocates to craft well-informed arguments. Are Advocates, legal professionals, and litigants ready for this major reform?

PROVISIONAL ATTACHMENT OF PROPERTY UNDER GST: RECENT CASES OF REVENUE OVERREACH

Puneet Agarwal
Sr. Partner

"The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled."

-Radha Krishan Industries v. State of H.P[1]

The Hon'ble SC judgment in the case of Radha Krishan Industries (Supra), establishing in the above terms, the jurisprudence surrounding the provisional attachment of property u/s 83 of the CGST Act, provided respite to the assessees against the arbitrary action of the revenue authorities. However, the recent emerging issues reflect otherwise.

Emerging Issues

Lately, the assessees registered under GST, have been thwarted by the provisional attachment of their property, especially bank accounts, carried out by the Revenue without providing any reasons, tangible materials, or following the principles of natural justice. Additionally, parallel investigations by various Commissionerates/ wings of the State & Central GST Department, many a times who donot even have territorial jurisdiction over the assessees, is adding to the agony of the assessees. On the top of this, mechanical disposal of objections filed by the assessees against attachment orders without proper hearing opportunity, and failure of revenue to give effect to sunset clause of one year, has further compounded the misery of the Assessees.

Legal mandate on Provisional Attachment of Property u/s 83 of the CGST Act

The provision regulating provisional attachment of property is provided u/s 83 of the CGST Act, 2017. As per the provision the 'Commissioner' can take action under the said act provided the following conditions are fulfilled:

1. proceedings under Chapter XII, Chapter XIV or Chapter XV of the CGST Act has been initiated;
2. that the Commissioner is of the opinion that it is necessary to provisionally attach any property including bank account for the purpose of protecting the interest of the Revenue.

Recent Judicial Pronouncements

The above cases of Revenue outreach have not gone unnoticed by the Hon'ble High courts who have addressed the mechanical attachment of property/bank accounts by the Revenue under GST in the light of the law and judicial wisdom as laid down by the Hon'ble SC, in the case of Radha Krishan Industries (Supra). Some of the notable judgments of the HC are discussed below:

1. **Sidhivinayak Chemtech Pvt. Ltd.[1]**- The Hon'ble Court while setting aside an attachment order, held that the Commissioner passing the order must have jurisdiction over the assessee. The objective standards as set out in the case of CIT, Delhi vs. Kelvinator of India Ltd., (2010) 2 SCC 723, were further adopted by the Hon'ble court.
2. **VKS Industries[2]**- The provisional attachment order cannot be extended beyond the statutory period of one year and the same would cease to have effect after the period of one year.
3. **Varun Gupta[3]**- The non-recording of opinion and non-reference to any tangible material which necessitated the Commissioner to pass the provisional attachment order would render the same untenable in law.

The Way Forward

In scenarios of attachment of property of the assessee, especially the bank accounts, under the provisions of the GST Act the assessee must take preventive steps & due legal recourse for securing its business interests. In such scenarios one may:

1. Submit proper & due representation/objections to the jurisdictional GST officers, asking for hearing opportunity before the disposal of the representation/objection.
2. In case the property has been attached or bank accounts have been frozen in violation of the mandate of s. 83 of the CGST, the assessee may take recourse by filing writ petition before the jurisdictional high court.
3. Attachment of property, if continued beyond the statutory period of one year may be brought to the notice of the jurisdictional authorities and if necessary, before the appropriate High Court.

In the words of Hon'ble SC, the power to attach the bank property/bank account, is a 'draconian power' and must be exercised in exceptional circumstances. The assessees must take abundant caution to protect themselves against any arbitrary departmental actions.

[1] Sidhivinayak Chemtech Pvt. Ltd. v. Prin. Commr., CGST Meerut & Ors, W.P.(C) 17547/2022, [Delhi High Court.]
[2] M/s VKS Industries v. Commr. CE & CGST, W.P. (C) 257/2023. [Delhi High Court]
[3] Varun Gupta v. Union of India, WRIT TAX No. - 858 of 2022, [Allahabad High Court].

DELHI HIGH COURT SETS NEW PRECEDENT: ARBITRATION MANDATED FOR DISPUTED CLAIMS IN INSURANCE POLICIES, NOT ENTIRE LIABILITY

Vijay Sharma
Sr. Partner

Imagine a world where insurance disputes could be settled swiftly, fairly, and with utmost clarity. Well, thanks to a recent ruling by Justice Prateek Jalan of the esteemed Delhi High Court, that world might just be within our grasp. In a ground breaking decision, Justice Jalan has shed light on the interpretation of arbitration clauses in insurance policy disputes, providing a much-needed beacon of understanding in a realm often shrouded in confusion.

In this remarkable ruling, Justice Jalan has established a crucial distinction that could shape the future of resolving insurance-related conflicts. According to the court's clarifications, if an insurer outright denies any liability, the dispute cannot find its resolution through arbitration.
However, the intricacies lie in cases where the insurer contests specific claims falling outside the policy's coverage, while simultaneously acknowledging its overall liability. In these instances, Justice Jalan asserts that arbitration can serve as the appropriate platform for seeking redress.
With this profound distinction, Justice Jalan highlights the significance of discerning between complete denial of liability and the acceptance of broader responsibility while disputing certain aspects of a claim. By doing so, he paves the way for a more efficient and effective resolution of insurance policy disputes, wherein the boundaries of arbitration become more clearly defined.

According to the court's clarification, if an insurer completely denies liability, the dispute cannot be resolved through arbitration.

However, if the insurer contests specific claims that fall outside the coverage of the policy while acknowledging overall liability, such disputes can be referred to arbitration. The judge emphasized the importance of this distinction in determining the appropriate platform for resolving conflicts in insurance policy agreements.

Arbitration Denied for Entire Liability Dispute in Insurance Policy Case

In a recent case, the involved parties had entered into an insurance policy agreement on January 5, 2018. Clause 7 of the agreement stated that any dispute regarding the quantum to be paid under the policy, for claims where liability is admitted, shall be referred to arbitration.

The petitioner requested the appointment of an arbitrator, but the respondent rejected the request, contending that the dispute concerned liability and fell outside the scope of the arbitration clause. Consequently, the petitioner approached the Court seeking the appointment of an arbitrator.

The Court carefully examined the language and intent of the arbitration clause, referring to the precedent set by Mallak Specialities vs. New India Assurance. It emphasized that if an insurer denies liability entirely, arbitration is not appropriate.

Delhi High Court Upholds Arbitration in Disputed Insurance Claims Case

In the mentioned case, the Court observed that the respondent did not outrightly dismiss the petitioner's claims but refused arbitration based on the argument that one of the claims was not covered by the insurance policy. The Court analyzed various judgments where insurers denied liability entirely and distinguished those scenarios.

The judge made a crucial distinction between cases where insurers deny all liability and cases where the overall liability is not disputed, but only specific claims under a particular category are disputed, deemed to be outside the policy's coverage. The judge concluded that it was not a complete denial of liability but a disagreement concerning one specific claim falling outside the policy.

Regarding this distinction, the Court ruled that arbitration cannot be pursued in the former scenario. However, in the latter case, where specific claims under one category are disputed, the matter falls within the scope of the arbitration clause, and the respondent should raise such objections before the arbitrator. It was also highlighted in the Court that in another claim involving the same parties, the respondent had agreed to arbitration.

Considering the respondent's limited denial of claims based on policy coverage, the Court granted the petitioner's request and appointed a sole arbitrator.

In conclusion, Justice Prateek Jalan's recent ruling on arbitration clauses in insurance policy disputes provides much-needed clarity and guidance. By distinguishing between complete denial of liability and contestation of specific claims, the ruling sets a precedent for efficient resolution and promotes fairness within the insurance industry. This landmark decision paves the way for a more just and equitable future in resolving insurance disputes.

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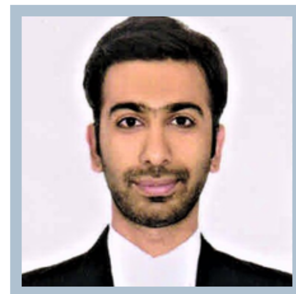
ONCE NCLT IS SATISFIED THAT DEFAULT HAS OCCURRED, THERE IS HARDLY ANY DISCRETION LEFT WITH NCLT TO REFUSE ADMISSION OF THE CIRP APPLICATION U/S 7 OF IBC



Jatin Sehgal
Sr. Partner

1.The Supreme Court, in the case of M. Suresh Kumar Reddy Vs. Canara Bank & Ors held that the only circumstance in which an application U/S 7 of the IBC can be rejected is if the NCLT determines that the debt has yet to become due and payable.

The Court further held that the decision in the case of **Vidarbha Industries** cannot be read and understood as taking a view which is contrary to the belief taken in the cases of **Innoventive Industries Limited v. ICICI Bank and Another and E.S. Krishnamurthy and others v. Bharath Hi**, which define the scope of section 7 of IBC and that the view taken in the case of Innoventive Industries still holds good.

Shri Sanjay Jitendralal Shah, Resolution Professional of B&C Energy Infra Limited VS Dakshin Gujarat Vij Company Limited& Ors. IA/572(HMM)2022 inCP(IB) 469 of 2019

2.The Hon'ble Adjudicating Authority National Company Law Tribunal, Ahmedabad Bench, comprising of Dr. Madan B. Gosavi (Member Judicial) and Kaushalendra Kumar Singh (Member Technical) vide its Order dated 24.01.2023 gave a noteworthy remark upon the status of related parties in the submission of resolution plan and during the distribution of assets in a company.

In the present case, the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated, receiving claims from two Secured Financial Creditors, two Unsecured Financial Creditors, and some Operational Creditors. Accordingly, he constituted a Committee of Creditors consisting of only two Financial Creditors, not including the other two, stating that they were the directors of the Corporate Debtor and related parties.

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In pursuance of the publication of Form-G, one of the FCs submitted the Resolution Plan, and they being related parties, it was considered to be submitted by the corporate debtor himself. Howsoever, as per the provisions under Sec 240A of the IBC, the ineligibility to submit the Resolution Plan by a particular class of persons (including the related party of the Corporate Debtor) is not applicable, provided the Corporate Debtor is an MSME unit. Accordingly, the NCLT opinionated, in the discussed case, as follows:

"In case the Corporate Debtor goes into liquidation still, the value of the number of assets of the Corporate Debtor is insufficient to pay the debts of Secured Financial Creditors. Therefore, as per the waterfall distribution mechanism, as stated under section 53 of the IBC, 2016, the Operational Creditor of the Corporate Debtor would get nothing. For this reason, we have held that Resolution Plan cannot be rejected, although no provision is made to pay the debts of the Operational Creditors.

However, Learned Counsel appearing for the Operational Creditors brought to our notice specific facts to impress upon us that this Adjudicating Authority cannot approve such Resolution Plan. Learned Counsel further submitted that in the Resolution Plan, some provision is made for payment of debts of two Secured Financial Creditors only. The other two Financial Creditors are paid nothing because they are related parties of the Corporate Debtor. However, the Resolution Plan mentions that their claims will not get extinguished, and they are being carried forward. Therefore, according to Learned Counsels, it is against the provisions of the law.

Given the above, we hold that Resolution Plan does not treat all stakeholders equitably, and it is against the provisions of the Insolvency and Bankruptcy Code, 2016. Hence, we have that it is not in conformity with the provisions of section 30(2)(e) and (f) of the IBC, 2016. Accordingly, we do not wish to approve this Resolution Plan.

Accordingly, we proceed to pass the following orders:

I.IA/572(AHM)202 filed by the Resolution Professional for approval of the Resolution Plan under section 30(6) of the IBC, 2016 stands rejected and disposed of."

GLIMPSES OF SIGNIFICANT DIRECT TAX DEVELOPMENT & RULINGS – MAY 2023

Tarun Rohatgi
Sr. Mentor

A. Withdrawal of Rs.2000 Denomination Bank Note

19th May 2023- RBI circular/ notification/ press release

1. The **Reserve Bank of India has decided to withdraw Rs. 2000 denomination banknotes in pursuance of the clean note policy**.
2. However, the banknotes in the Rs 2000 denomination will continue to be legal tender.
3. The exchange of Rs 2000 note into banknotes in other denominations can be made up to Rs. 20,000 from 23rd May 2023. SBI and other banks, by clarification, have stated that no identification proof is required to exchange banknotes.
4. Banks have been directed to provide deposit /or exchange facilities for Rs. 2,000 bank notes until 30th September 2023.

NIC comments

1. After demonetisation, the Rs.2000 note was issued in Nov 2016 to remonetise the Economy. As per estimates, Rs.2000 notes constitute only 10-11 % of total currency in circulation. Considering the percentage and timelines, it is expected that the process would bring hardship to the citizen in general.
2. The reserve bank of India Governor has kept the question open whether the Rs. 2000 denomination will continue to be legal tender after 30th September 2023; to that extent, the uncertainty would prevail.
3. It is expected that on account of the deposit of Rs.2000 notes in the Banking system, the banks' liquidity would improve, and therefore the interest rate should ease.
4. Litigation is expected to arise in this space because of the legality of the action and the Process and under the Economic Laws.

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Transporter misappropriating bitumen interested in delivery cannot be treated as owners under section 69A of the Income Tax Act.

B.DN SINGH VS CIT CENTRAL (SC civil appeal.no 3738-3739 of 2023) dated 16th May 2023

Where appellant-assessee carried on business as a carriage contractor for bitumen, and the assessee was involved in a scam of misappropriating the bitumen and not delivering the quantity lifted to the various Divisions of the Road Construction Department of the Government of Bihar, the position of the assessee is that of a thief and a thief cannot be said to be 'owner' within the meaning of section 69A.

1. The question would arise pointedly as to when a common carrier refuses to deliver the consignment and continues to possess it contrary to contract and law and converts it into his use and presumably sells the same, as to whether he could be found to be the owner of the goods. Would he be different from someone who commits theft and sells it claiming to be the owner? Can a thief become the owner? It would be straining the law beyond justification if the Court recognised a thief as the property owner within the meaning of Section 69A. Therefore, section 69A cannot be invoked against the assessee.
2. Besides the term 'Valuable article', u/s 69A means only such precious and aspirational articles like bullion & jewellery, which can be repositories of hidden earnings, not commonplace stuff like bitumen.

Black Money Act C. [2023] 150 taxmann.com 290 (Jaipur - Trib.)

Krishna Das Agarwal v. DDIT/ADIT(Inv.)

Assessee, a senior citizen, incorporated a company in UAE. An assessment was conducted under Section 10(3) of the Black Money Act based on alleged credits appearing in that company's bank account since the UAE company was a separate legal entity with its assets and funds. Foreign bank accounts and foreign investments belonged solely to a foreign company; it could not be asserted that the assessee was the beneficial owner of bank accounts. Therefore, no tax liability can be fastened on the assessee.

D. Addl. CIT v. Tejal Ashis Mehta (Mum.) (Trib.) AY 2016-17(April 2023)

Source: www.itatonline.org

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

S.43: Penalty for failure to furnish in return income, information or provide inaccurate particulars about an asset (including financial interest in any entity) located outside India- Foreign insurance policy was not declared in return- Bonafide mistake- Levy of the penalty of Rs 10 lakhs was deleted. [S.10(3), Income-tax Act, 1961, 139]

GOODS AND SERVICES TAX - MAY 2023

Rakesh Garg
Sr. Mentor IDT & GST

Replacement of parts by the vehicle service station on behalf of the manufacturer

In the case of Mohd. Ekram Khan and Sons vs. CTT - (2004) 136 STC 515 (SC), the Supreme Court observed that for the convenience of the customer, there might be an arrangement between the manufacturer and the dealer so that the customer gets replacement of parts during the warranty period from the dealer which, in due course, is made good by the manufacturer. Under such circumstances, when the dealer replaces parts for the customers, it either gets those parts replaced by the manufacturer or reimbursed through credit notes. The Apex court held that such transaction would be treated as 'sale' from the dealer to the manufacturer, and be liable to sales tax.

The said judgment was referred to the larger bench of the Supreme Court vide order dated 05.02.2019 in Civil Appeal No.1822 of 2007. On 15.05.2023, the three Judges bench of the Supreme Court in the case of **Tata Motors Ltd. vs. The Deputy Commissioner of Commercial Taxes - 2023 (5) TMI 744** held in the following terms: -

- The judgment of the Supreme Court in **Mohd. Ekram Khan** applies to a situation where a manufacturer issues a credit note to a dealer acting under warranty given by the manufacturer under a sale of an automobile. The dealer replaces a defective part of the automobile with a spare part maintained in the stock of the dealer or when the same is purchased by the dealer from the open market. In such situations, the credit note issued in the name of the dealer is a valuable consideration for a transfer of property in the spare part made by the dealer to the customer and hence a sale within the meaning of the sales tax legislations of the respective States under consideration. The value in the credit note is thus exigible for sales tax under the separate sales tax enactments under consideration.
- The judgment in **Mohd. Akram Khan** does not apply to a case where the dealer has received a spare part from the automobile manufacturer to replace a defective part therein under a warranty collateral to the sale of the automobile.

On the above understanding of the judgment of this Court in Mohd. Akram Khan does not call for any interference.

The Supreme Court also observed that when the transaction between the manufacturer and dealer is viewed in the larger canvas of a dealer discharging his obligations under warranty appended to a sale of an automobile, the same cannot be narrowly construed.

The Court further observed that "No doubt, cash is a money consideration, but the definition of "sale" under the Central Sales Tax Act as well as under the State enactments does not imply price to mean only a money consideration in a narrower sense but in a wider sense to include different forms of money consideration such as deferred payment and also a valuable consideration which need not be restricted to cash or deferred payment only **but a valuable consideration which would include a credit note which is to be read within the definition of 'price'**".

The judgment is of utmost importance and equally applies in the GST Law where the supplier of goods/services receives price/consideration, either in money form or credit notes, from a third party other than the recipient of such supply. For example, a collection of mobile phones at a discounted price to the customer, where the telecom service provider reimburses the price difference.

BOOSTING INTERNATIONAL TRADE: EXPLORING THE AMNESTY SCHEME UNDER THE NEW FOREIGN TRADE POLICY

Jagmohan Gupta
Senior Mentor,
Foreign Trade Policy

Amnesty Scheme:

The government has recently revised the foreign trade policy, effective from April 1, 2023. As part of this revision, the Director General of Foreign Trade (DGFT) has introduced an amnesty scheme to facilitate a one-time settlement of defaults in export obligations under the Advance Authorization and Export Promotion Capital Goods (EPCG) schemes.

Key points regarding the amnesty scheme:

Coverage: The scheme applies to authorizations issued under the Advance Authorization scheme (all variants) and the EPCG scheme (all variants) under the Foreign Trade Policy 2004 to 2009 until March 31, 2015. It also includes authorizations issued under the Advance Authorization scheme (all variants) and EPCG scheme (all variants) under the Foreign Trade Policy 2004 to 2009, limited to those with export obligation periods valid until August 12, 2013.

Exclusion: Cases that have already deposited the duty along with applicable interest in full will not be eligible for the amnesty scheme. Additionally, cases under investigation or adjudicated for fraud, misdeclaration, or unauthorized diversion of material and/or capital goods will be excluded from the scheme.

The introduction of the amnesty scheme by the DGFT aims to provide a one-time opportunity for defaulting exporters to settle their outstanding export obligations. It is expected to ease the burden on exporters and facilitate compliance with export obligations, ultimately promoting smoother trade activities.

Benefits under the scheme:

Exporters who have defaulted on their export obligations can now regularize their situation under the newly introduced amnesty scheme. Eligible authorization holders will need to pay all the customs duties that were initially exempted, in proportion to the unfulfilled export obligation.
• Additionally, the maximum interest payable under this scheme is capped at a rate of 100 % on the exempted duties. However, no interest will be charged on the portion of additional customs duty and special additional customs duty.

- In cases where the default is partial, authorization holders must approach the regional authority of the Director General of Foreign Trade (DGFT) to obtain details of the default and apply for an export obligation discharge certificate.
- The application must be accompanied by the necessary documents.
- Upon receiving the application, the DGFT will review the case and provide the authorization holder with information regarding the customs duty and interest payable. Subsequently, the authorization holder must make the payment to the jurisdictional customs authority and submit proof of payment to the regional authority of the DGFT.
- If the entire authorization is in default, the applicant can directly pay the customs duty and interest to the jurisdictional customs authority and submit proof of payment to the regional authority.
- Payment of Customs duty and the applicable Interest with the Jurisdictional Customs Authorities needs to be completed before 30.09.2023 and shall send the proof to the Regional Authority of the DGFT concerned.

To take advantage of the amnesty scheme, interested authorization holders must register themselves on the website https://dgft.gov.in by June 30, 2023. The detailed procedure for registration and participation can be found on the website.

Conclusion:

The Foreign Trade Policy (FTP) 2023 offers significant relief to exporters who couldn't meet their Export Obligations under Advance Authorization or EPCG Scheme. This scheme ensures a reasonable repayment amount and provides an opportunity for license holders to comply with the policy. Overall, the Amnesty Scheme offers a favorable opportunity for defaulting license holders to rectify their non-compliance and fulfill their export obligations. Exporters are encouraged to take advantage of this opportunity provided by the FTP 2023.

LRS AND TCS IMPACT INTERNATIONAL PAYMENTS THROUGH CREDIT CARDS

Mukesh Bansal
Senior Mentor

Ministry of Finance, through a notification dated 16th May 2023, amended Foreign Exchange Management (Current Account Transactions) Rules to omit Rule 7 to withdraw exemption provided to overseas payments through credit cards under Liberalised Remittance Scheme (LRS) for Residential Individuals. For the Foreign Exchange Management Act (FEMA), this will impact the overall limit of USD 250000 available for Residential individuals. Going forward, all international payments through credit cards shall be part of this limit. This has increased the transaction costs for resident individuals on the tax front, as TCS will be applicable on all international payments through credit cards under LRS.

For example, say if Mr A, a resident individual, will spend a total of USD 50000 during FY 2023-24 on a foreign tour and travel, shopping, fooding and other personal payments, his remaining limit under LRS for all other purposes shall be only USD 200000 for FY 2023-24. Also, the issuer bank of the credit card shall collect TCS equivalent to 20% of such total spend, which Mr A may claim tax credit like advance tax / tds while filling his income tax return for FY 2023-24. So, this may also be a cash flow issue for Mr A unless he has obligations to pay advance tax on other incomes.

Background:
Foreign Exchange Management (Current Account Transactions) Rules 2000 (“CAT Rules”) regulate cross-border current account transactions. Under these Rules, various types of transactions are prohibited, regulated, or permitted through three schedules.
Schedule I of CTA Rules is for prohibited or non-permissible transactions such as Remittance for a lottery, horse races, banned magazines, football pools and other non-permitted transactions. As mentioned in Rule 3 and Schedule I, transactions are not allowed to be taken up.

Rule 4 of CAT Rules, read with Schedule II of these Rules, prescribed the transactions for which prior permission of the Central Government is required. Such transactions include payments for culture tours, advertisement in foreign print media, payments for import by Government departments on a CIF basis, payments for certain prize money & sponsorship fees and other transactions as mentioned in Schedule II of CAT Rules.

Rules 5 of CAT Rules, read with Schedule III of these Rules, permit normal trade and personal transactions as per limitations and conditions prescribed in Schedule III of these Rules.
Schedule III covers the normal private and personal payments by Individual Residents within an annual cap of USD 250000 per resident, like foreign tours, gifts, employment or business visit abroad, Emigration, maintenance of close relatives abroad, medical treatment expenses, study expenses or any other current account transactions.

Based on CAT Rules, the Reserve Bank of India has notified Liberalised Remittance Scheme (LRS) for resident individuals within a limit of USD 250000 per financial year. Under LRS, an individual resident may take up various current account and capital account transactions, including setting up companies and purchasing immovable properties, investing in foreign securities etc., up to USD 250000 per financial year.

Prior to the 16th May 2023 notification of the Ministry of Finance, Rule 7 of CAT Rules, has excluded the use of an International Credit Card for making payment by a person towards meeting expenses while such a person is on a visit outside India from current account transaction limits, thereby there was no limits or regulations on payments made by Residents out of India through international credit cards. As such, all payments using international credit cards were outside the scope of the limit under LRS and CAT Rules.

In Finance Bill 2020, with effect from 01.10.2020, tax collection at source (TCS) provisions were made applicable on outward remittances under the LRS scheme through AD Bank and seller of overseas tour packages with a TCS rate of 5% except for health and education purposes, if remittance through AD Bank is of INR 7,00,000 or more, for the financial year.

In Finance Bill 2023, these TCS rates are substantially increased up to 20% for all purposes except for education and health purposes, where the TCS rate is 5% if the amount is Rs. 700000 or more in a financial year.

Impacts:
Since now international credit card transactions are within CAT Rules and LRS limits of USD 250000 will be reduced for other purposes to the extent of Credit cards spent by resident individuals.
All payments through international credit cards, such as food bills, hotel bills, and travel and shopping payments while out of India, will attract 20% TCS, thereby adding credit card invoices. Additionally, TCS provisions and reporting requirements will ensure reporting of all overseas spending by such residents.

It may be noted that these tax impacts were already applicable for banking transactions, transactions through the Internet and debit cards but not applicable in case overseas transactions were with credit cards. Due to amendments in CAT Rules, all overseas payment transactions through credit cards are also under TCS provisions with additional costs of 20%.

The challenge may be a declaration of the purpose of transactions undertaken through credit cards.Banks issuing international credit cards may have to work out a purpose/declaration where the payer can declare the intention of the payments through credit cards, as one can pay fees and expenses for foreign education and payments for health expenses/ foreign hospitals etc., through credit cards. It will be a compliance obligation for the payer to declare the correct purpose of payments through credit cards. Guidelines may be taken from question 6 of FAQ issued by RBI on Liberalised Remittance Scheme, wherein it is made clear that AD will be guided by the nature of the transaction as declared by the remitter in Form A2 and will thereafter certify that the remittance is in confirmity with the instructions issued by the Reserve Bank in this regard from time to time. However, the ultimate responsibility is of the remitter to ensure compliance to the extant FEMA rules/regulations.

One of the welcome clarifications by the Ministry of Finance through clarification on tax collection at source dated 18th May 2023, in respect of travel and incidental expenses concerning education and medical, where MoF clarified that in these cases, TCS rates related to education and health shall be applicable. Separate guidelines in this respect are expected from the Ministry.
Another welcome step is to exempt overseas spending up to Rs. 700,000 for the financial year through debit and credit cards from the LRS limit. This will provide massive relief to most card users except high spenders and HNI.

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The other issue may be credit card payments by an employee for meeting the expenses during overseas travel during official visits, where all such expenses are to be reimbursed by the employer. In the first instance, such an employee has to make payments from his/her personal credit card, and TCS provision will attract at the time of such payments. Again, it will be interesting to see how the mechanism to declare the purpose for the expenses on POS will be made available. In the absence of this, Companies/ employers must explore other options of corporate credit cards or prepaid forex cards in the employer's name to avoid compliance and tax difficulties at the employee level.

Through clarification on tax collection at source dated 18th May 2023, MoF has stated that expenses incurred by employee for any business entity shall be out of the purview of LRS and hence shall not be subject to LRS limits and TCS in the hands of employees who have used their credit card. But how this will be practically implemented may need further clarification and guidelines.

Conclusion:

As per the report from RBI, Indian residents have spent more than USD 12 billion during the FY 2022-23 for overseas tours and travel, as per data from the LRS database. Since credit cards spent out of India were out of this database, actual foreign tour, travel, and shopping expenses may be more prominent figures than this reported figure. Apart from this huge spending on foreign tours and travel, overseas credit card spending was exempt from LRS and TCS, while debit card and banking transactions were covered under LRS. Thus, the differential treatment between debit and credit cards was also to be done away for bringing uniformity and equity in treating the two modes of forex withdrawal. A relief of up to Rs. 7,00,000 spent on international debit cards and credit cards for a year is also a welcome step, due to which most general use cases of personal and business shall be covered except luxury spent by HNI during overseas travel and holidays.

Further guidelines may be expected under FEMA, and user guides of credit cards are expected from RBI and other banks on how the purpose code with respect to international payments through credit cards will be implemented. Meantime, MoF may issue further clarification and guidelines for open questions concerning incidental expenses for health and education, use of personal credit cards by the employees of any business entities and most common use of one person's credit card by another person (Closer relative/ Friends) for any international transactions.

A personal view of CA. Mukesh K Bansal only for information and discussion purposes. Feedbacks and suggestions are welcome at Mukesh.Bansal@mkak.in or 9540022533.

GUIDELINES FOR RESPONSIBLE AI INTEGRATION: A GLOBAL PERSPECTIVE

As artificial intelligence (AI) advances, societies grapple with its challenges worldwide. The integration of AI raises complex legal and ethical issues, particularly concerning liability, accountability, and the impact on human lives. To address these concerns, nations have developed comprehensive guidelines to ensure the responsible development and deployment of AI systems. This article explores the guidelines established by the European Union (EU), the United States (US), Singapore, and India. In addition, it sheds light on their approaches and key acts related to responsible AI practices.

Guidelines of the European Union

The EU has outlined a set of guidelines to evaluate the trustworthiness of AI software, which emphasises the importance of human agency and oversight, safeguarding fundamental rights while ensuring the resilience and security of AI systems.

- EU's AI Act related to responsible AI practices in the EU include the Artificial Intelligence Capabilities and Transparency Act and the Artificial Intelligence for the Military Act.

These acts promote transparency, accountability, and enhanced capabilities in both civilian and military domains.

Guidelines of the United States

President Joe Biden has recently signed two significant Acts regarding AI.

- The Artificial Intelligence Capabilities and Transparency Act
- The Artificial Intelligence for the Military Act

These laws focus on transparency and improved AI capabilities. Additionally, the National Security Commission, in collaboration with the National Artificial Intelligence Initiative Office, has released a report emphasising accountability and governance within AI systems. These guidelines aim to ensure consistent policies and centralised oversight throughout the lifecycle of AI systems.

Guidelines of Singapore

Singapore has developed a Model AI Governance Framework that guides responsible AI practices. The framework highlights

·Significance of internal governance structures

·Human involvement in decision-making processes,

·Effective operations management

·The importance of transparent stakeholder communication.

The guidelines stress the need for data quality assurance, including measures to address biases in datasets.

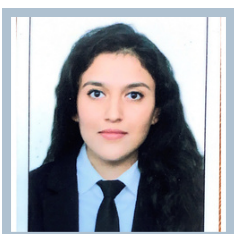
Guidelines of India

While India is in the process of developing an overarching framework for AI systems, and it has established sector-specific guidelines and legislation.

- The Indian government is all set to release the first Draft of the Digital India Bill in the first week of June.
- The SEBI circular in 2019 mandates reporting requirements on AI in finance.
- The National Digital Health Mission aims to set standards for reliable AI systems in healthcare.
- Recently, the draft Personal Data Protection Bill 2019 addresses privacy protections for AI solutions.

Conclusion

The guidelines provided by different nations underscore the importance of responsible AI integration. They address vital aspects such as trustworthiness, human oversight, transparency, accountability, and data quality assurance. By adhering to these guidelines, nations can navigate the challenges of AI integration while maximising its benefits. However, laws and governance must continually adapt to the evolving landscape of AI technology. Through collective efforts, governments, organisations, and stakeholders can promote the responsible development and deployment of AI systems, ensuring they benefit humanity while upholding ethical standards.



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THE MERE USAGE OF EXPRESSIONS LIKE “ERROR” CANNOT BE CONSIDERED AS “PATENT ILLEGALITY” IN AN ARBITRAL AWARD UNLESS THE ILLEGALITY IS APPARENT ON THE FACE OF IT: SUPREME COURT

The Hon’ble Supreme Court on 10th May 2023 held that an arbitral award could only be considered suffering from patent illegality if its illegality is apparent on the face of the award. Reliance Infrastructure had entered into a power purchase agreement (PPA) for constructing a power plant for the Government of Goa. However, Reliance turned to arbitration when the state failed to fulfil its payment obligations. In 2018, the Arbitral Tribunal awarded Reliance a sum of Rs. 278 crores along with interest till 31st October 2017 and a further 15% interest per annum till full payment.

Upon the Appeal filed by the State of Goa, the Bombay High Court reduced the interest rate to 10%. Subsequently, Reliance and the Government of Goa filed cross-appeals before the Supreme Court. The court, after taking note of the submissions of the parties and reviewing the provisions of the Arbitration and Conciliation Act, 1996, observed that "we do not find the High Court justified in commenting on the framing of points for determination by Commercial Court and then observing that the Commercial Court merely reproduced the findings of the award. The Commercial Court dealing with Section 34 application was not acting as a Court of Appeal. Yet, looking at the long-drawn arguments, the Commercial Court enumerated the issues raised. Then it returned the findings after examining the record and rejecting the submissions made on behalf of the State. There had been no such flaw in the judgment and order passed by the Commercial Court which called for interference by the High Court on the parameters and within the periphery of Sections 34/37 of the Act of 1996".

Moreover, the Supreme Court observed that "'The narrow scope of "patent illegality" cannot be breached by mere use of different expressions which essentially indicate only to "error" and not to "patent illegality"."

The Apex Court reiterated the stance previously expressed by the Court in Delhi Airport Metro Express and stressed the need for restraint when evaluating arbitral awards. Interfering with the award and re-assessing factual aspects would defeat the purpose of the 1996 Act. Moreover, setting aside awards as "perverse" or "patently illegal" without understanding the nuances would render previous judicial decisions redundant.

Therefore, it was held that the "Fact of the matter remains that nothing of patent illegality apparent on the face of the award has been pointed out. On the contrary, the submissions essentially indicate some alleged errors on the case's merits which, as noticed, do not fall within the parameters of Section 34 of the Act of 1996".

The court reprimanded the High Court for not relying on the Supreme Court's rulings in earlier judgments and instead relying on the analysis of a learned Single Judge.

In light of the same, the bench consisting of Justice Dinesh Maheshwari and Justice Sanjay Kumar set aside the High Court's verdict and restored the award.

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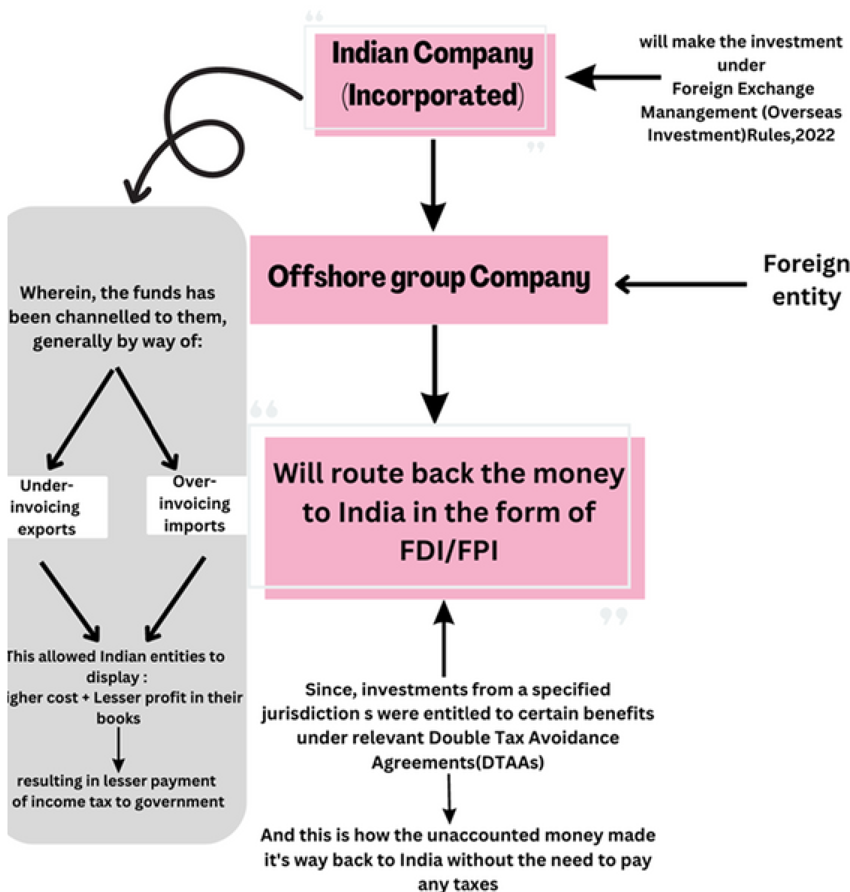
NUANCES AROUND ROUND TRIPPING

A process involves transferring money or assets offshore, followed by their return to the original country as a foreign investment. This practice is often used to evade taxes and regulations and has been a primary concern of the Reserve Bank of India ("RBI").

Major concerns of the RBI:

1. Indian company uses such practices to evade taxes or engage in money laundering.
2. Money routed back to India is to manipulate stock prices of listed Indian entities.



RBI has taken several steps to prevent round-tripping, including imposing strict regulations on overseas investment.

RBI notified the Round Tripping rules on 22nd August 2022, Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022. Rule 19(3) of Overseas Investment Rules 2022 (New framework) This provision intends to allow a person resident in India to invest in a foreign entity which has invested or invests back into India up to 2 layers of subsidiaries (without any prior approval of the RBI).

The RBI has also relaxed the conditions for round-tripping investments. Under the previous rules, Indian companies were required to obtain prior approval from the RBI before making a round-tripping investment. However, under the new rules, Indian companies can make round-tripping investments without prior permission, subject to certain conditions.

The conditions for round-tripping investments under the new rules are as follows:

1. The investment must be made in a bona fide business activity.
2. The investment must be made in a country or jurisdiction not subject to any sanctions or restrictions by the RBI.
3. The investment must be made in a foreign company not engaged in prohibited activities, such as real estate or gambling.

The essence of "**round-tripping**" under the Erstwhile Regime was expressed in response to ODI FAQ question 64, which prohibited Indian parties from creating Indian subsidiaries through their foreign WOS or JVs and from buying a WOS or investing in a JV that already had direct or indirect investments in India through the automatic route.

The OI Rules have, to some extent, eliminated the restriction above on round-tripping arrangements and the ambiguity surrounding whether such transactions would gain RBI approval. A round-tripping structure is permitted under Rule 19(3) of the OI Rules, but only if it has a maximum of two layers of subsidiaries.

The RBI has liberalised the investment structure for Indian parties, but it is still unclear how the "two layers of subsidiaries" restriction should be applied.

- One interpretation is that the restriction applies to the number of layers maintained outside India, where an Indian party could have two layers of investments before investing back in India.
- Another interpretation is that the restriction applies to the number of subsidiaries of a foreign entity, in which case an Indian party could have two layers of additional investments before investing back in the foreign entity.

Despite the uncertainty, this government concession can be viewed as a long-overdue positive development since it will allow Indian enterprises to grow internationally and funnel their profits to an Indian subsidiary, which will help replenish the country's declining foreign exchange reserves and help to protect the interest of Indian investors.

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