



*Believe you can and you're half-way there
~ Theodore Roosevelt*

Connection

P R O C E S S I N G O F I T R - 1 T O 6 & A P P L I C A B I L I T Y O F S E C T I O N 1 4 3 (1)

J U S T T O R E M I N D Y O U

- Jan 30 - Payment of TDS on purchase of property for December
- Jan 31 - TDS Return for December Quarter
- Jan 31 - GSTR - 5 for (Non Resident) July to December 2017

I N S I D E T H I S I S S U E :

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Sub-clause (vi) of clause (a) of sub-section (1) of section 143 of the Income-tax Act, 1961 ('Act') as introduced vide Finance Act, 2016, w.e.f. 01.04.2017, while processing the return of income, prescribes that the total income or loss shall be computed after making adjustment for addition of income appearing in Form 26AS or Form 16A or Form 16 (the three Forms) which has not been included in computing the total income in the return. In this regard, CBDT has issued **Instruction No.(s) 9/2017 dated 11.10.2017 & 10/2017 dated 15.11.2017** for identification of instances in which section 143(1)(a)(vi) of the Act may be invoked by CPC-ITR, Bengaluru on the basis of information contained in the ITR Forms 1 to 6.

2. As intimations proposing adjustments in identified returns under section 143(1)(a)(vi) of the Act would be shortly issued by the CPC-ITR, Bengaluru, the process to be followed by the taxpayers for filing the response is as under:

2.1 Since section 143(1)(a)(vi) of the Act is being applied for the first time while processing the returns, it has been decided that before issuing an intimation of the proposed adjustment, initially an awareness campaign would be carried out to draw the attention

of the taxpayer to such differences. This would be in form of an e-mail and SMS communication to the concerned taxpayer informing him about the variation in the tax-return vis-a-vis the information available in the three Forms and requesting him to submit response to the variation within one month of receiving the communication electronically. In case the taxpayer does not respond within the available time-frame



or the response is not satisfactory, a formal intimation u/s 143(1)(a)(vi) proposing adjustment to the returned income would be issued to him. As per the second proviso to section 143(1)(a)(vi) of the Act, in a case where no response is received from the taxpayer within thirty days of issue of such an intimation, the proposed adjustment shall be made to the returned income. Therefore, it is of utmost necessity that the concerned taxpayer files a prompt, timely and satisfactory response to the awareness campaign or subsequent intimation proposing adjustment u/s 143(1)(a)(vi) of the Act.

2.2 The manner for furnishing

response by the taxpayer is as under:

For furnishing the response electronically, taxpayer is required to login in his account in the e-filing site and choose the option (View>Returns/Forms). In a case where communication/intimation has been issued to the taxpayer u/s 143(1)(a)(vi) of the Act, the status will be displayed in the dashboard as '*Response to Communication/Intimation u/s 143(1)(a) is pending*'. The taxpayer can click on the same and submit his response.

2.3 The scenario(s) for furnishing response are as under:

I. Where upon receiving the awareness message or formal intimation u/s 143(1)(a)(vi) of the Act, if the taxpayer fully agrees with the proposed adjustment, he is required to file a revised return in response.

II. Where upon receiving the awareness message or formal intimation u/s 143(1)(a)(vi) of the Act, if the taxpayer partially agrees with the proposed adjustment, he is required to (i) file a revised return for the part of the proposed adjustment with which he is in agreement & (ii) file a reconciliation statement (in the format to be provided by CPC-ITR on the e-filing site) for the part of the proposed adjustment with which he is not in agreement.

III. Where upon receiving the

awareness message or formal intimation u/s 143(1)(a)(vi) of the Act, the taxpayer disagrees with the proposed adjustment, he is required to file a reconciliation statement (in the format to be provided by CPC-ITR on the e-filing site) in support of

his contention.

3. Based upon response of the taxpayer as indicated in para 2.3 above and the information so available with the CPC-ITR, thereafter, such returns shall be taken up for processing by CPC-ITR as per provisions of section(s)

143(1), 143(1)(a)(vi) read with Instruction No.s 9 & 10/2017 of CBDT.



M A N U A L F I L I N G A N D P R O C E S S I N G O F C L A I M O F E X C E S S B A L A N C E I N E L E C T R O N I C C A S H L E D G E R

1. Background:

1.1. Your attention is invited towards the Trade Circular No. 49 of 2017 dated 28th November 2017 which explains the manual filing and processing of refund claims related to zero-rated supply of goods or services or both as also the Trade Circular No. 52 of 2017 dated 11th December 2017.

1.2. Due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the Council, that the applications/ documents/ forms pertaining to refund claims on account of excess balance in electronic cash ledger shall be filed and processed manually till further orders. In this regard, the undersigned, in exercise of powers conferred under section 168 (1) of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as the "MGST Act") hereby clarifies that the contents of the Trade Circular No. 49 of 2017 dated 28th November 2017 shall

also be applicable to the refund claims on account of excess balance in electronic cash ledger inasmuch as they pertain to the method of filing of the refund claim and its processing which is consistent with the relevant provisions of the MGST Act, 2017 and Maharashtra Goods and Services Tax Rules, 2017 (hereafter referred to as the "MGST Rules")

1.3. It is clarified that refund claims on account of excess balance in electronic cash ledger shall be filed for a tax period on a monthly basis in FORM GST RFD-01A.

2. Preparation of application for refund:

2.1. The registered taxable person who desires to get the refund of excess balance in the electronic cash ledger is required to file application manually in FORM GST RFD-01A (as notified in the MGST Rules vide notification No. 55/2017 -State tax dated 15.11.2017. All the details in the said form is to be filled appropriately.

2.2. The applicant who de-

sires to get the refund of the balance in the electronic cash ledger shall access the common portal i.e. www.gst.gov.in and fill the appropriate details, of the claim of refund of the excess balance in the Electronic Credit Ledger, in the TABLE made available on the common portal with the use of appropriate Log-in Id and password. The process flow diagram is given below:

L o g i n
Id>password>Services>Refund
> Application for Refund>
>Select the refund type>select the Create Application>fill the application>take print out>submit the printout to designated GST Officer.

2.3. After accessing option Services available at the common portal under "Application for refund" Tab the applicant would be directed to the next screen.

2.4. From the said list select the type of refund as "Refund of Excess Balance in Electronic Cash Ledger" and then press the "create" button displayed in front of the said



row.

2.5. Balance available in the Cash Ledger shows the actual cash balance in the electronic cash ledger of Integrated Tax, Central Tax, State/UT Tax



and Cess, as on the date of creation of refund application.

2.6. The applicant need to fill the details in the appropriate head for which he desires to seek the refund of the cash balance in the electronic cash ledger. After filling the desired amount in the TABLE, the applicant shall select the Bank Account Number from the drop down list. It may be noted that for claiming he refund from the excess balance in the electronic cash ledger the selection of period of refund or the month of refund is not required.

2.7. In case, an applicant desires the refund amount in another preferred bank account which is not appearing in the drop down list then applicant is requested to add that bank account by filing amendment to registration record (non-core amendment) form. For this the applicant may go the >Registration>Non-core amendment> and add details including Bank Name, Branch Name, IFS Code. The facility given for choosing the Bank IFSC may be used so that no error is made while filling information about bank details. Once the Bank details are updated then the said refund amount determined as per the provisions of the law will be disbursed and credited to the said preferred Bank account.

2.8. Needless to say that the applicant shall first discharge the outstanding liability, if any, in respect of IGST,

CGST, SGST and cess and then only seek the refund of the cash balance in the said ledger. It may also be noted that the amount claimed as refund is subject to recovery of the dues, if any, by the department. Hence, the applicant is advised to discharge any outstanding liability under IGST, CGST, SGST and cess at the earliest.

2.9. It may please be noted that,-

2.9.1. Once the applicant has filled all the details in given Table, please save the form before you proceed to Submit.

2.9.2. Please correct any errors occurred during preparation and do not forget to save the said FORM before proceeding to submit.

2.9.3. It may please be kept in mind that once "Proceed" button is clicked and form is submitted, no modification will be allowed. Therefore due care may please be taken before pressing the "Proceed" button.

2.9.4. The Electronic Cash ledger balance visible here is the current balance in the Electronic Cash ledger.

2.9.5. Application can be saved at any stage of completion for a maximum time period of 15 days. If the same is not submitted within 15 days from the date of form creation, the saved draft will be purged from the GST database. The applicant after 15 days may follow the same procedure for creation and submission of refund Application in FORM-RFD-01A.

3. Uploading of information seeking refund from balance in the electronic cash ledger at GSTN portal:

3.1. Once the aforesaid steps are followed and application is saved then the message as "Saved successfully" will appear at the top left hand side of the Table. After doing so the "PROCEED" button will get activated. Press the said button. You will be

taken to the next window, where, after checking the Box for declaration the applicant is required to submit the said application with the EVC or, as the case may be, Digital Signature Certificate (DSC) wherever applicable.

3.2. After successful submission, refund ARN receipt will be generated. Take the printout of the same and submit to the appropriate authority as explained below.

3.3. The cases which are assigned to the State vide order of distribution of tax payer cited at Ref. (1) above, the application in FORM-GST-RFD-01A complete in all respect along with ARN receipt generated at common portal the printout of the same shall be submitted to the appropriate Official in the office of the concerned Joint Commissioner of State tax and in case, the office of the Joint Commissioner of State tax, does not exist then to the head of the location. The location wise list where the application is to be submitted is given in the ANNEXURE- B of the Trade Circular No. 49 of 2017 dated 28th November 2017.

3.4. The tax payer who is neither assigned to the State Tax Authority nor to the Central Tax Authority and who desires to submit the application for refund to the MGSTD, then under such circumstances, the refund application shall be accepted,-

(a) in case the registered place of business of the said tax payer is situated in Brihan Mumbai, then in the Office of the Joint Commissioner of State tax (MUM-VAT-F-001), Nodal-1, 5th Floor, "E-Wing", New Building, GST



Bhavan, Mazgaon, Mumbai-400010.

(b) at Pune location, in the office of the Joint Commissioner of State tax (VAT-PUN-F-001), 201, 2nd Floor, Off. Golf Club, Air Port Road, Yerawada, Pune-411006.

(c) at the location other than Brihan Mumbai and Pune in the office of the Joint Commissioner of State tax where such office exists and in any other case in the office of the head of the location.

4. Receipt of Refund Application:

4.1. As explained above, the application will be received in the Office of the Joint Commissioner of State tax and in case that the office of the Joint Commissioner does not exist then to the head of the Location as given in the ANNEXURE- B attached to Trade Circular No. 49 of 2017 cited at Ref. (2) above. It is informed that the applicant shall submit the application in FORM-RFD-01A in duplicate so that the suitable receipt of the application is given.

4.2. After receipt of the application, it will be verified that the application is in order and requisite details as given in this Trade Circular are attached. After it is found that the application is in order and the refund ARN print-out is enclosed then a receipt will be given by putting appropriate stamp and date of receipt of the application.

5. Acknowledgement for Refund of Application:

5.1. The application received in the concerned office of the Joint Commissioner of State tax or, as the case may be, head of the location shall be forwarded to the concerned Nodal officer on the same day or in any case not later than next working day.

5.2. After receipt of the application, the concerned Nodal officer shall check the balance in the electronic cash ledger and verify that the refund claimed is commensurate to the balance available in the said ledger. Any liability outstanding of the MGST may first be adjusted and remaining amount of refund, if any, may be processed as per the provisions of the MGST Act.

5.3. Once the completeness in all respect is ascertained an acknowledgment in FORM-RFD-02 as given in Rule 90(1) of the MGST Rules, shall be issued within 15 days from the date of submission of application.

5.4. In case the application so submitted is found deficient in certain aspects then the concerned officer shall issue deficiency memo in FORM-RFD-03 within 15 days from the date of receipt of the application.

5.5. In other words, the concerned officer after due verification is required to issue either FORM-RFD-02 or FORM-RFD-03 not later than 15 days from the date of receipt of application. All the supervisory authorities are hereby directed that to monitor that these timelines are strictly followed.

6. Issuance of defect memo in case of refund of application is deficient:

6.1. As explained above the in case application for refund is deficient then the Deficiency Memo should be issued. It should be complete in all respects and only one Deficiency Memo shall be given. Submission of application after Deficiency Memo shall be treated as a fresh application. Re-submission of the application, after rectifying the deficiencies pointed out in the Deficiency memo, shall be made by using the ARN and debit entry number generated originally.

6.2. If the application is not filed afresh within thirty days of the date of receipt of communication of the deficiency memo, the concerned Nodal officer shall pass an order in FORM GST PMT-03 and re-credit the amount claimed as refund through FORM GST RFD-01B.

7. In case the refund application is found in order then the applicant shall receive the refund in the Bank account available in the registration record with common portal.

8. Needless to state that any refund amount which the applicant is not entitled or has claimed wrongly or inappropriately then it shall be recovered along with the interest or may face prosecution for the serious breach of the provisions of the MGST Act.



TAXATION OF NATURAL GAS UNDER GST

The Maharashtra Goods and Service Tax Act, 2017 (MGST Act) was introduced with effect from 1st July 2017 and accordingly the Maharashtra Value Added Tax Act, 2002 (MVAT Act) Was amended from the 1st July 2017. After the amendment to MVAT Act, the definition of term, "Goods" covers only six goods i.e. (a) Petroleum crude; (b) high Speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas ; (e) aviation turbine fuel ; and (f) liquor for human consumption. Besides, a section 16(6A) was inserted in the MVAT Act which provides for the deemed cancellation of the registration w.e.f. 1st July 2017, of the dealers who have not affected any sales of aforesaid six "goods" during the period 2016-17. Therefore, the dealers who are effecting the sales of these six goods would only remain registered dealers under the MVAT Act.

2. The government of Maharashtra, in exercise of the powers conferred under section 9(1) of The MVAT Act had issued a notification dated 24th August 2017 cited at Ref. (1) above. A new entry 16 was added to the Schedule "B" of the MVAT Act by the said notification, effective from 24th August 2017. The said entry B-16 Provides that the sale of natural gas to a registered dealer, subject to the conditions mentioned in the said notification, is entitled for a lower rate of VAT @ 3%. To avail the benefits of reduced rate i.e. at 3% of the purchasing dealer was required to be certified (as per proforma 'A') by the concerned Joint Commissioner.

3. After issuance of aforesaid notification dated 24th August 2017, queries were received from the Trade as also from some of the Departmental Authorities, as to whether the benefit

given under the notification dated 24th August 2017, are also available to the taxpayer registered under The Maharashtra Goods and Service Tax act, 2017 (MGST Act). To clarify this aspect, a Trade Circular No 39T of 2017 was issued on 8th September 2017 and it was clarified that the benefit of notification dated 24th August 2017 will also be available to the taxable person registered under the MGST act 2017.

4. Subsequently, by notification No. VAT-1517/CR-136(a)/Taxation-1 dated 13th October, 2017, the said schedule entry B-16 was amended w.e.f. 14th October 2017. In addition to certain other amendments, an explanation is provided that the (buying manufacturer) 'registered dealer' referred in this entry shall also include 'taxable person' registered under the MGST Act.

5. On the backdrop of the issuance notification(s) dated 24th August 2017 and 13th October 2017, the matter with regards to the applicability of the reduced rate of tax in respect of sales of Natural Gas to the registered dealer for use in manufacture vis-à-vis clarification given by the Trade Circular No. 39T of 2017 issued on 8th September 2017 was discussed in the Finance Department. During the discussion, the Finance Department was of the opinion that since the earlier notification issued on 24th August 2017 refers to "Sale of Natural Gas to a registered dealer" which should mean the dealer registered under the MVAT Act and not the taxable person registered under the MGST Act. Therefore, the benefits of the lower tax rate of 3% VAT as provided by the notification dated 24th August 2017 shall not be available to the taxable person registered under the MGST Act for the

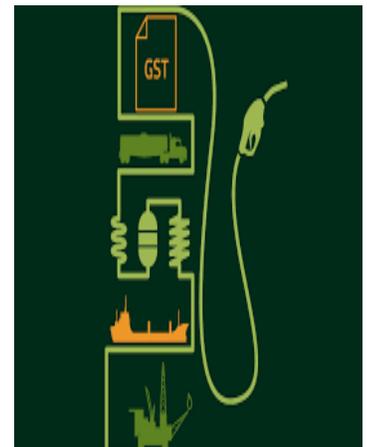


period 24th August 2017 to 13th October 2017.

6. Pursuant to the view of the Finance Department, it is hereby clarified that, the manufacturer buyer who was not holding registration certificate under the MVAT Act on or after 1st July 2017 either due to cancellation of said registration certificate or due the deeming provision relating to cancellation of the registration certificate under section 16(6A) of MVAT Act, shall not be entitled for the benefits of reduced rate of tax of 3% in respect of use of Natural Gas in manufacturing, for the period 24th August 2017 to 13th October 2017.

7. In view of the above, the following guidelines are issued:

- For the period 24th August 2017 to 13th October 2017 the sales of Natural Gas, to manufacturers, who were not holding the registration certificate under the MVAT Act during the said period, shall be liable for VAT @ 13.5 %



under Schedule entry B-15..

- For the period starting on or after 14th October 2017 the sales of Natural Gas, to manufacturers, whether registered under the MVAT Act or under the MGST Act, subject to the conditions given in the notification against a certificate in "Proforma A" would be entitled to avail the benefits of reduced rate of VAT @ 3%.
- In view of the aforesaid circumstances, it is also necessary that the concerned Joint Commissioners, who had earlier issued certificate in

"Proforma A" with effect from the 24th August 2017, issue addenda and change the date of effect to the 14th October, 2017.

- From the date of issuance of this Trade Circular, the certificate in Proforma CA' shall be issued effective from the date of filing of the application for the said certificate.
- The dealers, who have sold natural gas during the period 24th August 2017 to 13th October 2017 to manufacturers who were not holding registration certificate under the MVAT Act,

applying lower rate of tax at 3% during the aforesaid period, are advised to arrange their affairs accordingly and take the necessary corrective steps at earliest.

8. In view of the above, the clarification issued vide Trade Circular No. 39 T of 2017 dated 8th September 2017 shall stand modified.



EXTENSION OF DATE OF FILING OF VAT AUDIT REPORT

Section 61(1) of The Maharashtra Value Added Tax Act, 2002 Provides that all eligible dealers shall submit the Audit Report in Form-704. As provided under rule 17A (1) of the Maharashtra Value Added Tax Act, 2005, this form is to be uploaded electronically. Rule 66 of the said rules mandates that such Audit Report in form e-704 Shall be submitted within nine months and fifteen days of the end of the year to which such report relates. Accordingly the prescribed date for filling of form e-704 for the year 2016-17 is 15th January 2018.

The representations from Trade and Associations have

been received with a request to extend the due date for submission of Audit Report in form e-704.

The representations, as aforesaid, are examined. After careful consideration of the same and with approval of the Finance Department, Government of Maharashtra, it has been decided to allow uploading of the Audit Report in Form e-704 for the year 2016-17 up to 15th February 2018.

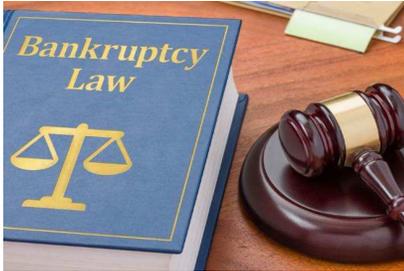
In view of above, the physical copy of acknowledgment and the statement of submission of Audit Report shall be submitted upto 25th February 2018 to concerned nodal officers viz. Dy. Commis-

sioner of State Tax, Asst. Commissioner of State Tax or State Tax Officer. The list of the Nodal Officers is available on the website www.mahavat.gov.in. The dealers who upload the said audit report under section 61(1) of the said Act on or before 15th February 2018 and also submit the physical copy of acknowledgement on or before 25th February 2018 then penalty proceeding shall not be initiated against such dealers.

It is clarified that the liability to pay interest, if any, as per the provisions of the said act shall remain unchanged.



THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2018



(1) This Act may be called the **Insolvency and Bankruptcy Code (Amendment) Act, 2018**.

(2) It shall be deemed to have come into force on the 23rd day of November, 2017.

2. Amendment of section 2.

2. In the **Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as the principal Amendment in section 2, -

(i) in clause (d), the word “and” shall be omitted;

(ii) for clause (e), the following clauses shall be substituted, namely:—

“(e) personal guarantors to corporate debtors;

(f) partnership firms and proprietorship firms; and

(g) individuals, other than persons referred to in clause (e).”.

3. Amendment of section 5.

In section 5 of the principal Act,—

(a) for clause (25), the following clause shall be substituted, namely:—

“(25) “resolution applicant” means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;”;

(b) in clause (26), for the words “any person”, the words “resolution applicant” shall be substituted.

4. Amendment of section 25.

In section 25 of the principal Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

“(h) invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.”.

5. Insertion of new section 29A. Persons not eligible to be resolution applicant.

After section 29 of the principal Act, the following section shall be inserted, namely:—

“29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classifi-

cation till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed an enforceable guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admit-



ted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation.— For the purposes of this clause, the expression “connected person” means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this *Explanation* shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.”.

6. Amendment of section 30.

In section 30 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed

within the period specified in that sub-section.”.

7. Amendment of section 35.

In section 35 of the principal Act, in sub-section (1), in clause (f), the following proviso shall be inserted, namely:—

“Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.”.

8. Insertion of new section 235A. Punishment where no specific penalty or punishment is provided.

After section 235 of the principal Act, the following section shall be inserted, namely:—

“235A. If any person contravenes any of the provisions of this Code or the rules or regulations made there under for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.”.

9. Amendment of section 240.

In section 240 of the principal Act, in sub-section (2),—

(i) after clause (s), the following clause shall be inserted, namely:—

“(sa) other conditions under clause (h) of sub-section (2) of section 25;”;

(ii) after clause (w), the fol-



lowing clause shall be inserted, namely:—

“(wa) other requirements under subsection (4) of section 30;”.

10. Repeal and savings.

(1) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under

the Insolvency and Bankruptcy Code, 2016, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Code, as amended by this Act.



**COMPANIES ACT AMENDMENTS
HAVING IMPACT ON BANKRUPTCY
CODE**

1. The Central Government notified the Companies (Amendment) Act, 2017 (Amendment Act) on 3rd January, 2018. The provisions of this Amendment Act shall come into force on the date or dates as the Central Government may appoint by notification(s) in the Official Gazette. A few provisions in the Amendment Act have important bearing on the working of the **Insolvency and Bankruptcy Code, 2016** (Code).

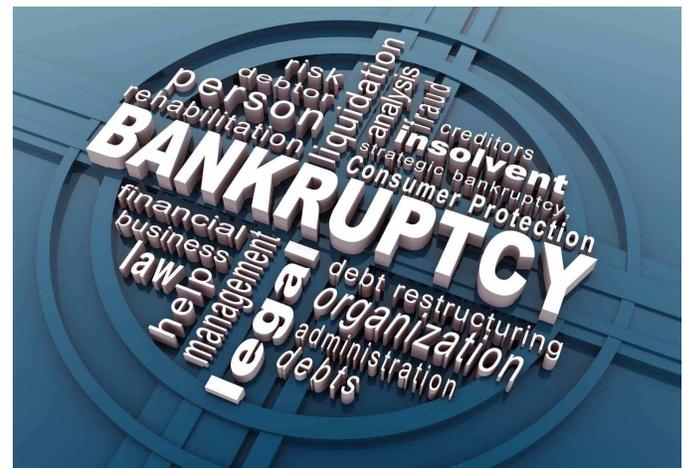
2. Section 53 of the Companies Act, 2013 prohibited issuance of shares at a discount. The Amendment Act now allows companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan such as resolution plan under the Code or debt restructuring scheme.

3. Section 197 of the Companies Act, 2013 required approval of the company in a general meeting for payment of managerial remuneration in excess of 11 percent of the

net profits. The Amendment Act now requires that where a company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, for such payment of managerial remuneration shall be obtained by the company before obtaining the approval in the general meeting.

4. Section 247 of the Companies Act, 2013 prohibited a registered valuer from undertaking valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. The Amendment Act now prohibits a registered valuer from undertaking valuation of any asset in which he has direct or indirect interest or becomes so interested at any time during three years prior to

his appointment as valuer or three years after valuation of assets was conducted by him.



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Innovate Create Lead



MCA 'REACTIVATED' DINs OF DISQUALIFIED DIRECTORS

Stakeholders of Condonation of Delay Scheme (CODS) (notified vide **General Circular No.16/2017 dated 29th December 2017**) may kindly note that the process for 'reactivation' of the DINs in respect of disqualified Directors has been **completed** and the status of the relevant DINs can be checked now. Stakeholders are therefore requested to file necessary 'overdue documents' as per the scheme.

They may further note that the scheme

is not applicable for those Directors who may have been associated with a company which was struck off under Section 248(1) of the Companies Act-2013 and DINs for such individuals shall be re-activated only upon receipt of orders for revival of the said company, as per due process laid down under Section 252 of the Companies Act-2013.



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