Connection

Volume VII, Issue 8 November 2018 LLB & Co.

"Coming together is a beginning, keeping together is progress, working together is success"

~ Henry Ford

LLB & CO.

JUST TO REMIND YOU:

- **Nov 15 - Payment of ESI and PF of Oct**
- **Nov 20 - GSTR 3B**
- **Nov 30 - Payment of TDS for purchase of Property for Oct**

INSIDE THIS ISSUE:

Section 112A relief on off Market transactions of acquisition of equity share

In exercise of the powers conferred by sub-section (4) of section 112A of the **Income-tax Act, 1961** (43 of 1961) hereinafter referred to as the Income-tax Act, the Central Government, with a view to specify the nature of acquisition in respect of which the provision of sub-clause (a) of clause (iii) of sub-section (1) of section 112A of the Income-tax Act shall not apply, hereby notifies the transactions of acquisition of equity share entered into—

(I) before the 1st day of October, 2004; or

(II) on or after the 1st day of October, 2004 which are not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004), other than the following, namely:—

(a) where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue:

Provided that nothing contained in this clause shall apply to acquisition of listed equity shares in a company;—

(i) which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;

(ii) by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;

(iii) by an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the Income-tax Act or a Qualified Institutional Buyer; and

(iv) through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does

not apply.

(b) where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India:

Provided that nothing contained in this clause shall apply to the acquisition of listed equity shares in a company which has been made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and is—

(i) through an issue of share by a company other than the issue referred to in clause (a);

(ii) by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;

(iii) approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;

(iv) under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;

(v) by any non-resident in accordance with foreign direct investment guidelines of the Government of India;

(vi) in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;

(vii) from the Government;

(viii) by an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer; and

(ix) by mode of transfer referred to in section 47 or section 50B or sub-section (3) of section 45 or sub- section (4) of section 45 of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].

(c) acquisition of equity share of a company during the period beginning from the date on

which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder;

Explanation.— For the purposes of this notification,—

(a) "frequently traded shares" means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company:

Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares;

(b) 'listed' means listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder;

(c) "preferential issue" and "Qualified Institutional Buyer" shall have the meanings respectively assigned to them in sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(d) "public financial institution"and ""scheduled bank" shall have the meanings respectively assigned to them in Explanation to clause (viia) of sub-section (1) of section 36 of Income-tax Act;

(e) "recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; and

(f) "reconstruction company" and "securitisation company" shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

2. This notification shall come into force with effect from the 1st day of April, 2019 and shall accordingly apply in relation to the assessment year 2019-20 and subsequent assessment years.

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

In exercise of the powers conferred by section 253 read with section 295 of the Income -tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. Short title and commencement.—(1) These rules may be called the Income—tax **(10th Amendment)** Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, —

"(i) in rule 47, in sub-rule (1) and sub-rule (2), for the words, brackets and figure "sub-rule (2)", the words, brackets and figure "sub-rule (3)" shall respectively be substituted;

(ii) in Appendix II,

(a) for Form 36 and notes thereto, the following shall be substituted, namely:-

"Form No. 36

[See rule 47(1)]

Form of appeal to the Appellate Tribunal

Notes

1. The memorandum of appeal shall be in triplicate and shall be accompanied by

(a) two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, two copies of the grounds of appeal or the grounds of objection before

the first appellate authority or the Dispute Resolution Panel, two copies of the statement of facts, if any,

filed before the said appellate authority or the Dispute Resolution Panel, and also-

(i) in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;

(ii) in the case of an appeal against an order under sub-section (3) of section 143 read with section 144A of the Income-tax Act, 1961, two copies of the directions issued under the said section 144A;

(iii) in the case of an appeal against an order under section 147 of the Income-tax Act, 1961, two copies of the original assessment order, if any;

(iv) in the case of an appeal against an assessment order made in pursuance of the directions of the Dispute Resolution Panel, the copy of Directions of the Dispute Resolution Panel.

(b) two copies of the relevant order where an appeal is against an order passed by a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director.

2. (A) The memorandum of appeal by an assessee under sub-section (1) of section 253(1) of the Income-tax Act, 1961 shall be accompanied by a fee of,

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees;

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees;

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent. of the assessed income, subject to a maximum of ten thousand rupees;

(d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees;

(e) no fee shall be payable in the case of a memorandum of cross-objections;

(f) an application for stay of demand shall be accompanied by a fee of five hundred rupees.

(B) The fee may be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of the Reserve Bank of India after obtaining a challan and the copy of the challan in triplicate shall be sent to the Appellate Tribunal with the memorandum of appeal.

(C) The Appellate Tribunal shall not accept cheques, drafts, hundies or other negotiable instruments for the purpose of payment of the fee.

3. The memorandum of appeal shall be written in English or, if the appeal is filed in a Bench located in any State notified by the President of the Appellate Tribunal for the purposes of rule 5A of the Income-tax (Appellate Tribunal) Rules, 1963, then, at the option of the appellant, in Hindi, and shall set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively.

4. The Appeal number and year of appeal shall be filled in by the office of the Appellate Tribunal.

5. In column's seeking Appellant's and Respondent's information, the relevant data, as applicable shall be filled in properly.

Illustration.— for instance in case the Department is Appellant or Respondent, as the case may be, the designation of the officer filing the Appeal and details pertaining to his office may be filled, if available.

6. The 'Tax effect' for the purpose of filling this Form shall be taken as the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (i.e. disputed issues) including applicable surcharge and cess:

Provided that the tax shall not include any interest thereon, except where chargeability of interest itself is in dispute and in case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect:

Provided further that in cases where returned loss is reduced or assessed as income, the tax effect shall include notional tax on disputed issues:

Provided also that in case of penalty orders, the tax effect shall be the quantum of penalty deleted or reduced in the order to be appealed against:

Provided also that while determining 'total tax effect' the tax effect on grounds, which forms part of the common grounds, such as where reopening of the case itself is under

challenge, shall not be considered separately:

Provided also that where income is computed under the provisions of section 115JB or section 115JC of the Income-tax Act, 1961, the 'tax effect', shall be computed as per the following formula, namely: —

(A-B) + (C-D) Where,

A = the total amount of tax as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called regular provisions);

B = the total amount of tax that would have been chargeable had the total income assessed as per the regular provisions been reduced by the amount of the disputed issues under regular provisions;

C = the total amount of tax as per the provisions contained in section 115JB or section 115JC;

D = the total amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

Provided also that where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under regular provisions, such amount shall not be reduced from total amount of tax while determining the amount under item D.

7. If the space provided is found insufficient, separate enclosures may be used for the purpose.";

(b) for Form 36A and notes thereto, the following shall be substituted, namely:-

"Form No. 36A

[See rule 47(2)]

Form of memorandum of cross-objections to the Appellate Tribunal

Notes:

1. The memorandum of cross-objections must be in triplicate.

2. The memorandum of cross-objections shall be written in English or, if the memorandum is filed in a Bench located in any State notified by the President of the Appellate Tribunal for the purposes of rule 5A of the **Income-tax (Appellate Tribunal) Rules, 1963**, then, at the option of the respondent, in Hindi, and shall set forth, concisely and under distinct heads, the cross-objections without any argument or narrative and such objections should be numbered consecutively.

3. The number and year of memorandum of cross-objections shall be filled in by the office of the Appellate Tribunal.

4. The Appeal number and year of appeal as allotted by the office of the Tribunal and appearing in the notice of appeal received by the respondent shall be filled in by the respondent.

5. In column seeking Respondents and Appellants information, the relevant data, as applicable, shall be filled in properly.

Illustration.—for instance in case the department is Appellant or Respondent, as the case may be, the designation of the officer filing the cross-objections and details pertaining to his office may be filled, if available.

6. The 'Tax effect' for the purpose of filling this Form shall be taken as the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which croos-objection is intended to be filed (i.e. disputed issues) including applicable surcharge and cess:

Provided that the tax shall not include any interest thereon, except where chargeability of interest itself is in dispute and in case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect:

Provided further that in cases where returned loss is reduced or assessed as income, the tax effect shall include notional tax on disputed issues:

Provided also that in case of penalty orders, the tax effect shall be the quantum of penalty deleted or reduced in the order to be cross-objected against:

Provided also that while determining 'total tax effect', the tax effect on grounds, which forms part of the common grounds of cross-objection, such as where reopening of the case itself is under challenge, shall not be considered separately:

Provided also that where income is computed under the provisions of section 115JB or section 115JC of the Income-tax Act, 1961, the 'tax effect', shall be computed as per the following formula, namely: —

(A-B) + (C-D) Where,

A = the total amount of tax as

per the provisions other than the provisions contained in section

115JB or section 115JC (herein called regular provisions);

B = the total amount of tax that would have been chargeable had the total income assessed as per the regular provisions been reduced by the amount of the disputed issues under regular provisions;

C = the total amount of tax as per the provisions contained in section 115JB or section 115JC;

D = the total amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

Provided also that where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under regular provisions, such amount shall not be reduced from total amount of tax while determining the amount under item D.

7. If the space provided is found insufficient, separate enclosures may be used for the purpose.".

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

In exercise of the powers conferred by sections 197 and 206C read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. Short title and commencement,— (1) These rules may be called the Income–tax (Eleventh Amendment) Rules, 2018.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the **Income-tax Rules, 1962**,-

(I) for rule 28, the following rule shall be substituted, namely: —

"**Application for grant of certificates for deduction of income-tax at any lower rates or no deduction of income-tax.**

28. (1) An application by a person for grant of a certificate for the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, under sub-section (1) of section 197 shall be made in Form No. 13 electronically, ___

(i) under digital signature; or

(ii) through electronic verification code.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No.13.";

(II) in rule 28AA, —

(A) in sub-rule (2), —

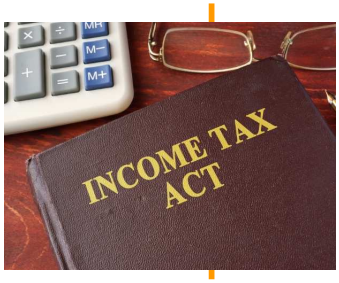
(a) in clause (ii), for the words "income, as the case may be, of the last three", the words "or estimated income, as the case may be, of last four" shall be substituted;

(b) in clause (iv), after the word "payment", the words ", tax deducted at source and tax collected at source" shall be inserted;

(c) clause (v) and clause (vi) shall be omitted;

(B) for sub-rule (4), sub-rule (5) and sub-rule (6), the following sub-rules shall, respectively, be substituted, namely:—

"(4) The certificate for deduction of tax at any lower rates or no deduction of tax, as the case may be, shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate:



Provided that where the number of persons responsible for

deducting the tax is likely to exceed one hundred and the details of such persons are not available at the time of making application with the person making such application, the certificate for deduction of tax at lower rate may be issued to the person who made an application for issue of such certificate, authorising him to receive income or sum after deduction of tax at lower rate.

(5) The certificates referred to in sub-rule (4) shall be valid only with regard to the person responsible for deducting the tax and named therein and certificate referred to in proviso to the sub-rule (4) shall be valid with regard to the person who made an application for issue of such certificate.

(6) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for issuance of certificates under sub-rule (4) and proviso thereto and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the issuance of said certificate.";

(III) in rule 28AB, __

(A) in sub-rule (2), __

(a) in clause (i), the word "and" shall be inserted at the end;

(b) in clause (ii), the words "and" occurring at the end shall be omitted;

(c) clause (iii) shall be omitted.

(IV) for rule 37G, the following rule shall be substituted, namely: __

"**Application for certificate for collection of tax at lower rates under sub-section (9) of section 206C**

37G. (1) An application by the buyer or licensee or lessee for a certificate under sub-section (9) of section 206C shall be made in Form No. 13 electronically, –

(i) under digital signature; or

(ii) through electronic verification code.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No.13" ;

(V) in rule 37H, __

(a) for sub-rule (1), the following sub-rules shall be substituted, namely:-

"(1) Where the Assessing Officer, on an application made by a person under sub-rule (1) of rule 37G is satisfied that existing and estimated tax liability of a person justifies the collection of tax at lower rate, the Assessing Officer shall issue a certificate in accordance with the provisions of sub-section (9) of section 206C for collection of tax at such lower rate;

(1A) The existing and estimated tax liability referred to in sub-rule (1) shall be determined by the Assessing Officer after taking into consideration the following, namely: __

(i) tax payable on estimated income of the previous year relevant to the assessment year;

(ii) tax payable on the assessed or returned or estimated income, as the case may be, of the last four previous years;

(iii) existing liability under the Act and the **Wealth-tax Act, 1957** (27 of 1957);

(iv) advance tax payment, tax deducted at source and tax collected at source for the relevant assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 37G.";

(b) after sub-rule (5), the following sub-rule shall be inserted, namely : __

"(6) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for issuance of certificate under sub-rule (5) and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the issuance of said certificate.";

(VI) in Appendix II, for Form No.13

President assents Companies (Amendment) Ordinance, 2018

1. Short title and commencement.

(1) This Ordinance may be called the **Companies (Amendment) Ordinance, 2018.**

(2) It shall come into force at once.

2. Amendment of section 2.

In section 2 of the **Companies Act, 2013** (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely:—

"Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement";

(b) in the second proviso, for the words "Provided further that", the words "Provided also that" shall be substituted.

3. Insertion of new section 10A.

After section 10 of the principal Act, the following section shall be inserted, namely:—

Commencement of business etc.

"10A.(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. Amendment of Section 12.

In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

"(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.".

5. Amendment of section 14.

In section 14 of the principal Act, —

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

"Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribu-

nal in accordance with the provisions applicable to it before such commencement.";

(ii) in sub-section (2), for the word "Tribunal", the words "Central Government" shall be substituted.

6. Amendment of section 53.

In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.".

7. Amendment of section 64.

In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.".

8. Amendment of section 77.

In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

"Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *ad-valorem* fees as may be prescribed.".

9. Amendment of section 86.

Section 86 of the principal Act shall be numbered as sub --section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.".

10. substitution of new section for section 87.

For section 87 of the principal Act, the following section shall be substituted, namely: —

Rectification by Central Government in Register of charges.

"87. The Central Government on being satisfied that —

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.".

11. Amendment of section 90.

In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),—

(a) after the word "punishable", the words "with imprisonment for a term which may extend to one year or" shall be inserted;

(b) after the words "ten lakh rupees", the words "or with both" shall be inserted.

12. Amendment of section 92.

In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) If any company fails to file its annual return under sub-section **(4),** before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.".

13. Amendment of section 102.

In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.".

14. Amendment of section 105.

In section 105 of the principal Act, in sub-section (3), for the words "punishable with fine which may extend to five thousand rupees", the words "liable to a penalty of five thousand rupees" shall be substituted.

15. Amendment of section 117.

In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".

16. **Amendment of section 121.**

In section 121 of the principal Act, for sub-section (3), Amendment of the following sub-section shall be substituted, namely:—

"(3) If the company fails to file the report under sub–section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.".

17. **Amendment of section 137.**

In section 137 of the principal Act, in sub-section (3),—

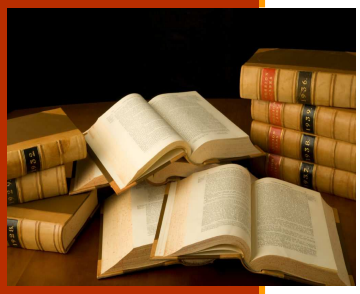
(a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted;

(b) for the words "punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" shall be substituted.

18. Amendment of section 140.

In section 140 of the principal Act, for sub -section (3), the following sub-section shall be substituted, namely:—

"(3) If the auditor



does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".

19. Amendment of section 157.

In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely: —

"(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.".

20. Amendment of section 159.

For section 159 of the principal Act, the following section shall be substituted, namely: —

Penalty for default of certain Provision

"159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.".

21. Amendment of section 164.

In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

"(i) he has not complied with the provisions of sub-section (1) of section 165.".

22. Amendment of section 165.

In section 165 of the principal Act, in sub-section (6), for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.

23. Amendment of section 191.

In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely: —

"(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.".

24. Amendment of section 197.

In section 197 of the principal Act,—

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section shall be substituted, namely:—

"(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.".

25. Amendment of section 203.

In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely: —

"(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.".

26. Amendment of section 238.

In section 238 of the principal Act, in sub-section (3), for the words "punishable with fine which shall not be less than twenty-five thousand

rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.

27. **Amendment of section 248.**

In section 248 of the principal Act, in sub-section (1), — Amendment of section 248.

(a) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—

"(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".

28. Amendment of section 441.

In section 441 of the principal Act, —

(a)in sub-section (1), in clause (b), for the words "does not exceed five lakh rupees", the words "does not exceed twenty-five lakh rupees" shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.".

29. Amendment of section 446B.

In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.

30. Amendment of section 447.

In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.

31. Amendment of section 454.

In section 454 of the principal Act, —

(i) for sub-section (3), the following sub-section shall be substituted, namely: —

"(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.";

(ii) in sub-section (8), —

(a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted;

(b) in clause (ii), for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.

32. Insertion of a new section 454A.

After section 454 of the principal Act, the following section shall be inserted, namely:—

Penalty for repeated default.

"454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.".

IBBI (Liquidation Process) (Second Amendment) Regulations, 2018

In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the **Insolvency and Bankruptcy Code, 2016** (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**, namely: –

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the principal regulations), for regulation 32, the following regulation shall be substituted, namely: –

"32. **Sale of Assets, etc.** The liquidator may sell-

(a) an asset on a standalone basis;

(b) the assets in a slump sale;

(c) a set of assets collectively;

(d) the assets in parcels;

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.".

3. In the principal regulations, in regulation 34, in sub-regulation (2), for clause (b), the following clause shall be substituted, namely: –

"(b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;".

4. In the principal regulations, for regulation 35, the following regulation shall be substituted, namely: –

"**35. Valuation of assets or business intended to be sold.**

(1) Where the valuation has been conducted under regulation 35 of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** or regulation 34 of the **Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017**, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) In cases not covered under sub-regulation (1), the liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

Provided that the following persons shall not be appointed as registered valuers, namely:-

(a) a relative of the liquidator;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or

(d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the **Companies (Registered Valuers and Valuation) Rules, 2017**, after physical verification of the assets of the corporate debtor.

(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.".

5. In the principal regulations, in regulation 40, in the *Explanation* occurring at the end, after the words "parcel of assets," the word ", business" shall be inserted.

ELECTIONS TO THE 24th COUNCIL AND 23rd REGIONAL COUNCILS OF ICAI

The stage is all set for the triennial elections to the Council and the Regional Councils of the Institute of Chartered Accountants of India. The next elections to the Council and Regional Councils of the Institute will be held on 7th and 8th December 2018 at Ahmedabad, Bengaluru, Chennai, Delhi/New Delhi, Gurgaon, Ghaziabad, Hyderabad, Indore, Jaipur, Kolkata, Mumbai, Pune, Surat and Thane and on 8 th December, 2018 at all other places where polling booths have been set up. The timings for polling on the appointed day(s) will be from 8.00 A.M. to 8.00 P.M. This is an opportunity for all the members, who are eligible to vote, to exercise their franchise. It is our sacred professional duty to cast our ballot. All eligible voters are requested to turn out in large numbers on the day(s) of election and exercise their franchise.

It is brought to the knowledge of all members eligible to vote that the Central Government has notified the amendments made in the Chartered Accountants (Election to the Council) Rules, 2006 in the Gazette of India vide Notification No. GSR 796E dated 23rd August, 2018. One of the amendments so made provide for recording of preference on ballot paper only in Arabic numerical numbers, i.e. 1, 2 and so on. Other modes of recording preferences on ballot paper, such as in Roman numerals or in words (like I, II, III or ONE, TWO, THREE) have been discontinued. In view of the same, members eligible to vote are requested to please place on the ballot paper the number 1 (in Arabic numeral only) in the box opposite the name of the candidate for whom they desire to vote. Members may, in addition, place the number 2 or the numbers 2 and 3 or the numbers 2, 3 and 4 and so on (in Arabic numeral only), in the boxes opposite the names of other candidates in the order of their preference up to the maximum number of candidates standing for the election. However, a cross, i.e. `X' mark may be put in the boxes opposite the name(s) of candidate(s) to whom they do not desire to vote. Some illustrations of invalid marking of preferences on ballot paper are given below for the information of the members so that marking of preference in any manner, other than permissible manner, is avoided.

Illustrations

	Name and Membership No. of the Candidate on the ballot paper	Valid Marking	Invalid Marking	Reason
Illustration 1	ABC -------- M.No. --------	1	I	Preference not marked in Arabic Numeral.
Illustration 2	ABC -------- M.No. --------	1	One	Preference not marked in Arabic Numeral.
Illustration 3	ABC -------- M.No. --------	1	(i)	Preference not marked in Arabic Numeral.
Illustration 4	ABC -------- M.No. --------	1		1st preference not marked at all
Illustration 5	ABC -------- M.No. --------	1	1	Preference marked outside the box
Illustration 6	ABC -------- M.No. --------	1	1	Preference marked outside the box
Illustration 7	ABC -------- M.No. --------	1	Kumar	Name written in the box instead of marking valid preference
Illustration 8	ABC -------- M.No. --------	1		Signature used instead of marking valid preference.
Illustration 9	ABC -------- M.No. --------	1	एक	Preference not marked in Arabic Numeral.
Illustration 10	ABC -------- M.No. --------	1	God is great 1	Writing anything other than valid preference makes it invalid
Illustration 11	X) ABC -------- (Candidate 1) M.No. -------- Y) DEF -------- (Candidate 2) M.No. -------- Z) GHI-------- (Candidate 3) M.No. --------	1 2 3	1 1 2	Marking same preference to more than one candidate, makes that preference and all the subsequent preferences invalid.
Illustration 12	ABC -------- M.No. --------	1	✓	Tick symbol is used instead marking preference in Arabic Numeral.
Illustration 13	ABC -------- M.No. --------	1	X	1st prefernce is not marked

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MCA extends due date of Filing Annual ROC Returns to 31.12.2018

Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements **for the financial year ended 31.03.2018** on account of various factors , it has been decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and **e- Form MGT-7** upto **31.12.2018,** wherever additional fee is applicable.