NEWSLETTER

Tax & Regulatory

June, 2024

Nangia Andersen LLP

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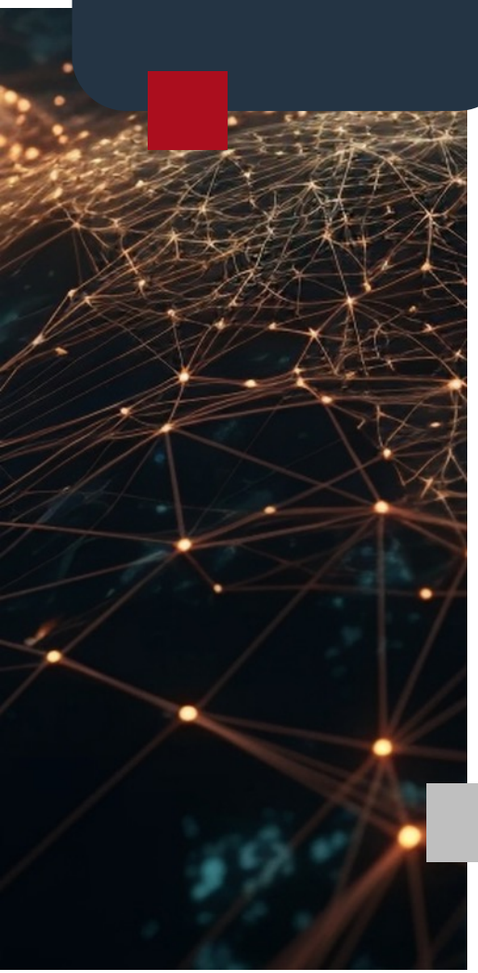
What's *Inside ?*



01

Direct Tax

Guarantee charges paid to a non-resident not interest; taxable under Article 23 of India-UK Treaty as other income

Johnson Matthey Public Limited Company vs. CIT, International Taxation-2

ITA 727/2018

Issue(s) - Taxability of guarantee charges

Outcome - In Favour of Revenue

Background

In a recent verdict, Hon'ble High Court of Delhi ('HC') examined whether guarantee charges paid by Indian entity to its foreign holding company accrues and arises in India and can it be taxed as interest income under Article 12 of India-UK DTAA (DTAA). HC held that the guarantee charges accrues/arises in India but are out of the scope of Article 12 of India-UK DTAA and liable to tax under Article 23(3) of DTAA as other income.

Brief Facts and Contentions

- Johnson Matthey Public Limited (Assessee) is a UK based company engaged in manufacturing of specialty chemicals and provided guarantee to foreign banks for extending credit facilities to its Indian subsidiaries, namely, Johnson Matthey India Private Limited and Johnson Matthey Chemicals India Private Limited. In connection with this, Assessee and the Indian subsidiaries executed Intra Group Parental Guarantee and Indemnity Services Agreement.
- During FY 2010-11, Assessee received ₹ 1.5 crores as charge against guarantee services and characterized the amount as interest in its return of income.

- Revenue, placing reliance on jurisprudence in this regard, contended that the sum has accrued/ arisen in India and would be characterized as other income and liable to be taxed under Article 23(3) of the DTAA.
- Assessee submitted that the income was not taxable in India as the source of guarantee charges were outside India and was not taxable under the Income Tax Act, 1961 (the Act). Further, receipt of such charges can be business income as per the DTAA and in absence of Permanent Establishment, cannot be taxed in India.
- Assessee placed reliance on judgement of Mumbai Bench of Hon'ble ITAT in case of Capgemini S.A Vs ADIT [ITA No. 7198/Mum/2012], wherein a French company gave guarantee to a French Bank for providing loan to an Indian company. It was held that guarantee charges arose in France. Further reliance was placed on a similar judgement of Apex Court of United States, wherein it was held that source of payment for services is where services are performed and not where benefit is enjoyed.

Hon’ble HC’s Judgement

- Hon’ble HC held that the income has accrued and arisen in India as referred in section 5 of the Act as the income is a periodical monetary return being received with some regularity and that accrual of income is not dependent upon actual receipt.
- Further, it was held that guarantee charges cannot be categorized as interest income under Article 12 of the DTAA as it is not in connection with any debt owed or income derived from any claim.
- Thus held that guarantee charges received by the Assessee shall be taxable under Article 23 of the DTAA as other income in absence of being covered under any other foregoing Articles of the DTAA.

Nangia Andersen LLP’s Take

HC has held that the guarantee charges will be deemed to have been be accrued/ arisen in India as the income is linked to the agreement between Indian entity and foreign taxpayer and shall be taxable under the residuary article i.e. other income as guarantee charges are not dealt with under any foregoing articles. Taxability of guarantee charges has been a vexed issue since a long time now. This issue will attain finality once it is deliberated upon by the Apex Court of India.

Consultancy fees not taxable absent Permanent Establishment in India as per India-UAE Treaty

Arun Rangachari vs. JCIT (IT)(OSD)-4(1)(2)

CO No.05/Mum/2024 (arising out of ITA No.2393/Mum/2019)

Issue(s) - Whether Consultancy Fee is taxable as per India-UAE Treaty

Outcome - In Favor of Assesse

Background

In a recent verdict, Income Tax Appellate Tribunal, Mumbai ('Hon'ble ITAT') held that consultancy fees paid by UAE based entities to non-resident Assessee will not be taxable in India in absence of Permanent Establishment (PE). ITAT also remarks that Revenue has not discharged the onus cast on it to prove its allegation that Assessee had PE / fixed base in India by making any enquiry or gathering any evidence and proving that the fee accrued in India.

Brief Facts and Contentions

- Arun Rangachari (Assesse), being a non-resident as per the Income Tax Act, 1961 (the Act) and settled in UAE, provided consultancy services to two entities based in the UAE, for executing projects in India. The consultancy services involved various tasks such as identifying land, local partners, and involvement in specific projects like Energy City Panvel and Logistics Park, Pen.
- The consultancy fees are paid by UAE based entities to two foreign companies, namely DAR Capital Limited (based in Mauritius) and Thurles International Limited (based in British Virgin Island), in which the Assesse is a director as well as 100% shareholder.

- Notice under section 148 of the Act was issued to the Assesse for AY 2009-2010 based on the results of a search action conducted on Dar Media Private Limited (DAR group of company), in which Assessee is a 100% shareholder and a director.
- Revenue contended that the Assesse has not offered income from consultancy services provided to UAE based entities to tax in India as per Article 7(1) of DTAA. According to revenue, consultancy services have been provided through a PE in India, as premises of Dar Media Pvt. Ltd. acts as a fixed base and is available at the disposal of Assesse.
- Further, it was alleged by the Revenue that the services were taxable under Article 14 of the India-UAE DTAA [Independent Personal Services] whereas the Assessee did not breach the threshold of 183 days provided in such article as his stay was restricted to 110 days in India.
- Further, Revenue contented that investment made in India by the foreign companies of Assessee shall be treated as unexplained investments by the Assessee and shall be liable to tax under section 69 of the Act, arguing that the investees were shell companies.

Hon’ble ITAT’s Judgement

- The Tribunal held that due to lack of evidence provided by the revenue to establish that the Assesse had a permanent establishment or fixed base in India through which consultancy services were rendered, consultancy fees cannot be held taxable as business profit under India-UAE DTAA.
- ITAT Further noted that the services were rendered to UAE based entities, which executed projects in India and the corresponding fees were remitted to non-resident companies of the Assesse and was not credited in any bank account in India.
- Tribunal further analysed the provisions of Article 14 of India-UAE DTAA and held that consultancy services do not fall under definition of professional services as per Article 14(2), as the list of services which qualify as professional services is exhaustive and does not cover consultancy services.
- Further held that company is a separate legal entity from the shareholder and without lifting corporate veil, the Assessee’s ownership of foreign companies does not justify treating the investments in India by the foreign companies as unexplained investments by the Assessee and therefore no applicability of section 69 of the Act is attracted.

Nangia Andersen LLP’s Take

Hon’ble ITAT has emphasized that onus to prove the presence of PE is on revenue authorities. Further as per OECD Guidelines, mere presence of an enterprise at a particular location would not necessarily mean that said location was at the disposal of the enterprise. Tribunal has also given insights on the separate identity of shareholder.

ITAT rejects principle of res-judicata for income tax proceedings; confirms income re-characterisation as FTS

Volvo Information Technology AB vs Deputy Commissioner of Income Tax ('DCIT')

ITA No. 2169/Del/2023

Issue(s) - Whether income can be re-characterised as FTS

Outcome - In Favour of Revenue

Background

In a recent verdict, Hon'ble Delhi Income-tax Appellate Tribunal ('Hon'ble ITAT') has examined whether the receipt which was already construed as Royalty in earlier years can be re-characterised as FTS under Article 12 of India - Sweden DTAA and rejected the consistency plea, concluding that the principle of res-judicata does not apply to the tax proceedings and further contended that the provisions of Article 12 of India - Sweden DTAA are wide enough to cover all type of receipts in the nature of managerial, consultancy and technical.

Brief Facts and Contentions

- Volvo Information Technology AB ('Assessee') is tax resident of Sweden which is part of Volvo Group ('the Group') and is engaged business of providing Information Technology ('IT') solutions to other entities of the Group for running their business operations.
- Assessee had entered into agreement with other entities of the Group for rendering services such as business application related services, end user services and shared infrastructure, Volvo corporate network, business consultancy, support to IT Division.

- During AY 2020-21, Assessee had filed return of income declaring NIL income and claiming refund on account of TDS.
- Assessing officer ('Ld. AO') issued show cause notice to the Assessee as to why the receipts from the above services shall not be treated as Fees for technical services ('FTS') under Article 12 of India - Sweden DTAA to which Assessee has furnished that the above services rendered to Indian entities are routine standard service and therefore cannot be characterised as FTS.
- Further, Assessee had submitted that the more restrictive scope of DTAA as provided under India-Finland DTAA and India - Portugal DTAA shall apply owing to the incorporation of Most Favoured Nation clause ('MFN clause') in India - Sweden DTAA vide protocol to the said DTAA and thus services cannot be characterised as FTS unless it meets the criteria of 'make available' clause.
- The Ld. AO was not satisfied with the Assessee submission and issued the Draft assessment order construing the receipts as FTS under Article 12 of India - Sweden DTAA. Consequently, Assessee had filed objection before the Ld. Dispute Resolution Panel ('Ld. DRP') which had agreed with the view of Ld. AO.
- The Learned Senior Counsel representing the Assessee relying on the decision of the Apex Court in the case of *Radhasoami Satsang vs CIT* [Civil Appeal Nos. 10574-10583 of 1983] and other judicial precedents had submitted that the Ld. AO had violated the rule of consistency by construing the above service as FTS as the same was examined and held as Royalty for the earlier assessment, which shall not be taxable now by virtue of the judgement of Hon'ble Apex Court in the case of Engineering Analysis Centre of Excellence Pvt Ltd Vs. CIT [Civil Appeal Nos. 8733-8734 of 2018].
- Aggrieved by the Final Assessment Order based on the direction of Ld. DRP, Assessee filed the appeal before Hon'ble ITAT.

Hon’ble ITAT Judgement

- Hon’ble ITAT held that issue in relation the applicability of MFN clause has already been examined by the Hon’ble Supreme Court in the case of *AO vs Nestle SA* [Civil Appeal No. 1420 of 2023(SC)] and thus the restrictive provision of India - Portugal DTAA and India- Finland DTAA cannot be imported in absence of separate notification issued by the Indian government.
- Hon’ble ITAT noted that the Ld. AO had treated similar receipts as royalty in earlier years but emphasized that each assessment year is an independent unit, and the principle of res judicata does not apply to the tax proceedings.
- Further, Hon’ble ITAT noted that the definition of FTS under Article 12(3)(b) is wide enough to cover all kind of payments made towards managerial, consultancy and technical and held that although the Assessee had claimed that the services are standard and routine, the facts remains that the Assessee had provided managerial, consultancy and technical services.

Nangia Andersen’s Take

The Hon’ble ITAT has highlighted the independence of each assessment year and the need for a thorough assessment of income. This decision also re-emphasizes a well settled principle that rules of interpretation of statute will not apply while interpreting the provisions of DTAA.

02

Indirect Tax

Advance Rulings & Judgements

Hon’ble High Court of Rajasthan held that GST is payable on RCM basis on services received outside India by Registered Person.

Brief Facts

- In the given case, the petitioner was dealing with jewelry and participated in an exhibition held outside India and hence he concluded that the services received outside India i.e., Place of Supply being outside India as per the provisions of Section 13(5) of Integrated Goods and Service Tax Act, 2017 (‘IGST Act’) should not be subjected to Integrated Goods and Services Tax (IGST) in India on RCM basis.
- However, the GST Authorities was of the view that the petitioner is liable to pay IGST as per Section 13 of the IGST Act which includes services received outside India, such as fairs and exhibitions. They referred to Notification 10/2017 – Integrated Tax (Rate) dated 28.06.2017 issued by the Government of India under Section 5(3) of the IGST Act, specifying that services supplied by a person in a non-taxable territory to a recipient in the taxable territory are subject to IGST on RCM basis.

Observations

- Whether IGST is payable on RCM basis by the petitioner on the exhibition services received from a person located in non-taxable territory i.e., Outside India as per Notification 10/2017 – Integrated Tax (Rate) dated 28.06.2017?

Decision

- The High Court of Rajasthan examined the relevant provisions, particularly Section 13 of the IGST Act, which determines the place of supply of services when the location of the supplier or recipient is outside India. Section 13(5) of IGST Act specifically includes the place of supply for events like fairs and exhibitions and the place of supply in such case will be the place where the event is held.
- The High Court of Rajasthan noted that the Government, under Section 5(3) of the IGST Act, has the authority to specify categories of supply of goods or services on which tax shall be paid on a reverse charge basis by the recipient. Notification 10/2017 – Integrated Tax (Rate) dated 28.06.2017 under this provision specifies that the recipient of services located in the taxable territory is liable to pay tax.
- The Rajasthan High Court upheld the tax imposition on exhibition services received by the petitioner from a person located in a non-taxable territory and the same is liable to IGST under RCM basis as per the relevant provisions of the IGST Act.
- We are of the opinion that since the place of supply is outside India, the service recipient located in India is not liable to pay IGST under RCM basis from a person located in a non-taxable territory.

[Savio Jewellery vs Commissioner CGST (D.B. Writ Petition No. 1910 of 2024 – Rajasthan HC) dated 02 May 2024]

Punjab & Haryana High Court stays proceedings related to taxability of Corporate Guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institutions and asks CBIC to respond on same.

Brief Facts

- The primary confusion that persists is whether it constitutes a supply of service when a corporate guarantee is provided by a related party against a loan facility. In this regard, Circular No. 204/16/2023-GST ("Circular 204") was issued which clarified that a corporate guarantee provided by a company for credit facilities availed by another company, where both the companies are related, is to be treated as supply of services.
- However, writ petition has been filed before the Hon'ble Delhi High Court in the case of M/s Sterlite Power Transmission Limited v. Union of India and interim protection has been granted to the petitioner against any coercive steps in case any demand is created on the supply of corporate guarantee.

Observations

- The Petitioner submitted that clarification item No.2 in Circular 204 regarding taxability of 'corporate guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institution' directly impinges upon powers of Appellate Authority by clarifying provisions in nature of adjudication and very purpose of filing of appeal stands negated.

Decision

- The High Court of Punjab & Haryana held that Effect and operation of Circular No. 204/16/2023-GST, dated 27-10-2023 relating to Item No. 2 shall remain stayed and Appellate Authority shall be free to decide case of petitioner without being influenced by clarification given in said Circular.
- The stay order issued by High Court of Punjab & Haryana serves to maintain the status quo until further clarity is obtained from CBIC.

[Acme Cleantech Solution Private Limited vs Union of India (C.W.P. No. 10249 of 2024) dated 03 May 2024]

03

Transfer Pricing

ITAT upholds TP-adjustment w.r.t distribution proceeds sharing

Outcome: In favour of the Revenue

Category: Determination of Arm's Length Price ("ALP")

Assessment Year: 2011-12

Facts of the Case

- M/s Sony Pictures Networks India Pvt Ltd ("the taxpayer") is engaged in the business of commissioning and marketing of sports programs, events and distribution and dissemination of TV channels. The taxpayer was appointed as an agent by its Associated Enterprise ("AE") i.e. Taj Limited Mauritius ("Taj Mauritius") for providing advertising support services and distribution of ten sports channel in Indian Territory on revenue sharing model.

- During the year under consideration, the taxpayer rendered the distribution services and retained 25% and 14% of distribution proceeds pertaining to period "1.04.2010 to 30.09.2010" and "1.10.2010 to 31.03.2011" respectively. Further, for the purpose of benchmarking the aforementioned transaction, the taxpayer adopted Comparable Uncontrolled Price ("CUP") method as the Most Appropriate Method ("MAM") and selected Pakistan entity and Nepal entity as comparables which entered into similar transaction for their respective territories with Taj Mauritius.

- The Transfer Pricing Officer ("TPO") accepted the MAM i.e. CUP adopted by the assessee. However, the TPO rejected the Arm's Length Price ("ALP") of the second leg of transaction i.e. from October to March stating that no reason was given for reduction in share of distribution income from 25% to 14%. Further, the TPO noted that there was no change in the revenue of comparables i.e. Pakistan and Nepal entity for similar period.

- Also, the TPO rejected the Nepal entity transaction as comparable stating that its agreement with the AE contained a minimum guarantee clause which was absent in the agreement with the taxpayer.
- In addition to the above, the TPO rejected the Transactional Net Margin Method ("TNMM") alternatively contended by the taxpayer challenging the profit level indicator ("PLI") computation and held CUP as the MAM since the same was consistently accepted by the taxpayer and the revenue in the past years.

  Accordingly, the TPO proposed an upward Transfer Pricing ("TP") adjustment.
- Additionally, the taxpayer incurred an international transaction of reimbursement of expenses incurred by the AE on cost-to-cost basis. However, the Ld. TPO challenged the need/benefit of such expenses incurred and determined the ALP of the aforesaid transaction at 'Nil'.
- Aggrieved by the same, the Taxpayer preferred an appeal before the Ld. Commissioner of Income-tax-Appeals ["CIT(A)"]. However, the CIT(A) confirmed the transfer pricing adjustment proposed by the TPO. Aggrieved by the order of Ld. CIT(A), the taxpayer filed an appeal before the Income Tax Appellate Tribunal ("ITAT"/"the Tribunal").

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- The Hon'ble ITAT observed that there is no change in Function, Asset and Risk ("FAR") analysis of the two half periods of the year under consideration. However, the revenue sharing between the taxpayer and the AE has substantially changed in the second half of the year. Further, the Tribunal observed that the Pakistan entity has retained 20% of collection which clearly shows that the second leg of transaction wherein the taxpayer has retained only 14% of the distribution proceeds is not at arm's length.

  In view of the above, the Tribunal clarified that the contention of the taxpayer to consider both the transactions as single transaction and accordingly benchmarking the same in aggregation is devoid of any merit.

- Additionally, the ITAT upheld TPO's action of removing the transaction with Nepal entity as comparable considering that the agreement between the Nepal entity and the AE contained a minimum guarantee clause which was absent in the taxpayer's agreement with the AE.

- Further, the Tribunal rejected the taxpayer's contention to allow set off of the excess revenue share during one period i.e. "01.04.2010 to 30.09.2010" (25% retention) with another period i.e. "1.10.2010 to 01.04.2010" (14% retention) considering both the transactions as separate transactions.

- Also, the Hon'ble ITAT rejected the taxpayer's contention to adopt TNMM as an alternative benchmarking methodology stating that since CUP is accepted as the MAM both by the taxpayer and the tax authorities, there arises no merit to adopt TNMM.

- In respect of benchmarking of the international transaction pertaining to reimbursement of expenses, the Tribunal upheld the TPO's 'Nil' ALP after observing that the taxpayer failed to show any need/benefit of such expenditure incurred.

In view of the above, the Tribunal concluded that the CIT(A) and the TPO are justified in making transfer pricing adjustment to the distribution income proceeds retained by the taxpayer in respect of second leg of transaction. Accordingly, the Hon'ble ITAT upheld the transfer pricing adjustment on distribution income of the taxpayer and thus, rejected the appeal of the taxpayer.

Nangia's Take

- Through the instant case, the Hon'ble ITAT has emphasized that maintaining the income from distribution proceeds throughout the financial year without any alterations in the function, asset, and risk profiles suggests a commitment to preserving the arm's length principle and ensuring fair and accurate pricing. Any changes in the remuneration mechanism (i.e. percentage of distribution proceeds retained in the instant case) in the absence of corresponding adjustments in the FAR could raise concerns about the integrity of transfer pricing arrangements.
- Accordingly, the Tribunal has highlighted that any change in the remuneration mechanism for different periods of the same year without any significant change in the FAR does not warrant the taxpayer to aggregate the transactions and consider them as single transaction.

[Source: Sony Pictures Networks India Pvt Ltd [TS-169-ITAT-2024(Mum)-TP]]

04

Regulatory

Updates Under Reserve Bank of India (“RBI”)

RBI allows regularization of partly paid units issued to non-residents by investment vehicles

The RBI vide notification dated 21st May 2024 clarified that Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024, which allow issuance of partly paid units to non-residents by investment vehicles, are effective from 14th March 2024.

In order to regularise issuances of partly paid units by Alternative Investment Funds (AIFs) to non-residents before 14th March 2024, the AIFs may seek compounding from the Reserve Bank of India, after completing administrative actions, including reporting via the FIRMS Portal.

Updates under Competition Commission of India ('CCI')

CCI Introduces the Competition Commission of India (general) amendment regulations, 2024

The CCI introduced amendments to the Competition Commission of India (General) Regulations, 2009, on May 10, 2024. These amendments include:

- **Confidentiality Undertakings:** Confidentiality undertakings must now be supported by an affidavit, and cogent reasons with self-certification are required for confidentiality claims.
- **Confidentiality Ring:** Introduces the concept and outlines the process for setting up a Confidentiality Ring, including specific timelines for requesting and handling confidential information.
- **Document Access and Fees:** Streamlines the process for inspecting and obtaining certified copies of documents, with inspection fees increased from One Thousand Rupees to Two Thousand Five Hundred Rupees per day.

These amendments aim to enhance transparency, control access to confidential information, and ensure fair proceedings.

Updates under Securities and Exchange Board of India

SEBI specifies timelines for disclosures by social enterprises on Social Stock Exchange ("SSE") for FY 2023-2024

SEBI vide its circular dated 27th May 2024 has prescribed the timelines for disclosures by Social Enterprises on SSEs for FY 2023-2024, as follows:

- Disclosures under Regulation 91C (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations') –
  - Not for Profit Organizations (NPOs) registered on SSE including NPOs whose designated securities are listed on SSE, shall be required to make annual disclosures to the SSE by **31st October, 2024**;
- Disclosures under Regulation 91E (1) of SEBI LODR Regulations, 2015 –
  - Social Enterprises which has registered or raised funds through SSE shall be required to submit Annual Impact Report to SSE by **31st October, 2024**;

SEBI notifies Securities and Exchange Board of India (infrastructure investment trusts) (amendment) regulations, 2024

SEBI vide notification dated 27th May, 2024, has notified the SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2024 ('Amendment Regulations'), effective immediately, provides the following:

- The concept of “subordinate units” was introduced vide the Amendment Regulations. Corresponding to the same, the meaning of “subordinate unit” has been specified as an instrument issued by an InvIT which can be reclassified as an ordinary unit.
- Chapter IVA has been inserted to provide a framework for issuance of subordinate units. Key highlights are as follows:
  - Subordinate units can only be issued by a privately placed InvITs upon acquisition of an infrastructure project.
  - The subordinate units can be issued only to the sponsor, its associates and the sponsor group.
  - The subordinate units do not carry any voting rights or distribution rights and shall be issued in dematerialised form only.
  - Such units shall be listed on a recognised stock exchange upon their conversion into ordinary units. An in-principle approval from the recognised stock exchanges shall be obtained prior to issuance of such units.
  - The subordinate units are locked in for transfer of units till re-classification into ordinary units and shall not be transferable/ encumbrance in favour of persons other than the sponsor, its associates and the sponsor group entities.

SEBI issues framework for considering unaffected price for transactions upon confirmation of market rumour

SEBI vide its circular on 21st May 2024 issued the aforesaid framework, key highlights as follows:

- The top 100 listed companies by market capitalization will have to confirm or deny any market rumour reported in the mainstream media from 1st June 2024, and top 250 companies from 1st December, 2024.
- The concerned companies will have to 'confirm, deny, or clarify any reported event or information in the mainstream media that is not general in nature and that indicates that rumours of an impending specific material event' are circulating amongst the investing public within 24 hours from the reporting of the information.

In this framework, the SEBI has excluded the price volatility due to market rumours, in arriving at average market price for the purpose of corporate actions (such as various corporate actions such as buyback through book building, buyback through stock exchange, qualified institutional placement, preferential allotment, takeovers) for fair price determination.

Updates under Food Safety and Standards of India (FSSAI)

Advisory issued in relation to provision of updation in modification application of license/ registration in FoSCoS

In accordance with Clause 2.1.9 (1) of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011, it is the duty of the Food Business Operators ('FBOs') to ensure that the Registering or Licensing Authority always has up-to-date information on their food business establishments. In case there are modifications/ additions/ changes in product category, layout, expansion, closure, or any other material information based on which the license was initially granted, the same is required to be conveyed to the relevant authority before such changes occur.

Prior to advisory issued by FSSAI dated 16th May, 2024, FBOs could only apply for only one modification to their license/ registration, as the case maybe be at a given point of time. They had to wait for approval of the current modification before proceeding for the next one, leading to delays.

Accordingly, now FSSAI has approved the proposal to introduce additional provision in FoSCoS allowing FBOs to cancel their current modification application and apply for an updated one, thereby streamlining the process.

Other Regulatory Updates

Master circular on corporate governance for insurers, 2024

The IRDAI vide its master circular dated 22nd May 2024 issued the aforesaid Master Circular pursuant to IRDAI (Corporate Governance for Insurers) Regulations, 2024. The Master Circular is issued to provide various operational and procedural aspect for adoption by the insurers.

The key change brought by the new circular are as follows:

- Optimum board composition by insurers and prescribing key roles and responsibilities thereof. Revised criteria for fit and proper status of directors also notified;
- Mandatory to formulate Audit committee, Investment committee, Risk Management committee, Policyholder Protection, Grievance Redressal and Claims monitoring committee, Nomination and Remuneration committee, CSR committee.
- Reduction of Statutory Audit engagement term with Insurer to only up to four years with three years mandatory cooling off period.
- Clearly outlaying responsibilities of KMPs, CEO/MD/WTD, CCO.
- Prescribing various disclosures, including disclosures pertaining to Qualitative and Quantitative aspects of the Insurer;
- Issuance of Guidelines for formulation of policy on the discharge of stewardship responsibilities.

The new Guidelines aim to promote independence and fairness. Though the Master Circular comes into immediate effect, the IRDAI has given insurers time up to 30th June, 2024 to ensure compliance with the provisions (unless a different timeline is specified under different provisions).

Orders/Judgements

Registrar of Companies (ROC)

ROC order under section 134 of the companies act, 2013 in the case of M/S. Regent professional academy private limited

Applicable Laws:

Section 134(1) Of The Companies Act, 2013 specified that financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the Chairperson of the Company; where he is authorised or by two directors out of which one shall be managing director, if any, and the CEO, CFO and the Company Secretary of the Company (if appointed) for submission to auditor for his report thereon.

Further, as per Section 134(8) of the Act, if a Company defaults in complying with the provision of Section 134 of the Act , the Company shall be liable to a penalty of Three Lakh Rupees and every officer of the Company who is in default shall be liable to penalty Fifty Thousand Rupees.

Facts of the intant case

M/s. Regent Professional Academy Private Limited (hereinafter referred as Company) is a Company registered in Gwalior, Madhya Pradesh. ROC received the notice from Regional Director to take necessary action against the Company for filing of the balance sheet for FY 2020-21 without the signature of Auditors and Directors. Accordingly, Show Cause Notice was issued by the ROC to the Company against which Company submitted that due to the conditions of COVID-19 and other personal issues, the unsigned copy was mistakenly attached in place of signed copy and the signed financial statements has been duly attached.

Order

ROC Madhya Pradesh, after considering the facts and circumstances of the case, held that the Company and its officer in default has violated Section 134(1) of the Act and are liable under Section 134(8) of the Act. ROC imposed the following penalty.

Company/Officer in default	Penalty (In Rs.)
M/s. Regent Professional Academy Private Limited	3,00,000
Sh. Govind Prasad Marg	50,000
Smt. Savitri Garg	50,000

ROC Order under section 203 of the companies act, 2013 in the case of M/S. Shiv VILAS resorts private limited

Applicable Laws:

Section 203(1) of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 specifies that every company belonging to such class or classes of companies as may be prescribed shall have the specified whole-time key managerial personnel. Specifically, every Private Company which has a paid-up share capital of ten crore rupees or more shall have a whole-time Company Secretary.

According to Section 203(5) If any company makes any default in complying with the provisions of this Section, such company shall be liable to a penalty of Rs.5,00,000/- and every Director and KMP of the company who is in default shall be liable to a penalty of Rs.50,000/- and where the default is a continuing one, with a further penalty of Rs.1,000/- for each day after the first during which such default continues but not exceeding Rs.5,00,000/-.

Facts of the instant case

Shiv Vilas Resorts Private Limited (hereinafter referred as Company) is a Company registered in Jaipur, Rajasthan. During the inspection, the ROC observed from the Form MGT-14 filed for FY 2020-2021 that there is a violation of Section 203 as post of Company Secretary in the Company is vacant. Further, show cause notice was issued against the Company by the ROC and hearing was fixed where authorized representative of the respondent submitted that Company appointed the Company Secretary w.e.f 12th June 2023 but due to the implementation of MCA V3 portal, company could not file Form DIR-12. Hence, there is no violation of Section 203 of the Act.

Order

ROC, after considering the facts and circumstances of the case adjudicated the matter and held provisions of Section 203 OF The Companies Act, 2013 read with Rule 8A of The Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 has been complied by the respondents and are not liable for penalty in the matter.

05

Compliance Calendar

Due dates	Particulars
7th June 2024	Due date for deposit of Tax deducted/collected for the month of May, 2024.
	Due Date for payment of Equalisation Levy on online advertisement and other specialised services, referred to in Section 165 of Finance Act 2016 for the month of May 2024.
14th June 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of April, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of April, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of April, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194S (by specified person) in the month of April, 2024.

15th June 2024	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March, 2024.
	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2023-24.
30th June 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of May, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of May, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of May, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S (by specified person) in the month of May, 2024.
	Due date for furnishing of Equalisation Levy statement for the Financial Year 2023-24.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in June 2024
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11th day of succeeding month	For Tax Period May 2024- 11th June 2024
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20th day of succeeding month	For Tax Period May 2024- 20th June 2024
3	**QRMP Scheme** Invoice furnishing facility ('IFF')	Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	For Tax Period May 2024 – 1st to 13th June 2024

	Form GST PMT-06 (Monthly payment of tax	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25th of the succeeding month	For Tax Period May 2024 - 25th June 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period May 2024- 13th June 2024
5	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source.	Monthly	10th of the succeeding month	For Tax Period May 2024- 10th June 2024
6	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period May 2024- 10th June 2024

Segment	Particulars	Due Dates
ECB Borrowers	ECB Return (ECB-2)	7th June, 2024
DPT-3	Reporting of deposits and exempted deposits	30th June, 2024

NOIDA
(Delhi NCR - Corporate Office) A-109, Sector - 136, Noida - 201304, India
T: +91 120 2598000

GURUGRAM
001-005, Emaar Digital Greens Tower-A 10th Floor, Golf Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI
Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand Lights, Chennai - 600006 T: +91 44 46549201

PUNE
3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune Central Mall, Shivajinagar, Pune - 411005, India

DELHI
(Registered Office) B-27, Soami Nagar, New Delhi - 110017, India T: +91 120 2598000

MUMBAI
4th Floor, Iconic Tower, URMI Estate, Ganpat Rao Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 4474 3400

BENGALURU
Prestige Obelisk, Level 4, No 3 Kasturba Road, Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN
1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001, Uttarakhand, India T: +91 135 271 6300

www.nangia-andersen.com | query@nangia-andersen.com

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