

VEDANAM

A monthly newsletter by Mehta & Mehta



WHY VEDANAM?

Knowledge is Power

Vedanam covers monthly regulatory updates under various laws. It highlights recent judgements and amendments. It covers synopsis of recent topics and laws. It has and will always strive hard to spreading knowledge to professionals.

What's inside this issue

- Regulatory Updates
- Amendments under Insolvency Bankruptcy Code
- Case Laws
- Articles
- Highlights of weekly Knowledge session

Regulatory Updates

Ministry of Corporate Affairs (MCA):

The MCA has inserted COVID-19 vaccination for persons other than employees and their families as an eligible CSR spending under Schedule VII(i)

<https://www.mca.gov.in/bin/dms/getdocument?mds=LYGLgEX5HiF2cj%252FEWInVfA%253D%253D&type=open>

The MCA has revised e-form MGT-7A and eform MGT-7 in line with the Companies (Management and Administration) Amendment Rules, 2021. Form MGT-7A is the newly introduced form for One Person Companies & Small Companies.

<https://www.mca.gov.in/MinistryV2/companyformsdownload.html>

The MCA has introduced Rule 33A which allots new name to the existing Company when the Company fails to change its name or new name in accordance with the direction issued under Section 16(3) of Companies Act 2013.

<https://www.mca.gov.in/bin/dms/getdocumentmds=xBAsF0oY7R3foZZqFw4y0A%253D%253D&type=open>

The MCA has extended due date of eform CFSS-2020 filing till 31st August 2021.

www.mca.gov.in

Securities Exchange Board of India (SEBI)

SEBI has extended due date of holding Annual General Meeting by top 100 listed Companies by market capitalization by six months from end of financial year 2020-21.

<https://www.sebi.gov.in/legal/circulars/jul-2021/extension-of-time-for-holding-the-annual-general-meeting-agm-by-top-100-listed-entities-by-market-capitalization 51318.html>

All complaints received by Real Estate Investment Trusts("REIT") and Infrastructure Investment Trusts("InvIT") shall be disclosed on website and with stock exchange.

<https://www.sebi.gov.in/legal/circulars/jul-2021/continuous-disclosures-in-compliances-by-reits-amendments 51305.html>

<https://www.sebi.gov.in/legal/circulars/jul-2021/continuous-disclosures-in-compliances-by-invits-amendments 51301.html>

Insolvency & Bankruptcy Code (IBC)

In form CIRP-8, every resolution professional is required to file intimating details of his opinion and determination under regulation 35A (Preferential and other transactions)

<https://ibbi.gov.in/uploads/legalframework/f6c188806f3e1357ec641821cfc62d7e.pdf>

TEST YOUR KNOWLEDGE:

1.The company shall furnish to the Registrar verification of its registered office within a period of _____ of its incorporation in such manner as may be prescribed.

2. Section 123 of the Companies Act 2013 deals with__?

3. When did the Companies Act 2013, come into force?

4. The minimum number of members that required while you are registering a public company is__

5. The memorandum of a company is dealt under ?

You will find the answer in Vedanam. You just have to search it.

Amendments

Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 [2016] was amended to Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 [2021]

2016-

Regulation-5 Qualification and experience in clause(c) sub clause (iii)

Fifteen years' of experience in management, after receiving a Bachelor's degree from a university established or recognised by law;

2021:

a) ten years in the field of law, after receiving a Bachelor's degree in law;

(b) ten years in management, after receiving a Master's degree in Management or twoyear full time Post Graduate Diploma in Management; or

(c) fifteen years in management, after receiving a Bachelor's degree, from a university established or recognised by law or an Institute approved by All India Council of Technical Education; or

Comments

Before the advent of this amendment, there was only one qualification prescribed under this sub-clause i.e., "fifteen years of experience in management, after receiving a Bachelor's degree". Now the ambit is increased to include law graduates and people experienced in management holding Master's Degree or PG Diploma in Management. Further, institutes which are approved by All India Council of Technical Education are also covered under this sub-clause, post amendment.

Comments

Before the advent of this amendment, there was only one qualification prescribed under this sub-clause i.e., "fifteen years of experience in management, after receiving a Bachelor's degree". Now the ambit is increased to include law graduates and people experienced in management holding Master's Degree or PG Diploma in Management. Further, institutes which are approved by All India Council of Technical Education are also covered under this sub-clause, post amendment.

2021-

After clause (iv)

"Explanation 1.- For the purposes of this regulation, only professional and managerial experience shall be considered. Explanation 2.- For the purpose of computing,- (a) the total experience of 10 or 15 years under sub-clause (iii), there shall be included experience of any period under sub-clause (iv); (b) the total experience of 10 years under sub-clause (iv), there shall be included experience of any period under any of the items of that sub-clause.

Comments

1. Experience of an individual under sub-clause (iii) & (iv) shall be clubbed together for the purpose of calculating total experience under sub-clause (iii).

2. Experience of an individual under sub-clause (iv) shall be clubbed together for the purpose of calculating total experience under sub-clause (iv)

2021-

Regulation 9 - Registration for a limited period was omitted.

2016-

Regulation 12 - Recognition of Insolvency professional entities in sub regulation (1) in clause (c)

majority of its shares is held by insolvency professionals, who are its directors, in case it is a company

2021-

majority of its equity shares is held by insolvency professionals, who are its directors, in case it is a company.

Comments

By this amendment it is clarified that, the majority of shares to be held by insolvency professionals should be only equity shares and not preference shares

Amendments

Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 [2016] was amended to Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 [2021]

2016-

Provision-

Provided that the insolvency professional entities recognised as on the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018 shall comply with the provisions of clauses (a), (b) (c) and (d) on or before 30th September, 2018 and the provisions of clauses (e), (f) and (g) on or before 30th June, 2018.

2021-

“Provided that the insolvency professional entities recognised before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 shall comply with the provisions of clauses (b) and (c) on or before 31st December 2021. Explanation.- For the purposes of clause (b) of this sub-regulation, „net worth“ means- (i) the net worth as defined under section 2(57) of the Companies Act, 2013 in case of a company; (ii) sum of partners“ contribution in the capital account and their undistributed profits net of accumulated losses, if any, in case of a registered partnership firm or limited liability partnership.”;

Comments

The entities are required to comply with clauses (b) & (c), on or before 31st December, 2021.

(b) it has a net worth of not less than ₹1 crore.

(c) majority of its equity shares is held by insolvency professionals, who are its directors, in case it is a company

2021-

After Regulation 12(2)

The Board shall acknowledge an application made under this regulation within seven days of its receipt.

(4) The Board may, after examination of the application,-

(i) require the applicant to submit, within reasonable time, additional documents, information or clarification;

(ii) inspect or inquire the applicant;

(iii) require any of the directors or partners of the applicant to appear, within a reasonable time, before it in person for any clarifications, as may be necessary for the purpose of considering the application.

2016-

Regulation 13

If the Board is satisfied, after such inspection or inquiry as it deems necessary that the applicant is eligible under these Regulations, it may grant a certificate of recognition as an insolvency professional entity in Form D of the Second Schedule to these Regulations

2021-

Where the Board, after consideration of the application under sub-regulation (4) of regulation 12,- (i) is satisfied that the applicant is eligible under these Regulations, it may grant a certificate of recognition as an insolvency professional entity within sixty days of receipt of the application, excluding the time taken by the applicant for submitting additional documents, information or clarification, or appearing in person, as the case may be, under sub-regulation (4) of regulation 12; (ii) is of the prima facie opinion that the recognition ought not be granted, it shall communicate such opinion along with reasons thereof and provide the applicant an opportunity to submit its explanation within fifteen days of the receipt of the communication from the Board, to enable it to form a final opinion.

(b) The Board shall, within thirty days of receipt of the explanation, if any, submitted by the applicant under clause (a), - (i) grant a certificate of recognition as an insolvency professional entity; or

Amendments

Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 [2016] was amended to Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 [2021]

(ii) reject the application by an order, after recording reasons thereof. (c) The Board shall grant a certificate of recognition as an insolvency professional entity under clause (a) or (b) in Form D of the Second Schedule.”

Comments

Earlier, the procedural part and timeline of granting the certificate was not provided, but with the advent of this amendment, a much-clarified procedure is prescribed.

2016-

Regulation 13 in sub clause (b) and (c)

inform the Board, within seven days, when an individual ceases to be its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees

inform the Board, within seven days, when an individual joins as its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees

2021-

inform the Board, within thirty days, when an individual ceases to be its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees.

inform the Board, within thirty days, when an individual joins as its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees.

Comments

Earlier, the entities were required to inform the IBBI, admission and cessation of Directors/ Partners within 7 days, but with the advent of this amendment, the timeline is revised to 30 days

2021

First Schedule After clause (22)

An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.

Comments

The Board has clarified and restricted the limit of assignments that a particular IP shall have at a particular point of time i.e., maximum 10 assignments as resolution professional in CIRP, out of which maximum 3 assignments can have admitted claims of more than ₹1000 crore each.

Facts about Companies Act, 2013

- **Companies Act 2013 has 470 sections | 29 Chapters | 7 Schedules.**
- **230 sections of Companies Act 1956 have failed to find a place in the new Act.**
- **Companies Act 1956 has more than 658 sections while the new Act has just 470 section.**
- **India will be the first country to mandate Corporate Social Responsibility under any law.**
- **35 new definitions have been introduced in the Act.**
- **400 is the number of places where the phrase ‘As may be Prescribed’ have been mentioned in the new Act.**
- **Chapter 20 related to Winding up provisions is the longest chapter with 95 section.**

Case Laws

Insolvency & Bankruptcy Code:

Where rewards incidental to ownership of the underlying asset were not transferred, the lease does not to constitute the Financial Lease

Greater Noida Industrial Development Authority Vs. Shri Pramod Agrawal – NCLAT New Delhi

In the present matter, the Appellant was earlier treated as Financial Creditor for the dues claimed by Appellant but later on the Appellant has been treated as Operational Creditor. (In this Appeal we are not dealing with issue if such lease constitutes, even operational debt). Order dated 25.11.2019 of the Adjudicating Authority directed the Resolution Professional to consider if debt of Appellant is a Financial Debt and place it before Committee of Creditors (CoC). He did this in 6th CoC Meeting.

Answer No. 1 : 30 days

On the face of it the Lease Deed does not appear to be Financial Lease. As the Resolution Plan is stated to be already approved, when it appears that the Appellant is not a Financial Creditor, we do not wish to go into the technicalities of the manner in which it was excluded from the CoC.

The Learned Counsel for Respondent No. 1 is claiming that CA-1511/2019 was not heard. The grievance appears to be because orders with regard to excluding UCO Bank was not passed. The Respondent No. 1 does not appear to have filed any appeal against the impugned order in that regard and thus we would not give much indulgence to Respondent No. 1.

We do not find that there is any substance in this appeal. The appeal is dismissed. No orders as to cost.

<https://ibbi.gov.in/uploads/order/2021-06-24-111636-vimhq1679091c5a880faf6fb5e6087eb1b2dc.pdf>

Prevention of Money Laundering Act:

Analysis: CA Alok Kumar Agarwal is being probed in the fertiliser scam case. He was produced before a special Prevention of Money Laundering Act (PMLA) court which sent him to 10 days of ED custody.

The allegations against him include routing of proceeds of crime involved in the impugned investigations through his group entities based in India and Dubai. He facilitated cross border transfer of proceeds of crime of Rs. 40 cr to India from Dubai for monetary consideration. Investigations have revealed that a part of the proceeds of crime has been received by RJD MP A D Singh through this module.

The fertiliser scam case relates to alleged illegal commissions worth over Rs. 685 cr given to the NRI sons of Indian Farmers Fertiliser Cooperative Limited (IFFCO) Managing Director and CEO U S Awasthi and Indian Potash Ltd (IPL) Managing Director Pravinder Singh Gahlaut and others by overseas suppliers from 2007-14

Judgement: The ED's money laundering probe is based on a Report registered by the CBI against Mr. Awasthi, Mr. Gahlaut, and others, including Mr. A D Singh who was the senior vice president of Jyoti Trading Corporation (Dubai).

Answer No. 2 : Declaration of dividend

The scam is related to the import of fertilizers and raw materials by IFFCO and Indian Potash Ltd from foreign suppliers at highly inflated rates. According to the FIR, about Rs. 685 cr of illegal commissions were received via the bank accounts of companies. While Rs. 481 cr of the total amount was sent through Dubai-based Rare Earth Group, the remaining went to Mr. Awasthi's sons, Amol and Anupam; and Mr. Gahlaut's son, Vivek, who are Non-Resident Indians living in the United States.

Articles

Whatsapp has no evidentiary value?

The Supreme Court says that WhatsApp messages have no evidential value in a historical notification from the apex court, by considering the present data theft, technology encryption, decryption, and interception by various technologists, Supreme court said, "Popularity is not a measure of reliability". It summarizes, messages exchanged on WhatsApp have no evidential value and the author of such messages can't be tied to them, especially in business partnerships governed by agreements.

The bench further said, "What is the evidential value of WhatsApp these days." Security experts said, Messages received in the WhatsApp by the either party can be modified or changed, and then can be presented in the court of law, which can hamper the process of the court and deny justice, and hence it is a good move brought by the Supreme court.

Answer No. 3 : 30th August 2013

Article 141 of the Constitution of India stipulates that "law declared by the Supreme Court shall be binding on all courts within territory of India". While the Competition Commission of India is adjudicating adversarial disputes under sections 3 and 4 of the Competition Act, functions as a "Civil Court". It has been strongly relying upon exchange of sensitive commercial information between competitors via WhatsApp messages as smoking gun evidence of cartel.

Conclusion:

With the latest binding observation of the Supreme Court of India, the defendants of any cartel inquiry may have a stronger argument of mitigation against exchange of information via WhatsApp. This is an important matter to be considered during all business dealings that from now onwards messages shared on Whatsapp will no longer considered as evidence in any court of law.

International Financial Service Centre:

Introduction

IFSC means "International Financial Services Centre" which connects customers to foreign financial services. It mainly deals with cross border financial transaction, which includes exchange of financial products and services. Some Global Financial Centres are situated at London, New York, Singapore, Dubai, and India. IFSC mainly includes services like banking, insurance, asset management, and most importantly, capital market instruments like debt, equity shares and derivatives.

Establishment of IFSC The International Financial Services Centre (IFSC) has been established on 27th April 2020 under the International Financial Services Centres Authority Act, 2019. The first IFSC has been set up at Gandhinagar in Gujarat, which is said to be the first IFSC in India. Section 18(1) of the SEZ Act 2005, provides approval by Central government to companies which fall under IFSC. Such companies are unlisted, and they operate in Special Economic zones. Only one IFSC can be setup in SEZ for example one is already set up in Gujarat the other can be formed under SEZ unit of Mumbai. IFSC basically, serves world class services to residents as well as non-residents and promotes export services.

Whether it is possible for private company to set up its unit in IFSC?

Applicants who wish to register as an IFSC company must meet the following eligibility criteria:

- It shall exclusively deal in financial services wherein the entities served must be located in SEZ.
- Companies' sole purpose should be to provide financial services related to financial products.
- All companies regulated by RBI or SEBI or IRDA are eligible to set up offices in that area
- Hence private companies are not eligible to set up companies under IFSC.

Articles

Process for setting up the company in IFSC

- First step is to obtain Letter of Intent from SEZ Ltd for securing the premises on lease.
- Application should be submitted in Form F to be filed with the jurisdictional Development Commissioner, Kandla SEZ along with copy of project report and other details.
- The Development Commissioner, shall scrutinize the proposal of the unit and shall place the same before Unit Approval Committee for their consideration
- Committee shall approve, modify, or reject the proposal within 15 days of its receipt application.
- The development commissioner also issues an approval letter for the establishment of the unit, subject to approval by the relevant regulatory agency.
- SEZ unit will also have to take approval from RBI, SEBI or IRDA for setting up IFSC unit.
- SEZ unit shall be required to confirm its acceptance with the terms and conditions of LOA within 45 days of receipt.
- SEZ unit will be required to enter into a lease agreement with SEZ Limited and copy of register lease deed shall be required to be submitted with the office within 6 months of receipt of LOA.

Does company law regulate IFSC in any way?

Companies Act, 2013 is applicable to all private and public companies of IFSC. The companies under IFSC are required to prepare a statement of accounts in accordance with the Companies Act, 2013. Further, the government relaxes certain provisions of the Act and compliance with other Regulators to facilitate and increase the participation of entities in IFSC. Certain amendments are proposed in Budget 2019 for IFSC that will facilitate the regulatory framework and improve the ease of carrying out business. And further International Financial Services

Centre Authority Bill was introduced in 2019. This bill aims to bring a unified authority for regulating all financial services in the IFSCs.

Benefits available to companies which are set up under IFSC:

There are certain benefits available to companies set up in IFSC. Few of them are as follows:

1. There is an exemption from security transaction tax leviable on securities transactions entered into by non-residents through IFSC.
2. IFSC also exempts other taxes and fees such as custom duty, excise duty, central sales tax, service tax, commodity transaction tax, long term capital gain tax, Dividend Distribution Tax, VAT and Stamp Duty.
3. The government has also exempted from the charge of Global Depository Receipts that are made by non-residents on recognized stock exchanges of IFSC.
4. Companies under IFSC are exempted from Corporate Social Responsibility norms for 5 years.
5. Exemption from the requirement of taking approval from NCLT for following a different financial year than April- March.
6. SEBI has relaxed shareholding and net worth requirements for entities setting up their subsidiaries in IFSC.
7. As per Budget 2016, MAT rate is 9% where for other companies it is 18.5%
8. According to the Companies Act 2013, IFSC has 60 days to submit resolutions and agreements to ROC, while other companies have 30 days.

Answer No. 4 : 7

Articles

Conclusion

IFSC plays a key role in offshore financial transactions in India. The main goal is to return the financial services and transactions performed by Indian companies in offshore financial centers. Currently, IFSC can establish financial sector institutions such as banks, insurance companies, stock exchanges, mutual funds, alternative investment funds, and other institutions registered with SEBI. With the help of such tax deductions, with the support of subsidies and benefits provided by SEBI, IRDA, and various regulations, IFSC is gaining the momentum it needs to succeed in India.

Tax fraud under Goods & Services Tax

Tax fraud over Rs 35,000 crore detected during the financial year 2020-21.

Directorate General of GST Intelligence (DGGI) registered 8,000 fraud cases involving fake Input Tax Credit (ITC) of over 35,000 crores and a total of 426 persons including fourteen professionals such as CAs, lawyers, directors and promoters got arrested during the financial year 2020-21. The department recorded many cases which usually involve misuse of ITC provision under the GST regime and said it is the most common mode of evasion under the GST law. From the beginning, Central Board of Indirect taxes and Customs (CBIC) have been regularly detecting such cases under the GST regime. With the help of other government departments, CBIC officers are using the latest IT tools, digital evidence, and collecting information to catch and detect such fraud.

How campaign against tax evasion was intensified?

The Ministry of Finance announced that the enforcement drive against the fake invoice fraudsters and other GST evaders is likely to be performed strictly and intensively to catch and book unscrupulous elements engaged in illegal activities to defraud the government exchequer. DGGI and other CGST department also detected GST evasion involving misclassification, undervaluation, and illegal supplies of goods and services along with fake ITC.

Recently a case by DGGI Nagpur Unit was recorded against three firms which were involved in passing fraudulent ITC of Rs 214 crore and claiming refund of accumulated ITC in a fraudulent manner. These firms submitted fake rental agreements and fake electricity bills that existed only on paper without any business activities from registered place of business which was mentioned while filing ITC.

How such transactions take place?

When the registrant issues a tax invoice without delivering the goods, or services or any payment towards GST, then such invoices are considered to be "Fake Invoices". Even tax fraud is carried through by making fake rental agreements and electricity bills which only exist on paper without any business activities. Even few people trade in exports of products which attract GST rate of 28 percent and Compensation Cess of 290 percent just to show and claim ITC. In this way few firms are claiming ITC by misclassification of commodities undervaluation and supplying goods and services which attract very high rate of GST.

How Professionals get involved in such frauds?

DGGI obtains IP addresses and mobile numbers which are used at the time of monthly GST return filing to catch fraudsters and even actual physical locations of premises are detected where fake firms are registered for filing of GST returns etc.

While investigating DGGI found that these firms usually issue invoices in relation to supply of manpower and consultancy services. Most units were registered in rural areas which obtained documents fraudulently.

Finance Ministry said that rigorous data mining and data analytics have helped in curbing the fake firms and fraudulent ITC claims even use of Aadhaar in GST registration will bring better control over such professionals who try to create bogus/fake firms for GST evasion by fraudulent ways and passing on of ITC.

Articles

Measures are suggested by the GST Law committee to Curb GST Fake invoicing frauds:

1. New registration applicants will have to go through various verification process like live photo, use of biometrics, Compulsory physical verification, aadhaar link and so on. The government may also seek for conditional registration for the applicant who are not trustworthy and are past defaulters.

Answer No. 5 : Section 4

2. To find existing fake dealers from the systems, The Law Committee also proposed Business Intelligence and Fraud Analytics (BIFA) tool for precise identification of current dealers who have already registered Conclusion: The enforcement drive govern by DCGI against fake invoice creators and other tax evaders are likely to intensify with an objective to catch and book all fraudulent and unscrupulous events engaged in illegal activities to defraud the government exchequer, Along with legislative and procedural changes in the law, this nationwide drive has contributed to better compliance and revenue collection.

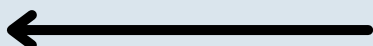
Highlights of Weekly Knowledge Sessions

Discussion on Amendments by SEBI on Independent Directors

In this session, we had experienced Panelists who shared their views on the said amendment. They raised concerns about the amendments introduced and how it will bring in change in the regulations of Independent Director. The Panelist shared their practical experiences as well.



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Highlights of Weekly Knowledge Sessions

Managerial Remuneration

In this session, entire provisions related to Managerial Remuneration were covered with varied practical examples. Questions were raised concerning the payment to Independent Directors and other Directors. Views were shared on remuneration to Directors and limits set under Companies Act, 2013.

Practical aspects of compliances of Private Limited Companies

This was an interesting session as the Panelists had given core practical examples of difficulties faced in performing compliances of Private Limited Company. They shared their views from the compliances point of view and how we can overcome the problems.

Virtual Meetings & Preferential Allotment

The recent session covered the importance of Virtual Meetings amid the COVID-19 crisis and even highlighted the challenges faced in conducting one. Beside Virtual Meetings, we had covered provisions of Preferential Allotment with recent case laws.

Watch entire videos at:

<https://www.youtube.com/channel/UCdPAz4-fA5Xs6L76MTr14nw/videos>

Mehta & Mehta is now in Kolkatta

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