



WHITESPAN
A d v i s o r y

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter



WHITESPAN
Advisory

**Happy
New Year**
❄️ 2021 ❄️

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FROM THE CHIEF EDITOR'S PEN

“Unless you try to do something beyond what you have already mastered, you will never grow.”

— Ronald E. Osborn

It gives us immense pleasure to share our 45th Edition of “WINS – e-newsletter” for January, 2021. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor's Quick Take.

In this issue we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
 - i. **Can An Arbitrator Award Pendente Lite Interest When Parties Had Agreed To Contrary Under The Terms Of Agreement?**
 - ii. **FSSAI- An Overview**
 - iii. **Latest Case Judgement and Summary Income Tax Case:**
3. Compliance checklist for the month of January 2021.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback are valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at vinayshukla@whitespan.in

with Warm Regards

WINS (Whitespan Information and News Services)

December 31, 2020

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

1. **Mr. Vinay Shukla** - Vinay is a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
1. **Ms. Jaya Yadav** - Jaya is a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
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Ministry of Corporate Affairs (MCA)

1. The Companies (Appointment and Qualifications of Directors) Fifth Amendment Rules, 2020

Date of notification: December 18, 2020

Effective date: Date of Publication in the Official Gazette

Link : http://www.mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf

MCA vide its notification dated December 18, 2020 notified the Companies (Appointment and Qualifications of Directors) Fifth Amendment Rules, 2020 by amending the Companies (Appointment and Qualification of Directors), Rules, 2014.

Key highlights of the amendment are:

- An individual eligible and willing to be appointed as an independent director shall be required to pass the online proficiency self assessment test within a period of two years instead of one year with 50% pass percentage.
- Such individual shall not be required to pass the online self assessment test if he/ she has served for a total period of not less than three years as on the date of inclusion of his/ her name in the data bank as a Director or KMP, in a listed company, an unlisted public company having a paid up share capital of rupees ten crore or more, body corporate listed on any recognized stock exchange, statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities.

2. The Companies (Compromises, Arrangements, and Amalgamations) Second Amendment Rules, 2020

Date of notification: December 17, 2020

Effective date: Date of Publication in the Official Gazette

Link : http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_18122020.pdf

MCA vide its notification dated December 17, 2020 notified the Companies (Compromises, Arrangements, and Amalgamations) Second Amendment Rules, 2020 by amending The Companies (Compromises, Arrangements, and Amalgamations), 2016.

Key highlights of the amendment are:

- Introduction of definition of corporate action - “any action taken by the company relating to the transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares, and right issue to the acquirer”.
- Insertion of new rule on purchase of minority shareholding held in Demat form:
- The company to verify the details of the minority shareholders holding shares in dematerialised form within 2 weeks from the date of receipt of the amount equal to the price of shares to be acquired by the acquirer.
- On successful payment to the minority shareholders, the company shall inform the depository to transfer the shares of such shareholders, kept in the designated DEMAT account of the company, to the DEMAT account of the acquirer.
- A copy of notice served on minority shareholders to be published in 2 newspapers of wide circulation.

3. The Ministry of Corporate Affairs has issued the Companies (Auditor's Report) Second Amendment Order, 2020

Date of notification: December 17, 2020

Effective date: Date of Publication in the Official Gazette

Link : http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmdtOrder_22122020.pdf

MCA vide its order dated December 17, 2020 notified the Companies (Auditor's Report) Second Amendment Order, 2020 by amending the Companies (Auditor's Report) Order, 2020.

Key highlights of the amendment are:

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the April 01, 2021 shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable.

4. The Companies (Share Capital and Debentures) Second Amendment Rules, 2020

Date of Notification: December 24, 2020

Effective Date: January 26, 2021

Link: http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_24122020.pdf

MCA vide its notification dated December 17, 2020 notified the Companies (Share Capital and Debentures) Second Amendment Rules, 2020 by amending e-form SH-7 (Notice To Registrar of any alteration of Share Capital).

5. Powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016

Date of Notification: December 22, 2020

Effective Date: December 22, 2020

Link: [df55d4f612f270d6c637ee4b3c8131c8.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/insolvency-and-bankruptcy-code/section-10a-of-the-insolvency-and-bankruptcy-code-2016)

MCA vide its notification dated December 22, 2020 has in view of COVID 19 pandemic, extended the period of suspension of the initiation of insolvency proceedings for fresh defaults from March 25, 2020 till March 25, 2021.

6. The Companies (Incorporation) Third Amendment Rules, 2020

Date of Notification: December 24, 2020

Effective Date: Date of Publication in the Official Gazette

Link: http://www.mca.gov.in/Ministry/pdf/ThirdAmdtRules_24122020.pdf

MCA vide its notification dated December 24, 2020 notified the Companies (Incorporation) Third Amendment Rules, 2020 by inserting a new rule “Extension of Reservation of Name in Certain Cases”:

"9A. Extension of reservation of name in certain cases — Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;

(b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;

(c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9:

Provided that the Registrar shall have the power to cancel the reserved name in accordance with sub-section (5) of section 4 of the Act."

7. Other Important Updates from MCA

Link : <http://www.mca.gov.in>

- Stakeholders may please note that there is no change in the additional fee logic of eform MGT-7 and AoC-4/AOC-4 XBRL/AOC-4 CFS/AOC-4 NBFC for the FY 2019-20 w.e.f 01 January 2021 since extension was provided to all the companies for conducting AGM and not for filing the form. Hence, the due date of form filing shall be computed based on the actual date of AGM or due date/extended due date of AGM as the case may be. Post 31st December 2020, additional fee shall be applicable from the actual date of AGM or due date/extended due date of AGM + 30/60 days as the case may be and Rs.100 per day shall be charged starting from such day even if such date falls prior to 31st December 2020.
- Stakeholders may please note that the Field 'SRN of the application filed for extension' (GNL-1) in eform MGT-7 is made optional for FY 2019-20 w.e.f 01 January 2021 due to blanket extension provided for all companies to conduct AGM. Consequently, eForm MGT-7 has been revised on MCA21 Company Forms Download page w.e.f 1st January, 2021.
- Please note that the last date for filing DIR-3 KYC for Financial year 2019-20 has expired on 31st December 2020. The process of deactivating the non-compliant DINs is in progress and will be completed shortly. Please note that web service DIR-3 KYC shall not be available for filing during the pendency of this activity. Filing of DIR-3 KYC can be made after completion of the scheduled activity, as above, when the service is made available on the portal after payment of applicable fees. Stakeholders may kindly note and plan accordingly.

Securities Exchange Board of India (SEBI)

1. Relaxation in timelines for compliance with regulatory requirements

Date of Circular : December 01, 2020

Effective Date : December 01,2020

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_48324.html

SEBI vide its circular dated December 01, 2020 has in view of the prevailing situation due to Covid-19 pandemic and representations received from the Stock Exchanges, extended the timelines for compliances by the trading members / clearing members, as under:

S.No.	Compliance requirements for which timelines are extended	Extended timeline
1.	Internal Audit for half year ended on September 30, 2020.	December 31, 2020
2.	System Audit for half year ended on September 30, 2020	
3.	Half yearly net worth certificate as on September 30, 2020	
4.	Cyber Security and Cyber Resilience Audit for half year ended on September 30, 2020	

2. Operational Guidelines for Transfer and Dematerialization of Re-lodged Physical Shares

Date of Circular : December 02, 2020

Effective Date : December 02, 2020

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/operational-guidelines-for-transfer-and-dematerialization-of-re-lodged-physical-shares_48336.html

SEBI vide its circular dated December 02, 2020 has laid down the operational guidelines for crediting the transferred shares into the respective demat account of the investor.

In case of the shares that are required to be locked-in, the RTA while approving / confirming the demat request, shall also incorporate / intimate the Depository about the lock-in and its period. Such shares shall be in lock-in demat mode for 6 months from the date of registration of transfer.

In case of non-receipt of demat request from the investor within 90 days of the date of Letter of Confirmation, the shares will be credited to Suspense Escrow Demat Account of the Company.

3. Additional Payment Mechanism (i.e. ASBA, etc.) for Payment of Balance Money in Calls for partly paid specified securities issued by the listed entity

Date of Circular : December 08, 2020

Effective Date :for all Call Money Notice wherein the payment period opens on or after January 01, 2021

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/additional-payment-mechanism-i-e-asba-etc-for-payment-of-balance-money-in-calls-for-partly-paid-specified-securities-issued-by-the-listed-entity_48378.html

SEBI vide its circular dated December 08, 2020 has introduced additional payment mechanism (i.e. ASBA, etc) for making subscription and/or payment of calls in respect of partly paid specified securities through SCSBs and intermediaries such as Trading Members/ Brokers - having three in one type account and Registrar and Transfer agents (RTA)

Additional Channels for making subscription and/or paying call money

Additional Channels for making subscription and/or paying call money		
Channel I	Channel II	Channel III
Online ASBA: Through an online portal of the SCSB. The SCSBs shall send the application to RTA and block funds in shareholders account	Physical ASBA: Physically at the branch of a SCSB The SCSBs shall send the application to RTA and block funds in shareholders account	Additional Online mode: using the facility of linked online trading, demat and bank account (3-in-1 type accounts), provided by some of the brokers.

The payment period for payment of balance money in Calls shall be kept open for fifteen days.

4. e-Voting Facility Provided by Listed Entities

Date of Circular: December 09, 2020

Effective Date: December 09, 2020

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/e-voting-facility-provided-by-listed-entities_48390.html

SEBI vide its circular dated December 09, 2020 has decided to enable e-voting to all the demat account holders, by way of a single login credential, through their demat accounts/ websites of Depositories/ Depository Participants in a phased manner. Demat account holders would be able to cast their vote without having to register again with the ESPs, thereby, not only facilitating seamless authentication but also enhancing ease and convenience of participating in e-voting process.

5. Framework for issue of Depository Receipts – Clarifications

Date of Circular : December 18, 2020

Effective Date: December 18, 2020

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/framework-for-issue-of-depository-receipts-clarifications_48477.html

SEBI vide its circular dated December 18, 2020 has issued a clarification on its Circular No. SEBI/HO/MRD/DOP1/CIR/P/2019/106 dated October 10, 2019 laying down a Framework for issue of Depository Receipts.

Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

- (a) who is not a person resident in India;
- (b) who is not a Non-Resident Indian (NRI)

The onus of identification of NRIs holders, who are issued DRs in terms employee benefit scheme, would lie with the listed company. The listed company shall provide the information of such NRI DR holders to the designated depository for the purpose of monitoring of limits.

6. Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Subrule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

Date of Master Circular: December 22, 2020

Effective Date: December 22, 2020

Link: https://www.sebi.gov.in/legal/master-circulars/dec-2020/master-circular-on-i-scheme-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48531.html

SEBI vide its master circular dated December 22, 2020 has in order to enable the users to have access to the applicable circulars at one place, prepared a Master Circular in respect of Schemes of Arrangement. This Master Circular is a compilation of relevant and updated circulars issued by SEBI which deal with Schemes of Arrangement and which are operational as of the date of this circular. In case of any inconsistency between the Master Circular and the applicable circulars, the content of the relevant circular shall prevail.

SEBI | Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

7. Relaxation in Timelines for Compliance with Regulatory Requirements

Date of Circular: December 31, 2020

Effective Date: December 31, 2020

Link: https://www.sebi.gov.in/legal/circulars/dec-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_48625.html

SEBI vide its circular dated December 31, 2020 has In view of the prevailing situation due to Covid-19 pandemic and representation received from the Stock Exchanges, it has been decided to extend the timelines for compliance with the

S.No	Compliance requirements for which timelines are extended	Extended timeline / Period of exclusion
1	Maintaining call recordings of orders/ instructions received from clients.	February 28, 2021.
2	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	Period of exclusion shall be from January 01, 2021 till February 28, 2021. A 15-day time period after February 28, 2021, is allowed to clear the back log.

Reserve Bank of India (RBI)

1. The Foreign Exchange Management (Export and Import of Currency) (Second Amendment) Regulations, 2020

Date of Circular : December 03, 2020

Effective Date : Date of Publishing in the Official Gazette

Link: <http://egazette.nic.in/WriteReadData/2020/223487.pdf>

RBI vide its notification dated December 03, 2020 has amended the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 by way of insertion of the following new regulation:

“10. Reserve Bank’s power to restrict export or import of currency: Notwithstanding anything contained in these regulations, the Reserve Bank, may, in public interest and in consultation with the Central Government, restrict the amount of Indian currency notes of Government of India and/or of Reserve Bank, and/or foreign currency, on case-to-case basis, that a person may bring into or take outside India and prescribe such conditions as it may deem necessary.”

Central Board of Excise and Customs (CBEC)

1. HSN Code to be mentioned on Tax Invoice

Date of Notification: December 01, 2020

Effective Date: December 01, 2020

Link: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-90-central-tax-english-2020.pdf>

Central Board of Indirect Taxes and Customs vide its notification dated December 01, 2020 has notified that for class of supply as specified in the notification a registered person shall mention eight number of digits of HSN Codes in a tax invoice issued by him

Central Board of Direct Taxes (CBDT)

1. Deduction Of Tax At Source income-tax Deduction From Salaries Under Section 192 Of The Income-tax Act, 1961 During The Financial Year 2020-21

Date of Circular: December 03, 2020

Effective Date: December 03, 2020

Link: https://www.incometaxindia.gov.in/communications/circular/circular_20_2020.pdf

CBDT vide its circular dated December 03, 2020 released the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2020-21 and explains certain related provisions of the Act and Income-tax Rules, 1962 (hereinafter the Rules). All the sections and rules referred are of Income-tax Act, 1961 and Income-tax Rules, 1962 respectively unless otherwise specified. The relevant Acts, Rules, Forms and Notifications are available at the website of the Income Tax Department.

2. Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 - reg.

Date of Circular: December 04, 2020

Effective Date: December 04, 2020

Link: <https://www.incometaxindia.gov.in/communications/circular/circular-21-of-2020.pdf>

CBDT vide its circular dated December 04, 2020 issued clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020. Vide this clarification, the Ministry of Finance in continuation of circular dated 22nd April, 2020 issued more FAQ's on the scheme.

3. Deduction Of Tax At Source income-tax Deduction From Salaries Under Section 192 Of The Income-tax Act, 1961 During The Financial Year 2020-21

Date of Circular: December 03, 2020

Effective Date: December 03, 2020

Link: https://www.incometaxindia.gov.in/communications/circular/circular_20_2020.pdf

CBDT vide its circular dated December 03, 2020 released the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2020-21 and explains certain related provisions of the Act and Income-tax Rules, 1962 (hereinafter the Rules). All the sections and rules referred are of Income-tax Act, 1961 and Income-tax Rules, 1962 respectively unless otherwise specified. The relevant Acts, Rules, Forms and Notifications are available at the website of the Income Tax Department.

4. Extention of Timelines to File Income Tax Return for the FY 2019-2020

Date of Public Notice: December 30, 2020

The Government has extended the deadline to file income tax return (ITR) for FY 2019-20 for individuals from the current deadline of December 31, 2020, to January 10, 2021. The extension of the deadline is for those individuals whose accounts are not required to be audited and who usually file their income tax return using ITR-1 or ITR-4 forms, as applicable, as per the press release dated December 30, 2020:

1. Individual ITRs: 10th Jan, 2021
2. Tax Audit and other Audits: 15th Jan, 2021
3. Income Tax Returns Audit Cases: 15th Feb, 2021
4. VVS Scheme: 31st Jan, 2021
5. GSTR-9/9C 2019 20: 28th Feb, 2021

Miscellaneous Laws

1. Computation of fee payable for delay in filings under regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Date of Clarification: December 04, 2020

Link: <https://ibbi.gov.in/uploads/legalframework/60e18951f684c85b59ab3485e25081aa.pdf>

Insolvency and Bankruptcy Board of India vide its clarification dated December 04, 2020 clarified that filing of a Form under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

2. IFSC(Banking) Regulation, 2020 – Guideline on determination of net worth of ‘Qualified Individual’ and ‘Qualified Resident Individual’

Date of Circular: December 11, 2020

Effective Date: December 11, 2020

Link: <https://ifsc.gov.in/Viewer/Index/126>

International Financial Services Centres Authority vide its circular dated December 11, 2020 laid down the Guidelines on determination of net worth of ‘Qualified Individual’ and ‘Qualified Resident Individual’.

The following points constitute the ‘Guideline’ to the BUs for determining the net worth of individuals to establish their eligibility as QI / QRI, under the Regulations.

- a) The Authority has specified the minimum net worth criterion for establishing the eligibility at the time of opening of a deposit account with a BU to underline the importance of ‘suitability’ aspect in respect of individuals.
- b) The net worth for individual shall be calculated as total assets owned less total liabilities. Any intangible assets (goodwill, trademark, IPR, etc) shall be excluded from total assets. The liabilities shall include secured as well as unsecured liabilities. The net worth shall be assessed based on the position as at the end of the financial year preceding the financial year of the date on which the deposit account is opened.
- c) The BUs shall obtain necessary certification (e.g. by a Chartered Accountant / Certified Public Accountant or such equivalent certified professional in the respective jurisdiction) to satisfy themselves about the individual’s eligibility as ‘QI’ or ‘QRI’, under the net worth criterion, before opening an account for the individual.

Article 1

CAN AN ARBITRATOR AWARD PENDENTE LITE INTEREST WHEN PARTIES HAD AGREED TO CONTRARY UNDER THE TERMS OF AGREEMENT?

The Hon'ble Supreme Court of India in case titled **Chittaranjan Maity Vs. Union of India** decided on **03.10.2017**, has reaffirmed the position under **Section 31(7)(a)** of the **Arbitration and Conciliation Act, 1996** (hereinafter called as "**1996 Act**") that when parties had agreed under the terms of the agreement that *pendente lite* interest shall not be payable, the Arbitrator cannot award interest between the date on which the cause of action arose till the date of the award.

Facts of the case:

The Supreme Court granted leave to appeal challenging the legality and correctness of the judgment dated **29.09.2011** passed by the Division Bench of the Calcutta High Court wherein the Division Bench had set aside the judgment and order of the Single Bench dated 27.01.2009.

The matter involved two questions of law as below:

- 1.** Whether the Division Bench was justified in considering the arbitrability of the dispute raised by the Respondent for the first time in the appeal on the basis of a "No Claims Certificate" issued by the Appellant to the Respondent; and
- 2.** Whether the Arbitral Tribunal was justified in awarding interest on the delayed payments in favour of the Appellant in view of specific clause in the agreement prohibiting award of pre-award interest.

In the present case, the Appellant's tender in response to the invitation of the Respondent for execution of balance of earth work for formation of banks for laying railway line, roads, platforms and miscellaneous work in connection with the new goods terminal yard of South-Eastern Railway at Sankrail in Howrah District was accepted. An agreement was entered into by and between the Appellant and the Respondent on **22.08.1991**, wherein the General Conditions of the Contract (GCC) were incorporated and the parties were bound by the terms and conditions thereof. Disputes and differences arose between the parties regarding execution of work and its purported abandonment and accordingly the Appellant demanded reference of the dispute to arbitration. Ultimately, the Appellant filed an application under Section 11(6) of the 1996 Act for appointment of an arbitrator before the Calcutta High Court and pursuant to the Order, the Arbitral Tribunal was constituted which adjudicated the disputes raised by the parties. The Arbitral Tribunal passed an award on **20.09.2006** in favour of the Appellant. The Respondent moved an application under Section 34 of the 1996 Act for setting aside the award. The Single Bench of the Calcutta High Court dismissed the application which was again challenged by the Respondent before the Division Bench. In the appeal before the Division Bench it was contended that the Appellant had issued a "No Claims Certificate" to the Respondent for the first time, thereby forfeiting their right for any claim from the Respondent.

In regards to award of *pendente lite* interest it was contended that in view of Clause 16(2) of the GCC, no interest could have been awarded to the Appellant. Clause 16(2) of the GCC read as follows:

"16(2) – No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities deposit in terms of sub-clause (1) of this clause will be repayable (with) interest accrued thereon."

The Division Bench by its judgment set-aside the judgment of the Single Bench by allowing the appeal of the Respondent.

Being aggrieved and dissatisfied with the order dated **29.09.2011**, the Appellant preferred Special Leave Petitions before the Hon'ble Supreme Court.

Judgment

The Supreme Court partly allowed the Appeal and decided the issue of arbitrability of the claim in light of the issuance of the "No Claims Certificate" in favour of the Appellant whereas on the issue of award of interest relied upon the specific agreement between the parties prohibiting award of *pendente lite* interest to hold that the Appellant was not entitled to any interest up to the date of the award.

On the issue of "No Claims Certificate" the Supreme Court accepted the position of law laid down in National Insurance and Mcdermott International Inc. to hold that the Division Bench was not justified while considering the arbitrability of the disputes for the first time, particularly, when the Respondent had not urged the issue relating to "No Claims Certificate" before the Chief Justice of the Calcutta High Court, the Arbitral Tribunal or before the Single Judge.

On the issue of awarding of *pendente lite* interest, the Supreme Court compared the position of law as prevailing under the Arbitration Act, 1940 with the provision contained in Section 31(7)(a) of the 1996 Act. The Supreme Court noted that a specific provision has been created under the 1996 Act whereby if the agreement prohibits award of interest for the pre-award period (i.e. *pendente lite* period), the Arbitrator cannot award interest for the said period. The specific bar contained in Clause 16(2) of the GCC was also considered.

Hon'ble Court observed that in view of specific provision contained in Section 31(7)(a) of the 1996 Act, award of interest has been made subject to any agreement to the contrary between the parties. In the present case, Clause 16(2) of the GCC expressly barring award of interest would therefore prevail over the power of the Arbitrator to award interest. Hence, it was held that the Appellant was not entitled to any *pendente lite* interest.

Conclusion:

The 1996 Act under the provisions contained in **Section 31(7)(a)** of the 1996 Act specifically provides that "*unless otherwise agreed by the parties*", in case of a monetary award, the Arbitral Tribunal may include in the sum for which the Award is made interest, at such rates as its deem reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the Award is made.

Therefore, what is significant to note under the 1996 Act is that, if the Agreement bars payment of interest, the Arbitrator cannot award interest from the date of cause of action till the date of award. Moreover the difference between pre-reference period and the *pendente lite* interest has disappeared in so far as the award of interest by the Arbitrator is concerned. The said provision recognizes only two periods, i.e. pre-award and post-award period.

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.

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Article 2

FSSAI- AN OVERVIEW

1. Importance of FSSAI License Registration?

Maintaining the food quality levels in order to ensure safety and providing satisfaction to every consumer is the aim of every Food Business Operator. Food safety and standards authority of India (FSSAI Registration) plays an important role in formulating the controlling procedures.

2. FSSAI License Registration Procedure ?

There are 4 steps including fssai license registration procedure that are following:- Selection of kind of business
Selection of food category
Selection of type of license
Documentation
Issue of certificate

3. FSSAI License Registration Documentations ?

Common documents required for obtaining FSSAI registration:-

- FSSAI declaration
- Photo Identity of FBO
- Proof of possession of premises (eg. Rental Agreement)
- Partnership Deed / Certificate of Incorporation / Articles of Association etc.
- List of food products to be dealt with.
- Food safety management system plan

4. Type of FSSAI License Registration ?

Basic registration: It includes business having turnover up to 12 lakh in a year

State license: business having turnover between 12 lakh to 20 cr in a year comes under state license Central license: business having turnover above 20 cr comes under central license, any business doing export and import also come under central license

5. How to Renew FSSAI License ?

To continue the business, it is required to be renewed before the expiry of the FSSAI License validity. If your food license expiry is keeping close stay attentive and remember you have to apply 30 days prior to the FSSAI License or registration Expiry date.

6. For whom it is mandatory to obtain the FSSAI License IN India ?

It is mandatory for the following individuals or entities to obtain FSSAI Registration or License as per the rules and regulation of the Food Safety and Standard Act, 2006:

- All types of Food Manufacturers
- Food Packaging unit
- Food Storage unit
- Wholesale food business operators
- Food Traders
- Online Food Business Operator
- Caters or Hotel

7. What are the Criteria for FSSAI Registration ?

Registrations are granted to small or petty FBOs whose annual turn- over does not exceed Rs. 12 lakhs Registrations are granted by the Registering Authority who may be Designated Officer/ Food Safety Officer or any official in Panchayat, Municipal Corporation or any other local body or Panchayat in an area, notified by the State Food Safety Commissioner Documents required while applying for a Registration:-

Application in Schedule-1

Fees @Rs. 100/- per annum

Address proof (Government documents like Voter ID card)

Photograph of applicant

Registration Card should be exhibited at a prominent place of business premise.

8. Who will Issue License to Food Business Operators Under Railways Premises ?

FSSAI license/Registration for food premises under Railways are issued by the Railways Designated Officers/FSO notified by Food Authority from time to time.

9. How can a Consumer Register his Complaint or Grievance ?

Consumers can connect to FSSAI through various channels. Consumers can register their complaints and feedbacks about food safety issues related to adulterated food, unsafe food, substandard food, labelling defects in food and misleading claims & advertisements related to various food products.

10. For whom it is mandatory to obtain Central License from central Licensing Authority ?

- Vegetable oil processing units and units producing vegetable oil by the process of solvent extraction and refineries including oil expeller unit having installed capacity more than 2 MT per day.
- Dairy units including chilling units- handle or process more than 50,000 litres of liquid milk per day or 2500MT of milk solid per annum

All slaughter houses equipped to slaughter more than 50 large animals or 150 or more small animals including sheep and goats or 1000 or more poultry birds per day. Meat processing units equipped to handle or process more than 500 kg of meat per day or 150 MT per annum.

- All food processing units other than mentioned under (a) to (d) including relabellers and repackers having installed capacity more than 2 MT/day except grains, cereals and pulses milling units.
- 100 % Export Oriented Units.
- All Importers importing food items including food ingredients and additives for commercial use.
- All food business operators manufacture any article of food containing ingredients or substances or using technologies or processes or combination thereof whose safety has not been established through these regulations or which do not have a history of safe use or food containing ingredients which are being introduced for the first time into the country.
- Food Business Operator operating in two or more states.
- Food catering services in establishments and units under Central Government Agencies like Railways, Air and airport, Seaport, Defence etc.
- Storage units other than those having controlled atmosphere and cold environment having capacity of more than 50,000 MT.
- Cold or Refrigerated Storage having capacity of more than 10,000 MT. Controlled Atmosphere + Cold Storage having capacity of more than 1,000 MT.

- Wholesalers having turnover of more than Rs.30 crores per annum.
- Retailers having turnover of more than Rs.20 crores per annum.
- Distributors having turnover of more than Rs.20 crores per annum.
- Suppliers having turnover of more than Rs.20 crores per annum.
- Caterers having turnover of more than Rs.20 crores per annum.
- Hotels – Five Star & Above.
- Restaurants having turnover of more than Rs.20 crores per annum.
- Transporters having more than 100 vehicles or turnover of more than Rs.30 crores per annum.
- Marketers having turnover of more than Rs.20 crores per annum.

Source: <https://fssaiindia.in/>

Disclaimer: The Article is based on the Relevant Provisions and as per the information existing at the time of the preparation.

In no event I shall be liable for any direct and indirect result from this Article. This is only a knowledge sharing initiative.

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.



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Article 3

Article on Latest Case Judgement and Summary on the Income Tax Act

1. Withholding of refund- There were no arrears of tax relating to any assessment year and refund was claimed every year. There was no allegation that the tax was not being paid or that there was any irregularity in filing the return. From the order and the records, it was evident that there was no reason recorded for coming to the conclusion that grant of refund was likely to adversely affect the revenue. The order was unsustainable. **(Favour of Assessee)**

Huawei Telecommunications (India) Company Private Limited Vs. Union of India and Others, 6th March 2020, High Court – Punjab and Haryana

2. Reassessment Notice of Assessing Officer having no jurisdiction - Queries were raised by ITO at Dusuya and a notice u/s 148 was issued to the assessee. In response, the assessee duly affirmed that he was a non-resident Indian and that the jurisdiction to assess him did not vest with the ITO at Dusuya. Therefore the latter himself transferred the case to Addl. Director of IT (International Transaction). Therefore Dy.CIT (International Taxation) neither record any reasons to believe that income of the assessee had escaped assessment nor issue any notice u/s 148. He continued proceeding from the stage left by the ITO at Dasuya. Since ITO Dasuya did not have any jurisdiction over the assessee, notice u/s 148 issued by him without jurisdiction and was not valid. Hence any transfer of such void proceeding to the AO of competent jurisdiction did not validate his action and the proceedings. Even otherwise, as per the provision of section 127, ITO at Dasuya himself had no jurisdiction to suo motu transfer the case to the Dy.CIT (International Transaction). Transfer of the case can be ordered by the competent authority prescribed in the said provision (127). **(Favour of Assessee)**

Manjit Singh Vs. Deputy Commissioner of Income Tax (International Transaction), 17th December 2019, ITAT-Chandigarh

3. At year-end provision for expenses- Assessee having made year-end provision for various expenditure by debiting P&L account , It was required to deduct TDS in respect of such provisions even if the amounts were not credited to the respective parties 'Accounts' ; Since the assessee has not deduct TDS , the provision for expenses are liable to be disallowed u/s 40(a)(ia). **(Favour of Revenue)**

TATA Sky Ltd. Vs. ACIT , 10Th Sept. 2020, ITAT-Mumbai

4. Discount on sale of set top boxes and recharge vouchers - Sale of set-top boxes and recharge coupons for DTH services is a sale and not service falling within the ambit of the definition of commission and therefore , assessee is not required to deduct TDS u/s 194H on discount allowed on sale of set-top boxes and hardware, recharge coupons, vouchers and bonus or credit provided to subscribers including sale promotion expenses and, consequently , the same cannot be disallowed u/s 40(a)(ia). **(Favour of Assessee)**

TATA Sky Ltd. Vs. ACIT , 10Th Sept. 2020, ITAT-Mumbai

5. Withholding of refund - There were no arrears of tax relating to any assessment year and refund was claimed every year. There was no allegation that the tax was not being paid or that there was any irregularity in filling the return. From the order and the records , it was evident that there was no reason recorded for coming to the conclusion that grant of refund was likely to adversely affect the revenue. the order was unsustainable. **(Favour of Assessee)**

CIT Vs. Saw Pipes Ltd, 15th April 2019, Delhi High Court

6. Application of income to charitable purposes - Adjustment of excess expenditure of earlier year against income of current year amounts to application of income for charitable purposes. **(Favour of Assessee)**

Principal CIT (Exemption) and Others Vs. Green Wood High School, 14th Aug. 2018, Karnataka High Court

7.Organizing Garbha By Charitable Institute - The main object of the assessee could not be said to be organizing Garbha. The assessee had been supporting 120 non-government organizations. The assessee was into health and human services for the purpose of improving the quality of life in society. All objects were charitable. The activities like organizing the event of Garbha including the sale of tickets and issue passes etc. cannot be termed as a business. The two authorities had taken the view that the profit making was not the driving force or the objective of the assessee. the assessee was entitled to the exemption u/s 11 , 12. **(Favour of Assessee)**

CIT (Exemption) Vs. United Way of Baroda , 25 Feb. 2020. (Gujarat High Court

8.Reassessment Objection of notice u/s 148 must be considered – The Assessee was asked to furnish ledger copy of salary and wages during assessment 143(3), The assessee furnished the details sought by the assessing officer. The assessing officer called upon the assessee wherein copies of the various expenditure accounts were submitted. This was a classical case of non-application of mind on the behalf of Assessing Officer while passing the order rejecting the objection filed by the assessee pursuant to the issuance of notice u/s 148. The assessing officer had brushed aside the justification, explanation and reconciliation furnished by the assessee in the objections to the notice. Moreover reason recorded by the assessing officer based on incorrect facts. Salary details already submitted on demand of AO. it was evident that reopened u/s 148 on a mere change of opinion and not valid. **(Favour of Assessee)**

Kapadia Money Changers Pvt. Limited Vs. ACIT, 30th April 2019, Gujarat High Court

9.Addition u/s 69A - Cash Deposited of Collection made Post Demonetization as received Monthly Subscription / dues: The order making the assessee liable to tax at the maximum margin rate of tax u/s 115BBE was imposed. The assessee had prima facie demonstrated that the assessment proceedings had resulted in distorted conclusion on the fact that The amount collected by it during the period was huge and remained unexplained and therefore the amount was liable to treated as unaccounted money in the hands of assessee u/s 69A. The closing cash on hand during the preceding months of the same year was not much at variance with closing cash on hand as on 31.10.2016. The collection of the 01.11.2016 to 8.11.2016 was not unusual compared to its collection made during the month of November 2015. The cash deposits made by the assessee in the year 2016 were not as variance with the cash deposit made by it in the preceding year.

- Collection of the monthly subscription / dues by assessee during the period in question was reasonable as compared to the same period in the year 2015. **(Favour of Assessee)**

Salem Sree Ramavilas Chit Co. Pvt. Ltd. Vs. DCIT , 4th Feb. 2020 (Madras High Court

10. Reassessment Notice u/s 148 was based on disallowance made in assessment of subsequent year – There was no information available with the assessing officer to the assessment year 1986-87 on the basis of which he could have formed a belief that income of the assessee had escaped assessment u/s 147. The reason for the reopening of the assessment did not make any reference whatsoever to any " Information " in the possession of the assessing Officer that persuaded him to form the belief that income had escaped assessment. The only " Information " available with him was the assessment order for the AY 1987-88 and no addition was made to the income of the assessee then. If That was the only basis for the reopening it was not permissible. Thus reassessment proceedings were invalid. **(Favour of Assessee)**

Tropex Promotion and Trading Ltd. Vs. CIT , 1st April 2019 (Delhi High Court

11. Assessment - Effects of electronic proceedings : The Assessment proceeding no longer involved human interaction and were based on records alone. Such Assessment proceedings could lead to erroneous assessment if officers were not able to understand the transaction and statement of account of the assessee or nature of the assessee. The assessee was to explain its stand in writing so that the assessing officer could arrive at an objective conclusion on the facts based on the record. **(Matter Remanded to AO)**

Salem Sree Ramavilas Chit Co. Pvt. Ltd. Vs. DCIT , 4th Feb. 2020 (Madras High Court)

- **12.Cash Credit, Assessee not bound to explain sources of source:** There was no dispute as to the identity of the creditors and the genuineness of transaction. That apart the creditor had explained how the credit given to the assessee. Thus the assessee had discharged the onus which was on him according to the requirement of section 68. The Assessing Officer held that sources of Source (Gift received from sister & brother) were suspected. The department had contended that the creditors had no regular source of income to justify the advancement of the credit to the assessee. It was not required for the assessee to explain the source of the source of the creditor who provided the money to the assessee. The Tribunal was not justified in sustaining the addition u/s 68 . **(Favour of Assessee)**

Gaurav Triyugi Singh Vs. ITO , 22nd January 2020, (Bombay High Court)

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.

Authors



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M.COM and Bachelor degree of Law

Compliance Checklist

Compliance Calendar for January 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of December 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for deposit of TDS for the period October 2020 to December 2020 when Assessing Officer has permitted quarterly deposit of TDS under section 192, section 194A, 194D or 194H
- Due date for issue of certificate for tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of November, 2020
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2020 has been paid without the production of a challan
- Quarterly TCS certificate in respect of tax collected for the quarter ending December 31, 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194-IM in the month of December, 2019
- Quarterly statement of TDS deposited for the quarter ending December 31, 2019

FEMA Related Compliances

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
 - Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))

- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers

- Payment of ESI Contribution for the month of December

GST Related Compliance

- GSTR 1(Monthly) for December 2020
- GSTR 3B for December 2020
- GSTR-4 of Oct-Dec 2020 for Composition Dealer

Companies Act Related Compliance

- Due date for filing AOC-4 if (AGM is held on 31.12.2020)

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