

## **WEEKLY CORPORATE UPDATES**

*Saturday 06<sup>th</sup> August, 2022*

(Curated & compiled by)

### **Team Indiacorp Law**

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## MCA UPDATES

### *The Companies (Accounts) Fourth Amendment Rules, 2022*

*Dated: 5<sup>th</sup> August, 2022*

*Ministry of Corporate Affairs (MCA) vide its notification dated 5<sup>th</sup> August, 2022 has notified The Companies (Accounts) Fourth Amendment Rules, 2022.*

*Vide this notification, in the Companies (Accounts) Rules, 2014 in rule 3-*

*(i) in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” shall be substituted;*

*(ii) in sub-rule (5), in the proviso, for the words “periodic basis”, the word “daily basis” shall be substituted;*

*(iii) in sub-rule (6), after clause (d), the following clause shall be inserted, namely:-*

*“(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”*

*Related Link: <https://www.mca.gov.in/bin/dms/getdocument?mcs=PFI%252BHUCxmaN%252F0eZR7IC0oq%253D%253D&type=open>*

## M&A UPDATES

### *India proposes antitrust scrutiny for M&A worth over \$250 million*

*Dated: 5<sup>th</sup> August, 2022*

*India proposes mandating antitrust scrutiny for mergers and acquisitions valued above Rs. 2,000 crore (\$250 million), according to a draft law, a move lawyers said appeared aimed at global tech companies with substantial local business.*

*The proposal is part of a larger overhaul of India's competition law in a bill set to be introduced in parliament on Friday. Under current law, the Competition Commission of India (CCI) reviews mergers and acquisitions that surpass thresholds for asset size or turnover.*

*But many high-value deals between technology firms with a major presence in India have escaped scrutiny in the country because the companies involved have had few assets and low turnover.*

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Facebook's acquisition of WhatsApp in 2014 for \$19 billion, for example, required no CCI clearance, even as WhatsApp counted India as a major market, lawyers say.

New regulations by the CCI will lay out the process to determine whether an entity has "substantial business operations" in India, according to the draft of the bill, which is dated Aug. 2.

As part of the broader revamp of competition law, the government also proposes reducing the time limit for approving mergers to 150 days from 210 days.

It further proposes introducing a settlement mechanism for entities under investigation, after the CCI considered the "nature, gravity and impact of the contraventions," the draft bill stated.

Related Link: <https://economictimes.indiatimes.com/news/economy/policy/india-proposes-antitrust-scrutiny-for-ma-worth-over-250-million/articleshow/93362281.cms>

## IBBI & NCLT UPDATES

### *NCLAT restricts liquidation costs to a sum of actual costs as Liquidator didn't follow due procedure in e-auction*

Dated: 02 Aug 2022

Where Liquidator did not follow stipulated procedure in e-auction for sale of assets of corporate debtor and cost of liquidation was also going up as liquidation process was getting prolonged, Liquidator was to be directed to complete liquidation process as early as possible and liquidation cost was to be restricted to payment of actual costs incurred in liquidation process.

Related Link: [NCLAT restricts liquidation costs to a sum of actual costs as Liquidator didn't follow due procedure in e-auction - Taxmann](#)

### *Appeal against rejection of CIRP dismissed as creditor raised forged bills only to initiate CIRP to defraud other creditors: NCLAT*

Dated: 02 Aug 2022

Where appellant-operational creditor raised bills for supply without GST number, bill were forged and fabricated prepared only for initiation of CIRP against corporate debtor, which established active collusion between parties to defraud other creditors.

Related Link: [Appeal against rejection of CIRP dismissed as creditor raised forged bills only to initiate CIRP to defraud other creditors: NCLAT - Taxmann](#)

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## *CIRP plea filed after 3 yrs of date of loan becoming NPA wasn't time-barred if debt was acknowledged within 3 yrs : SC*

*Dated: 03 Aug 2022*

*A CIRP application u/s 7 is not time-barred if filed after 3 years from date of loan becoming NPA if CD acknowledged debt within 3 years.*

*Related Link: [CIRP plea filed after 3 yrs of date of loan becoming NPA wasn't time-barred if debt was acknowledged within 3 yrs : SC - Taxmann](#)*

## *Resolution plan was rightly approved as CoC didn't discriminate between all OC in approving nil payments: NCLAT*

*Dated: 04 Aug 2022 |*

*Where in resolution plan approved by CoC nil payments had been provided to all operational creditors as well as Government dues and taxes because of insufficient liquidation value, there was no discrimination amongst operational creditors in said resolution plan and, therefore, same was rightly approved by NCLT.*

*Related Link: [Resolution plan was rightly approved as CoC didn't discriminate between all OC in approving nil payments: NCLAT - Taxmann](#)*

## *Delay in filing proof of claim by appellant was to be condoned when similar relief was granted to resolution applicant*

*Dated: 04 Aug 2022*

*Where application for condonation of delay of eight days in submission of proof of claim of appellant was not considered by NCLT, however an exclusion of 245 days from CIRP period was granted to prospective resolution applicant to consider its resolution plan, benefit of condonation of delay should also have been made available to appellant and, therefore, Resolution Professional was directed to consider proof of claim of appellant.*

*Related Link: [Delay in filing proof of claim by appellant was to be condoned when similar relief was granted to resolution applicant - Taxmann](#)*

## *No violations could be attributed on part of IRP as alleged violations were due to circumstances beyond his control: IBBI*

*Dated: 05 Aug 2022*

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Where 'M' who was appointed as an IRP in CIRP of corporate debtor was issued SCN for alleged contravention of non-appointment of registered valuer and non-preparation of information memorandum, in view of fact that 'M' had put forward an agenda for appointment of registered valuer, however, CoC did not approve cost of registered valuer and that he did not find any data related to financial position of corporate debtor to prepare information memorandum.

Related Link: [No violations could be attributed on part of IRP as alleged violations were due to circumstances beyond his control: IBBI - Taxmann](#)

## **Union Bank expects to recover Rs 15,000 crore from bad loans this fiscal**

Dated: Aug 01, 2022

Union Bank of India expects to recover Rs 15,000 crore from bad loan accounts during the current fiscal year, and a bulk of this would come from accounts undergoing insolvency resolution process. It expects to make recoveries worth Rs 10,000 crore from accounts under the National Company Law Tribunal (NCLT) for resolution of bad loans in 2022-23, the bank said during an analysts conference call post June 2022-23 quarter earnings announcement last week.

Replying to a question on recovery guidance for full year 2022-23, Managing Director and Chief Executive Officer A Manimekhalai said: "The recovery will be around Rs 15,000 crore."

Besides, the public sector lender is also likely to shift a few accounts under the newly incorporated debt resolution company NARCL.

Related Link: [union bank: Union Bank expects to recover Rs 15,000 crore from bad loans this fiscal - The Economic Times \(indiatimes.com\)](#)

## **Nod to Tata Power JV's takeover of UP Transmission Co**

Dated- Aug 03, 2022

The Uttar Pradesh power regulator has approved the takeover of the South East UP Power Transmission Company by Resurgent Power Ventures, a JV between Tata Power and ICICI Bank. It had emerged as the highest bidder in February, quoting ₹3,251 crore upfront payment for the stressed transmission asset under insolvency.

The NCLT cleared the bid in June.

"This is a critical order for the power sector. This is one of the first large-scale stressed transmission projects which has been resolved through IBC (Insolvency and Bankruptcy Code) and has been accepted by the State Regulatory Commission," said SKV Law Offices advocate Shri Venkatesh, who appeared for Resurgent Power Ventures.

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## **Threshold Limit Under Insolvency And Bankruptcy Code Will Also Include Interest: NCLAT**

Dated: 29<sup>th</sup> July, 2022

The National Company Law Appellate Tribunal, Principal Bench, New Delhi comprising of Justice Ashok Bhushan, Justice M Satyanarayana Murthy and Mr. Naresh Salecha held that minimum threshold mentioned under Section 4 of the Insolvency & Bankruptcy Code, 2016 (IBC/Code) can include both the principal amount and the interest

### **Brief Facts**

The Operational Creditor supplied various yarns to the Corporate Debtor namely Bombay Rayons Fashions Ltd. (Bombay Rayons) and raised nine invoices from March, 2017 to January, 2020 for an amount of INR 2.02 Crores. Bombay Rayons paid some invoices and five invoices were remained unpaid to the Operational Creditor by the Bombay Rayons.

Thereafter, the Operational Creditor filed an application under Section 9 of the Code against Bombay Rayons which was admitted by the NCLT, Mumbai and Corporate Insolvency Resolution Process (CIRP) of Bombay Rayons was initiated by NCLT.

### **Contentions of Appellant**

It was contended by Bombay Rayons that after the amendment by the Central Government, the minimum threshold under Section 4 of the Code is INR 1 Crore but the principal debt owed to the Operational Creditor is 97.87 Lakhs which is below the threshold limit and therefore, the petition filed by the Operational Creditor is not maintainable.

### **Decision/Analysis by NCLAT**

The NCLAT noted that originally Section 4 of the Code prescribes a threshold limit of INR One Lakhs however vide notification No. S.O 1205 (E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, the threshold limit under Section 4 of IBC had been increased to INR One Crore.

The Bench further observed that the invoices raised by the Operational creditor clearly mentioned that the interest will be charged @18% after the due date of the bill.

Thereafter, Appellate Tribunal referred to the definition of Debt as defined under Section 3(11) of the Code and definition of Claim as defined under Section 3(11) of the Code and definition of Claim as defined under Section 3(6) of the Code and concluded that since the interest on delayed payment was clearly stipulated in

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*invoices and therefore, the The operational creditor will entitle for right to payment which will clearly part of debt under Section 3(11) of the IBC.*

*Therefore, the bench concluded that the total amount for maintainability of a debt as per Section 4 of the Code will include both the principal debt amount as well as the interest on the delayed payment as it was clearly stipulated in the invoice itself.*

Related Link: <https://www.livelaw.in/news-updates/national-company-law-appellate-tribunal-section-4-insolvency-bankruptcy-code-bombay-rayons-fashions-ltd-operational-creditor-205352#:~:text=2020%20issued%20by%20the%20Ministry,du%20date%20of%20the%20bill>

## SEBI UPDATES

### *Operational Circular for listing obligations and disclosure requirements for Nonconvertible Securities, Securitized Debt Instruments and/ or Commercial Paper*

*Circular No.: SEBI/HO/DDHS/DDHS\_Div1/P/CIR/2022/0000000103*

*Dated: 29<sup>th</sup> July, 2022*

*For effective regulation of the corporate bond market and to enable the issuers and other market stakeholders to get access to all the applicable circulars at one place, SEBI has issued this Operational Circular. This Operational Circular is a compilation of the relevant existing circulars, with consequent changes. The stipulations contained in these circulars have been detailed chapter-wise in this operational circular. For ease of reference, each chapter of this operational circular contains footnotes corresponding to the respective erstwhile circulars. Accordingly, the circulars listed at Annex - 1 stand superseded by this Operational Circular except circulars which were issued to 'all listed entities', which shall continue to apply to entities that have listed specified securities.*

Related Link: <https://www.sebi.gov.in/legal/circulars/jul-2022/lodr-single-operational-circular-for-listing-obligations-and-disclosure-requirements-for-non-convertible-securities-securitized-debt-instruments-and-or-commercial-paper-61345.html>

### *SEBI defers implementation of MF holders' nomination rules till October 1, 2022*

*Dated: 30<sup>th</sup> July, 2022*

*Markets regulator SEBI deferred the implementation of rules pertaining to nomination for mutual fund holders till October 1, 2022. The rules, which mandate investors, subscribing to mutual fund units, to submit details of nomination or opting out of nomination, was to come into force August 1, 2022. Now, investors, who are*

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subscribing to mutual fund units from October 1, 2022 will have the choice of providing nomination or opting out nomination.

Related Link: [https://www.business-standard.com/article/markets/sebi-defers-implementation-of-mfholders-nomination-rules-till-oct-1-122072901088\\_1.html](https://www.business-standard.com/article/markets/sebi-defers-implementation-of-mfholders-nomination-rules-till-oct-1-122072901088_1.html)

## ***Inadequate KYCs: SEBI lays down rules for deactivation of accounts***

Dated: 30<sup>th</sup> July, 2022

Capital markets regulator SEBI released a framework for automated deactivation of trading and demat accounts of investors in case of inadequate Know Your Client (KYC) details. The framework will come into effect from August 31, 2022. Noting that addresses form a critical part of the KYC procedures, SEBI said that every address recorded for the purpose of compliance with the KYC procedures has to be accurate.

Related Link: [https://www.business-standard.com/article/pti-stories/sebi-lays-rules-for-automateddeactivation-of-trading-demat-accounts-in-case-of-inadequate-kycs122072901250\\_1.html](https://www.business-standard.com/article/pti-stories/sebi-lays-rules-for-automateddeactivation-of-trading-demat-accounts-in-case-of-inadequate-kycs122072901250_1.html)

## ***Two entities pay Rs 63 lakh to settle Varun Beverages case with SEBI***

Dated: 01<sup>st</sup> August, 2022

Fenton Investments and ArvindSinghania settled with markets regulator SEBI a case pertaining to alleged insider trading in the shares of Varun Beverages after paying Rs 63 lakh. The two applicants proposed to settle the alleged violations of insider trading rules "without admitting or denying the findings" through a settlement order. The regulator had conducted an investigation to ascertain whether certain entities traded in the scrip of Varun Beverages Ltd (VBL) during December 21, 2017 to January 4, 2018 on the basis of Unpublished Price Sensitive Information (UPSI) related to the company entering into a strategic partnership with PepsiCo India for sale and distribution of the larger Tropicana portfolio.

Related Link: [https://www.business-standard.com/article/markets/two-entities-pay-rs-63-lakh-to-settlevarun-beverages-case-with-sebi-122080101241\\_1.html](https://www.business-standard.com/article/markets/two-entities-pay-rs-63-lakh-to-settlevarun-beverages-case-with-sebi-122080101241_1.html)

## ***Circular on use of digital signature certificate for announcements submitted by listed companies***

Circular No.: SEBI/HO/CFD/CMD1/CIR/P/2020/145

Dated: 02<sup>nd</sup> August, 2022

Considering the advantages of using digital signature certifications for authentication of documents / filings, Stock Exchanges, in consultation with each other and SEBI, have decided to make it mandatory to file announcements under various SEBI Regulations using digital signature certification to the Stock Exchange except for Outcome of Board meeting which includes only financial result, any disclosure in which documents issued by entities other than listed company are included (For e.g., Auditors certificate, NCLT / other court's

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order, Credit Rating, etc.), Newspaper advertisement and any other disclosure as specified by Stock Exchanges from time to time. The circular shall be effective from September 01, 2022.

RelatedLink: [https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges\\_47219.html](https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges_47219.html)

## Consultation Paper on Green and Blue Bonds as a mode of Sustainable Finance

Dated: 04<sup>th</sup> August, 2022

SEBI has placed a consultation paper for public comments on Green and Blue Bonds as a mode of Sustainable Finance. Since the framework of green debt securities was laid down by SEBI, there have been multiple events in the sustainable finance space around the world, thereby necessitating a review in the Indian context. In this context, SEBI, through this consultation paper, is seeking public comments on a proposed regulatory framework:

- a. to amplify the definition of green debt securities,
- b. to introduce the concept of blue bonds
- c. to reduce the compliance cost for issuers of green debt securities with while not creating any perverse incentives that may lead to 'greenwashing'.

The public comments may be sent not later than August 31, 2022 in the prescribed format.

RelatedLink: [https://www.sebi.gov.in/reports-and-statistics/reports/aug2022/consultation-paper-on-green-and-blue-bonds-as-a-mode-ofsustainable-finance\\_61636.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug2022/consultation-paper-on-green-and-blue-bonds-as-a-mode-ofsustainable-finance_61636.html)

## SEBI amends the rules for mutual funds, defines 'associate'

Dated: 04<sup>th</sup> August, 2022

SEBI has amended mutual fund rules to remove the applicability of the definition of "associate" to sponsors that invest in various companies on behalf of the beneficiaries of insurance policies. The new rules will become effective from September 3, the Securities and Exchange Board of India (SEBI) said in a notification. Under the rules, associate includes a person who directly or indirectly, by himself, or in combination with relatives, exercises control over the Asset Management Company (AMC) or the trustee, among others. At present, there are 43 mutual fund houses, which together manage assets worth nearly Rs 38 lakh crore.

Related Link: [https://www.business-standard.com/article/pti-stories/sebi-amends-mutual-fund-rules-122080401023\\_1.html](https://www.business-standard.com/article/pti-stories/sebi-amends-mutual-fund-rules-122080401023_1.html)

## Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence

Circular No.: SEBI/HO/DDHS/DDHS\_Div1/P/CIR/2022/106

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Dated: 04<sup>th</sup> August, 2022

Securities and Exchange Board of India (Sebi) on Friday strengthened the guidelines for debenture trustees with respect to listed securities. The requirements pertaining to encumbrance, creation of security and related due diligence that needs to be carried out by Debenture Trustees (DTs) have been revised.

In a circular issued by the regulator, it said that Debenture Trustees will have to put in place an empanelment policy for empanelling external agencies for carrying out due diligence. Besides, Debenture Trustees (DT) have to formulate a policy on mitigating conflict of interest and disclose the same on their websites. The policy should include a requirement that the empanelled agency would have no pecuniary relationship with the issuer company three years prior to the issue, the regulator said.

The regulator further said that before initiating due diligence, a DT and the listed entity will have to enter into an amended debenture trust agreement with respect to security creation, initial due diligence and continuous monitoring by the DT concerned. Post carrying out the initial due diligence, the DT would have to issue a no-objection certificate to the issuer company for going ahead with proposed change in the structure or creation of security.

After creation and registration of charge, the issuer company and the DT concerned would have to enter into an amended debenture trust deed. The latter should include all the terms and conditions arising out of the due diligence carried out by the DT, and the security created by the issuer company. The issuer company, following the execution of amended debenture trust deed, will have to submit certain documents to the depositories and stock exchanges.

Related Link: [https://www.sebi.gov.in/legal/circulars/aug-2022/enhanced-guidelines-for-debenture-trustees-and-listed-issuer-companies-on-security-creation-and-initial-due-diligence\\_61629.html](https://www.sebi.gov.in/legal/circulars/aug-2022/enhanced-guidelines-for-debenture-trustees-and-listed-issuer-companies-on-security-creation-and-initial-due-diligence_61629.html)

## RBI UPDATES

### **Banks seek relief from RBI on personal loan overdraft norms**

Dated: 01<sup>st</sup> August, 2022

Banks have approached the Reserve Bank of India (RBI) seeking relaxation of its recent guidelines to allow them to issue debit cards to customers having Over-Draft (OD) accounts that are used for extending personal loans. Banks, under the aegis of the Indian Banks' Association (IBA), have urged the RBI to permit them to issue debit cards in the OD accounts that are of the nature of personal loans, where the limits are sanctioned against salary, pension, deposits and government securities, and for personal consumption. They also want to issue debit cards where such a facility is extended to Mudra and Kisan credit card accounts holders.

RelatedLink: <https://www.financialexpress.com/industry/banking-finance/banks-seek-relief-from-rbi-onpersonal-loan-overdraft-norms/2612617/>

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## **Credit card on UPI: NPCI in talks with banks for pilot**

Dated: 22<sup>nd</sup> July, 2022

The National Payments Corporation of India (NPCI), the umbrella organisation for retail payments in the country, will commence a pilot project of enabling credit cards on Unified Payments Interface (UPI) over the next two months.

Related Link: <https://indianexpress.com/article/business/banking-and-finance/credit-card-on-upinpci-in-talks-with-banks-for-pilot-8046563>

## **Cos with local investment grade ratings eligible for ECB relaxation**

Dated: 02<sup>nd</sup> August, 2022

Companies rated investment grade locally can make use of the central bank's relaxed rules on External Commercial Borrowings (ECB), the Reserve Bank of India (RBI) said on August 01, 2022, giving further regulatory clarity on creditworthiness eligibility for availing of this limited-period offer. The special dispensation will expand the universe of local borrowers seeking to tap the global money hubs for funds.

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/cos-with-localinvestment-grade-ratings-eligible-for-ecb-relaxation-rbi/articleshow/93282708.cms>

## **RBI's FI-index improves in 2022 across all parameters**

Dated: 03<sup>rd</sup> August, 2022

The Reserve Bank of India (RBI) on August 02, 2022 said that India's financial inclusion (FI) index for the year ended March 31, 2022, improved to 56.4 from 53.9 in the previous year, with the index showing growth across all the subindices, the central bank said in a press release. The index is published annually in July.

Related Link: <https://www.financialexpress.com/industry/bankingfinance/rbis-fi-index-improves-in-2022-across-allparameters/2615053/>

### **GST UPDATES**

## **GST Revenue collection for July second highest ever & 28% higher than the revenues in the same month last year**

Dated: 01<sup>st</sup> August, 2022

The gross GST revenue collected in the month of July 2022 is `1,48,995 crore of which CGST is `25,751 crore, SGST is `32,807 crore, IGST is `79,518 crore (including `41,420 crore collected on import of goods) and cess is

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₹10,920 crore (including ₹995 crore collected on import of goods). This is second highest revenue since introduction of GST. The government has settled ₹32,365 crore to CGST and ₹26,774 crore to SGST from IGST. The total revenue of Centre and the States in the month of July 2022 after regular settlement is ₹58,116 crore for CGST and ₹59,581 crore for the SGST.

Related Link: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1846881>

## **Notification issued by CBIC to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Crores from October 01, 2022**

Notification No.: No. 17/2022

Dated: 01<sup>st</sup> August, 2022

CBIC has issued notification to reduce e-Invoicing limit to Rs. 10 crores from existing limit of Rs. 20 crores w.e.f. October 01, 2022.

Related Link: [https://www.cbic.gov.in/resources/htdocs-cbec/gst/17\\_2022\\_CT\\_Eng.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/gst/17_2022_CT_Eng.pdf)

## **Introducing Single Click Nil Filing of GSTR-1**

Dated: 02<sup>nd</sup> August, 2022

Single click Nil filing of GSTR-1 has been introduced on the GSTN portal to improve the user experience and performance of GSTR-1/IFF filing. Taxpayers can now file NIL GSTR1 return by simply ticking the checkbox File NIL GSTR-1 available at GSTR-1 dashboard.

Related Link: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1846881>

## **No GST on chequebooks for customers, only on bank buying from printer**

Dated: 02<sup>nd</sup> August, 2022

Finance Minister Nirmala Sitharaman on August 02, 2022 said there is no GST on chequebooks for bank customers, as she tried to clear "misinformation" over issues related to the imposition of the levy on various products and services. Also, there is no GST on crematorium, funeral, burial, or mortuary services, the minister said and explained the Goods and Service Tax has been levied on the construction of new crematoriums.

Related Link: [https://www.business-standard.com/article/economy-policy/no-gst-on-chequebooks-for-customers-only-on-bank-buying-from-printer-fm-122080201708\\_1.html#:~:text=Finance%20Minister%20Nirmala%20Sitharaman%20on,on%20various%20products%20and%20services](https://www.business-standard.com/article/economy-policy/no-gst-on-chequebooks-for-customers-only-on-bank-buying-from-printer-fm-122080201708_1.html#:~:text=Finance%20Minister%20Nirmala%20Sitharaman%20on,on%20various%20products%20and%20services)

## **No GST on Perks to Employees, Clarifies Government Tax Body**

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Dated: 03<sup>rd</sup> August, 2022

*Perks given by employers to employees are not subjected to the Goods and Services Tax (GST), the Board of Central Excise and Customs (CBIC) has clarified. According to a recent circular, services by an employee to the employer during employment will not be considered a supply of goods or services.*

Related Link: <https://www.ndtv.com/business/employees-won-t-have-to-pay-gst-on-perks-says-taxbody-3139562>

## **Clarifications regarding applicable GST rates & exemptions on certain services**

Circular No.: 177/09/2022

Dated: 03<sup>rd</sup> August, 2022

*It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit. Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.*

Related Link: <https://taxinformation.cbic.gov.in/view-pdf/1003114/ENG/Circulars>

## **GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law**

Circular No.: 177/09/2022

Dated: 03<sup>rd</sup> August, 2022

*Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.*

Related Link: <https://taxinformation.cbic.gov.in/view-pdf/1003115/ENG/Circulars>

### **Concerns:**

M/s Indiacorp Law, Advocates & Solicitors, Noida&Jangpura Extension (New Delhi)

## *Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh*

*Circular No.:179/11/2022*

*Dated: 03rd August, 2022*

*Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.*

*Related Link: <https://taxinformation.cbic.gov.in/view-pdf/1003116/ENG/Circulars>*

## *Supreme Court directs GST Council to issue advisories to all the states for implementation of Document Identification Number to every communication sent to taxpayers*

### ***Facts of the case:***

*A Public Interest Litigation has been filed and prayed for an appropriate writ, order, or direction to the respondents – respective States and the GST Council to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons to promote transparency and accountability in the indirect tax administration. It was also requested to direct the GST Council to consider and take a policy decision in respect of the implementation of the DIN system by all the States, as it may prevent any abuse by the Departmental Officers of pre-dating communications and ratifying actions by authorizations subsequently made out in the files. The same has till date only been implemented only by two States, i.e., the States of Karnataka and Kerala.*

### ***Judgment:***

*Supreme Court held that in view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST.*

### **Concerns:**

*M/s Indiacorp Law, Advocates & Solicitors, Noida&Jangpura Extension (New Delhi)*

*The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. The Supreme Court has directed the Centre and the Goods and Services Tax (GST) Council to issue advisory to states for implementing a digital system for all communication sent by GST officers to taxpayers.*

Related Link: [https://main.sci.gov.in/supremecourt/2022/10171/10171\\_2022\\_11\\_11\\_36464\\_Judgement\\_1\\_8-Jul-2022.pdf](https://main.sci.gov.in/supremecourt/2022/10171/10171_2022_11_11_36464_Judgement_1_8-Jul-2022.pdf)

**Thanking You,**

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