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Legal Updates, Insights and Summary Judgements

This update covers:

Insights & Updates: Key Perspectives, Partner Additions, Roundtables, and Recent Developments

Adani Group Indictment: Key Updates

The U.S. District Court for the Eastern District of New York has unsealed an indictment against Gautam Adani, Sagar Adani, and Vneet S. Jaain on charges of bribery, wire fraud, and securities fraud. The allegations include a $250 million bribery scheme to secure solar energy contracts, potentially generating $2 billion in profits.

Key Impacts:

AGEL shares dropped by 36%, erasing $9.6 billion in market value.

Major investors are reassessing their stakes.

Global partnerships, including with TotalEnergies, are on hold.

The Adani Group has denied all allegations, reaffirming its commitment to compliance and transparency. This case underscores the critical need for robust corporate governance and investor diligence.

The global business community will be watching closely as legal proceedings unfold.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7269695091684831232

ANI vs. ChatGPT: A Landmark Case in AI and Copyright Law

The Delhi High Court is hearing a pivotal case between Asian News International (ANI) and OpenAI, highlighting the legal and ethical challenges at the intersection of AI and intellectual property.

Case Highlights:

Core Issue: ANI alleges unauthorized use of its copyrighted news content by OpenAI for training ChatGPT, citing intellectual property violations and reputational damage.

OpenAI's Defense: Claims adherence to fair use principles and denies direct copyright infringement.
Judicial Actions: The court has appointed experts to navigate the complexities of AI and copyright, with the next hearing scheduled for January 28, 2025.
Global Relevance: This case echoes similar legal battles worldwide, where media houses challenge AI developers over data usage and misinformation concerns.

It has the potential to set significant precedents for:

- AI innovation and training methodologies.
- Strengthened media rights and licensing agreements.
- Regulatory frameworks governing AI in India.

Why It Matters:
The outcome of this case could redefine the balance between fostering AI innovation and protecting intellectual property rights, impacting AI developers, media organizations, and policymakers alike.

To delve into the specifics, please review the information provided in the following link :
https://www.linkedin.com/feed/update/urn:li:activity:7269696396608323584

Delhi High Court's recent decision in the Niva Bupa Health Insurance case

The Delhi High Court's recent decision in the Niva Bupa Health Insurance case sets a significant precedent in safeguarding customer data privacy.

Successfully represented by Partner Mohit Bakshi and Associate Akshaja Singh, Adv. from White & Brief Advocates & Solicitors, the judgment underscores the importance of protecting sensitive information in the digital era.

To delve into the specifics, please review the information provided in the following link :
https://whiteandbrief.com/delhi-high-court-protects-customer-data-privacy-in-niva-bupa-health-insurance-case/

Powering Tax Leadership: Strategies Born at the Roundtable!

We are thrilled to announce the successful conclusion of the ***"Tax Navigator – CFOs and Tax Leaders Roundtable"***, a transformative platform where industry leaders gathered to exchange groundbreaking ideas, foster collaboration, and craft impactful strategies for the evolving tax landscape.

This exclusive Strategic Leadership Forum brought together trailblazers from esteemed organizations to explore critical aspects of tax functions, including Planning and Optimization, Compliance, and Litigation Management, fostering actionable insights and innovation.

We extend our heartfelt gratitude to Mr. Divyang Thakker, Global Head – Direct and Indirect Taxation at PI Industries (Chair), and Mr. Prateek Bansal , Tax Partner at White and Brief - Advocates & Solicitors (Co-Chair), for their exceptional leadership in steering these discussions.

Welcoming Mohit Bakshi as the Head of Litigation and Dispute Resolution

We are thrilled to welcome Mohit Bakshi former Partner at DSK Legal, as the Head of Litigation and Dispute Resolution – North India Region at White & Brief Advocates & Solicitors. With extensive expertise in litigation, arbitration, and regulatory matters, Mohit will play a pivotal role in strengthening our presence in North India.

Read more at :

https://www.barandbench.com/news/corporate/dsk-legal-partner-mohit-bakshi-joins-white-brief-as-head-of-litigation-and-dispute-resolution

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Welcoming Arvind Gurumurthy as Joint Managing Partner and Head of General Corporate, M&A, and PE/VC

We are thrilled to welcome Arvind Gurumurthy former Partner at Kochhar & Company, as Joint Managing Partner – South Region and Head of General Corporate, M&A, and PE/VC. With nearly two decades of expertise in corporate law and high-value transactions, Arvind will lead our South India operations, driving innovation and growth.

Read more at :

https://www.barandbench.com/news/corporate/kochhar-partner-arvind-gurumurthy-joins-white-brief-as-joint-managing-partner

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Launch of our New Venture - White and Brief’s Sidebar

White & Brief announces launch of New Venture - White & Brief's Sidebar

We are proud to announce our latest initiative, a dedicated transactions-focused arm designed to cater to the key drivers of growth - ***Infrastructure*** & ***Energy***, ***M&A***, ***and PE/VC***. White and Brief’s Sidebar ***represents a new chapter inour commitment toevolving and delivering best-in-class legal services toour marquee domestic and foreign clients***.

Read more here :

https://www.barandbench.com/news/corporate/white-brief-announces-launch-of-new-venture-white-briefs-sidebar

Recent Judgements

CIVIL

Ramachandra Reddy (Dead) Thr. Lrs vs Ramulu Ammal (Dead) Thr. Lrs. CIVIL APPEAL NO. 3034 OF 2012

The Supreme Court upheld a property transfer based on a settlement deed that required the transferee to care for the transferors and engage in charitable activities. A bench comprising Justice C.T. Ravikumar and Justice Sanjay Karol rejected the argument that consideration can only be in monetary form, affirming that taking care of the transferors and performing charitable work are valid forms of consideration for the transfer of immovable property. The Court observed, “What flows from the above-cited judgments as also provisions of law, is that ‘consideration’ need not always be in monetary terms. It can be in other forms as well.” referring to precedents on the matter.

The appeal was filed against a judgment by the Madras High Court, which partially overturned the concurrent findings of the Trial Court and First Appellate Court.

The dispute involved the division of a coparcenary property among heirs and the validity of a 1963 settlement deed executed in favor of Govindammal, granting her two-thirds of the property. The deed required Govindammal to care for the transferors and continue charitable work. The respondents argued that the settlement deed was essentially a gift deed, as taking care of the transferors and doing charity work could not be considered valid consideration. In contrast, the appellants sought to uphold the findings of the lower courts, which had recognized the deed as a valid settlement. The High Court, however, treated it as a gift deed and modified the division of property.

The Supreme Court, setting aside the High Court's judgment, stated that the 1963 deed was a settlement deed, not a gift deed. The Court emphasized that consideration need not always be monetary. The deed, which transferred the property to Govindammal in exchange for her care of the transferors and her commitment to charitable work, was a valid form of consideration under the law. The Court further stated that the High Court had erred in overturning the well-reasoned decisions of the Trial Court and First Appellate Court. Referring to the case Santosh Hazari v. Purushottam Tiwari (2001), the Court noted that for a second appeal to be maintainable, the substantial question of law must meet certain criteria, including whether it has been previously settled by law or a binding precedent, and whether it is material to the decision of the case. The Court concluded that none of these conditions were met in this case to justify the High Court's reversal of the concurrent findings.

Shyam Kumar Inani v. Vinod Agrawal & Ors. (2024 INSC 865) CIVIL APPEAL NO. 2845/2015

The Supreme Court observed that the mere lack of explicit boundary details in an agreement pertaining to property does not render it vague or unenforceable. The Supreme Court further held that the transferee pendente lite is bound by the outcome of the litigation and may be added as a party to the suit, especially if the transfer occurred with knowledge of the pending proceedings and in violation of an injunction. This observation came in a batch of Civil Appeals filed by Plaintiffs in a Suit for Specific Performance of a Contract, challenging the High Court's judgment, which had overturned the Trial Court's decision and dismissed the suit.

The dispute arose from khasras purchased by one Sushila Devi via a registered Sale Deed executed with the previous owner. The said Sushila Devi, now owner of the Suit Property, entered into an agreement to sell in 1990 with each of the Appellants separately after receiving consideration. The Appellants had taken over actual possession of the land having paid the entire consideration. However, the Defendants, being the legal heirs of Sushila Devi, subsequently refused to execute the Sale Deed and instead applied for mutation upon the death of the said Sushila Devi, which was allowed. As such the Appellants filed separate Suits for Specific Performance against the legal heirs of the previous owner. In the agreement executed in 1990, the Appellants had paid the full sale consideration and taken possession of the agricultural land, which they had been cultivating. The Trial Court issued an interim injunction restraining the alienation of the property, and later, the Trial Court decreed the suits. The Defendants filed an appeal before the High Court, and the High Court overturned the Trial Court's judgment, dismissing the suits. The Appellants then approached the Supreme Court. The Supreme Court noted that a purchaser who has paid full consideration and received the original title deeds would normally have taken possession. Any subsequent possession by another party would be unauthorized. The Court found the High Court's conclusion—that the Plaintiffs were not in possession and thus barred from filing the suit—untenable. The Plaintiffs had been in possession since executing the Agreement to Sell, cultivating the land, and paying land revenue, which contradicted the Defendants' claim that possession remained with the previous owner and her heirs.

The Court also addressed the sale deeds executed during the pendency of the suit, stating that they were subject to the doctrine of lis pendens and could not harm the Plaintiffs' rights under the prior Agreement to Sell. The Court concluded that subsequent purchasers from third parties would only acquire the rights of their vendors and if the vendors did not have any rights, the vendees cannot be said to be in a better position. Accordingly, the Appeals were allowed, the High Court's judgment was set aside, and the Trial Court's order was restored.

ARBITRATION

GOQII Technologies Private Limited Versus Sokrati Technologies Private Limited CIVIL APPEAL NO. 12234 OF 2024

The present appeal arises from the final judgment and order passed by the Bombay High Court in a Commercial Arbitration Application. In the instant case, Goqii Technologies Private Limited ("Appellant") sought appointment of an arbitrator under Clause 18.12 of their Master Services Agreement (MSA) to resolve a dispute over payments for services rendered by Sokrati Technologies Private Limited ("Respondent"). The High Court had dismissed the Appellant's application, stating that there was no valid dispute warranting arbitration. The factual background of the case was that the Appellant, a wellness technology company, entered into an MSA with the Respondent, a digital marketing service provider. In 2022, the MSA was extended for three years. Between August 2021 and April 2022, the Appellant paid Rs 5.53 crore for the Respondent's services. However, in mid-2022, allegations surfaced about malpractices involving Sokrati's parent company, Dentsu, leading the Appellant to conduct an independent audit. The audit revealed issues such as fraudulent clicks, poor returns on investment, and overcharging. In response to an outstanding demand under the Insolvency and Bankruptcy Code (IBC), the Appellant invoked arbitration and filed a counterclaim for refunds and damages based on the audit findings. The High Court dismissed the Appellant's request for an arbitrator, stating that while the audit report showed poor performance, it did not substantiate fraud or justify withholding payment. The High Court concluded that there was no legitimate dispute, deeming the Appellant's attempt to invoke arbitration as "dishonest" because it was based on a non-existent dispute. The High Court also noted that the Appellant had not pursued the investigation suggested by the audit report. Ultimately, the Court found that the Appellant had failed to provide sufficient evidence of deficiencies in the services provided by the Respondent.

Dissatisfied with the High Court's decision, the Appellant filed the present appeal, stating that the High Court exceeded its jurisdiction by conducting a detailed review of the facts and the audit report, which was inappropriate at the stage of Section 11 of the Arbitration and Conciliation Act, 1996. At this stage, the court should only determine whether there is a prima facie case for arbitration, and not assess the merits of the dispute. The Appellant further argued that the dispute involved complex technical issues related to digital marketing services, which required expert knowledge. The Appellant contended that the High Court should have referred the matter to arbitration, where experts could properly assess the dispute.

The Appellant clarified that the audit report, which revealed the issues, was only provided in February 2023, making it impossible for them to have raised the dispute earlier. Additionally, they had raised concerns about the invoices in emails prior to receiving the audit report, challenging the High Court's finding that the dispute had not been raised earlier. On the other hand, the Respondent's counsel argued that the High Court correctly found no genuine dispute and emphasized that a mere arbitration clause does not automatically lead to arbitration. The court must ensure that a legitimate dispute exists before referring the matter to arbitration.

The Respondent further argued that the Appellant's dispute was an afterthought and that they had never previously raised any concerns or identified deficiencies in the services provided. The Respondent contended that the Appellant was not entitled to any damages or refunds, as the claims were vague and lacked sufficient documentation and also accused the Appellant of filing the arbitration petition with mala fide intent to avoid paying legitimate dues and to disrupt the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC).

Court's Analysis: The Court reviewed the scope of judicial scrutiny under Section 11 of the Arbitration and Conciliation Act, referring to the recent judgment in SBI General Insurance Co. Ltd. vs. Krish Spinning and clarified that at the Section 11 stage, the court's role is limited to determining whether an arbitration agreement exists and whether there is a prima facie case for arbitration. The court should not engage in a detailed review of the facts or the merits of the case, as was done by the High Court in this case. The Court further emphasized that the issue of frivolity or dishonesty should be determined by the arbitral tribunal, not the referral court at this stage. The Court also clarified that while the scope of inquiry is limited, the arbitration process should not be misused to force arbitration on non-existent or mala fide claims. The arbitral tribunal can impose costs on parties found to have abused the process. Accordingly, the appeal was allowed, and the High Court's order was overturned and an arbitrator was appointed by SC to resolve the dispute, with all further legal proceedings deferred to the arbitration process.

M/S Ajay Protech Pvt. Ltd. Versus General Manag ER & ANR. CIVIL APPEAL NO.___/2024 Special Leave Petition (CIVIL) NO. 2272 OF 2024

The appeal centers on whether the Appellant's request for an extension of the mandate of the Arbitral Tribunal under Section 29A(4) of the Arbitration and Conciliation Act, 1996, should have been granted by the High Court. The Court ultimately concluded that there was "sufficient cause" to extend the time for the Arbitral Tribunal to make its award, allowing the appeal and extending the deadline until December 31, 2024. The facts of the present matter were such that the Appellant entered into a works contract with the first Respondent, and when disputes arose, the Appellant sought arbitration by issuing a notice in February 2018. The High Court appointed a sole arbitrator in February 2019. The first meeting of the Arbitral Tribunal was held in June 2019, and pleadings were completed by October 9, 2019. The statutory 12-month period for making the award began on this date, which would have expired on October 8, 2020. This period could be extended by mutual consent for an additional 6 months, extending the deadline to April 9, 2021. The COVID-19 pandemic impacted proceedings, leading to the Supreme Court's order in January 2022 excluding the period from March 15, 2020, to February 28, 2022, from the limitation period under Section 29A. Arbitration hearings were delayed, but the parties agreed to seek an extension in May 2023. The Appellant filed an application for an extension on August 1, 2023, which was dismissed by the High Court on November 3, 2023.

The key issue decided by Court in the present case was Whether an application for extension can be entertained if filed after the expiration of the Arbitral Tribunal's mandate and if the application can be entertained, whether the facts of the case justify an extension.The Appellant argued that the pandemic period should be excluded from the limitation period, as per the Supreme Court's order. They claimed that the delay in filing the extension application was due to adjournments caused by the Respondents and the complexity of the case, and that the Tribunal had been diligent.

On the other hand, the Respondents contended that the Tribunal's mandate expired in 2022, and the Appellant's application was delayed by over two years. They argued that Section 29A mandates filing for an extension before the expiration of the statutory period.

The Court addressed several key issues concerning the interpretation and application of Section 29A(4) of the Arbitration and Conciliation Act, which governs the timeline for making an arbitral award. The Court emphasized that while Section 29A(4) mandates the termination of the tribunal's mandate if the award is not made within 12 months from the completion of pleadings, this period can be extended by mutual consent for an additional 6 months. Furthermore, the provision explicitly grants the Court the power to extend the mandate even after the expiration of the statutory and extendable 18-month period, countering the Respondent's claim that the application must be filed before the mandate expires. The Court referred to the Rohan Builders case, which clarified that an application for an extension of time could be filed both before and after the expiration of the statutory period for making the award. The Court confirmed that Section 29A allows the Court to extend the time even post-expiry, as long as an application is filed. Section 29A(5) gives the Court discretion to grant an extension if sufficient cause is shown. The Court made it clear that extensions are not automatic and must be based on valid reasons.

The Court accepted the reasons for delay as justifiable and found that the delay in filing the application was not caused by any fault of the parties or the Tribunal. The Court took into account the significant disruption caused by the COVID-19 pandemic, which started before the statutory period expired and led to delays in the proceedings. Additionally, the fact that the parties agreed in May 2023 to seek an extension further supported the Appellant's case for a time extension. Given these factors, the Court concluded that there was sufficient cause to justify an extension. The Supreme Court allowed the appeal, set aside the High Court's order, and extended the deadline for the Arbitral Tribunal to make its award until December 31, 2024.

GENERAL CORPORATE

Noida Special Economic Zone Authority Vs. Manish Agarwal & Ors., CIVIL APPEAL NOS. 5918-5919 OF 2022

Recently the Supreme Court dismissed the Noida Special Economic Zone's (NSEZ) plea challenging the NCLAT's decision to approve a resolution plan. The resolution plan granted Rs. 50 Lacs against NSEZ's admitted claim of Rs. 6 Crore. While adjudicating the matter, the court came up with various propositions settling contentious views around the Insolvency and Bankruptcy Code (IBC), 2016.

The facts and circumstances that led to the instant issue arose when Respondent No.02, i.e., Shree Bhoomika International Limited (hereinafter referred to as "Corporate Debtor") was sub-leased the contentious Plot at NOIDA Special Economic Zone by the Appellant, in the capacity of lessee of the said land from the NOIDA Authority. The appellant's contention is that the Corporate Debtor began defaulting on lease payments. The corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated by the Appellant before the NCLT. The Committee of Creditors, which comprised the Sole Financial Creditor, the Stressed Assets Stabilization Fund – IDBI Bank Limited was constituted by the Interim Resolution Professional. Afterward, the Appellant filed a claim of INR 6,29,18,121/- which was admitted by the Respondent No.01 – Resolution Professional (hereinafter referred to as "RP") in entirety. Valuation of the Corporate Debtor was thereby conducted and the liquidation value was fixed at INR 04.25 Crores and not 6 Crores as claimed by the Appellant. The Resolution Plan which was prepared by Respondent No. 03 – M/s Commodities Trading, being the Resolution Applicant (hereinafter referred to as "Resolution Applicant") was put before the Committee of Creditors, which approved. An application was then filed under Sections 31(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC 2016") before the NCLT by the RP, seeking approval of the Resolution Plan on behalf of the Committee of Creditors.

The same was allowed by NCLT granting only INR 50 Lakhs to the Appellant against its admitted claim of INR 06.29 Crores. Aggrieved, the Appellant put forth its objections before the RP to the Resolution Plan and claimed payment of the entire amount of INR 06.29 Crores from the Corporate Debtor, leaving open the legal remedy to recover the full dues, in case the same was not accepted. Being aggrieved with the RP, the Appellant moved an application before the NCLT challenging the approval of the Resolution Plan. This was dismissed on the ground that NCLT lacks jurisdiction to accept the prayer made in the application, which would amount to setting aside the Resolution Plan, hence the Appellant then filed an appeal before the NCLAT.

After considering the facts, circumstances, and rival submissions of the parties, the Supreme Court decided in favor of the resolution plan. The Court reiterated its well-settled position in Duncans Industries Ltd. v. State of U.P. and Others (2000) 1 SCC 633 that the question of valuation is basically a question of facts, which does not call for any interference if it is based on relevant material on record. Following precedents such as Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC(2021) 9 SCC 657 and Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh (2020) 11 SCC 467, the Court emphasized that all claims, including statutory dues not included in an approved resolution plan, are extinguished. This includes claims by the Central Government, State Governments, and local authorities. As regards the other claims pertaining to the transfer fees, etc., the court held that they were not to be interfered with by courts or tribunals as they are related to the commercial wisdom of the Committee of Creditors who are the best persons to determine their interests, therefore any interference here is non-justiciable except as provided by Section 30(2) of IBC 2016. Section 30(2) of IBC outlines the requirements that a Resolution Plan must meet before it is approved by the Committee of Creditors (CoC) and subsequently by the Adjudicating Authority (NCLT). The provision ensures that the Resolution Plan Complies with the provisions of the law. It also provides for the payment of debts to operational creditors and financial creditors, ensuring that the interests of various stakeholders, particularly operational creditors, are not ignored. It further ensures that the Resolution Plan does not contravene any other laws of the land unless overridden by Section 238 of IBC, which gives IBC precedence over conflicting provisions of other laws.

Consequently, in the instant case, the Court reaffirmed that under Section 238 of the IBC which provides for the provisions of IBC 2016 to have an overriding effect over the other laws, IBC's provisions have an overriding effect over conflicting laws, including the Special Economic Zone (SEZ) Act. After placing reliance on the judgment of Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531, the Court stated that once a resolution plan has been approved and implemented, courts cannot interfere or grant relief to dissatisfied creditors. Hence, the Court dismissed the appellant's claim.

Bharti Airtel Limited and Another V Vijaykumar V. Iyer and Others CIVIL APPEAL NOS. 3088-3089 OF 2020

Recently, in a significant ruling, the division bench of the Supreme Court clarified the intricate application of set-offs under the Insolvency and Bankruptcy Code (IBC) within the ambit of the Corporate Insolvency Resolution Process (CIRP). The recent judgment is crucial in addressing a contentious issue, providing a meticulous examination of various categories of set-offs and their ramifications. The Supreme Court of India in this judgment addressed the interplay between the right to claim set-off and the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

In April 2016, Bharti Airtel Limited and Bharti Hexacom Limited entered into spectrum trading agreements with Aircel entities for the purchase of rights to use spectrum in the 2300 MHz band. The agreements were contingent on approval from the Department of Telecommunications (DoT), which required Aircel entities to furnish bank guarantees for pending dues. Since Aircel was unable to furnish the required guarantees, Airtel agreed to provide them on behalf of Aircel, deducting the guaranteed amount from the transaction's consideration.

The National Company Law Tribunal (NCLT) admitted insolvency petitions against the Aircel entities in March 2018. Following this, a moratorium under Section 14 of the IBC was imposed, prohibiting the enforcement of claims against Aircel entities. Airtel entities adjusted Rs. 145.20 crores owed by Aircel entities for operational charges, SMS charges, and interconnect usage charges against amounts payable under the spectrum agreements. They argued that these adjustments were valid under the doctrine of set-off.

The Supreme Court discussed the Contractual Set-Off, which arises from an agreement between parties. It does not depend on statutory provisions but is based on the mutual intention of the parties. The Court observed that for contractual set-off to apply, the claims and counterclaims must arise from closely connected transactions. In this case, the Court found that the operational charges claimed by Airtel arose from agreements unrelated to the spectrum trading agreements. Thus, the claimed set-off could not be enforced as a contractual right. Further, the court noted that Statutory or Legal Set-Off under Order VIII Rule 6 of the Code of Civil Procedure, 1908 allows a defendant to claim set-off for liquidated sums due from the plaintiff. However, the Court emphasized that statutory set-offs are inapplicable during the CIRP due to the overriding provisions of the IBC. Further, Equitable Set-Off requires a close connection between the claims, making it inequitable to enforce one without considering the other. The Court held that the operational dues and the amounts under the spectrum trading agreements did not share such a connection. Then, Insolvency set-offs under Regulation 29 of the Liquidation Regulations apply only during the liquidation process, not during CIRP. The Court clarified that the IBC's CIRP framework does not permit insolvency set-offs. The Court highlighted that the CIRP focuses on the Revival and rehabilitation of the corporate debtor, the equitable treatment of creditors, and the prevention of preferential treatment to specific creditors. The moratorium imposed under Section 14 of the IBC prohibits enforcement actions against the corporate debtor during CIRP. Allowing set-offs would be in conflict with this objective if creditors are allowed to unilaterally adjust their claims, potentially reducing the debtor's asset pool and disrupting equitable distribution.

The Court referred to British Eagle International Airlines Ltd. v. Compagnie Nationale Air France (1975 1 WLR 758) wherein the House of Lords held that contractual arrangements conflicting with insolvency laws such as preferential set-offs are void. The principle was applied to reject Airtel's reliance on contractual set-offs during CIRP.

The Court further referred to Swiss Ribbons Pvt. Ltd. v. Union of India (2019 4 SCC 17) wherein the Supreme Court emphasized the IBC's objective to ensure a time-bound resolution and equitable distribution of assets and ruled that permitting set-offs during CIRP would undermine this objective. The Court elaborated on two foundational principles of insolvency law including the Pari Passu Principle which ensures that creditors of the same class are treated equally (allowing set-offs would violate this principle by prioritizing one creditor over others) and the Anti-Deprivation Principle which prevents creditors from contracting out of insolvency laws to gain undue advantage (permitting Airtel's set-off claims would contravene this principle as well).

The Court underscored the non-obstante clause in Section 238, which gives the IBC precedence over other laws. It further emphasized that the moratorium under Section 14 bars all recovery actions, including set-offs, during CIRP. Ultimately, the Court noted that Airtel's set-off claims were based on unrelated transactions, the operational dues arose from agreements distinct from the spectrum trading agreements, and allowing the set-off would contravene the principles of mutuality and equity central to insolvency proceedings.

CRIMINAL

Pankaj Kumar Tiwari v. Enforcement Directorate Citation: 2024:DHC:8280

The present case before the Delhi High Court arising under the Prevention of Money Laundering Act, 2002 (PMLA), highlights critical aspects of bail jurisprudence, the right to liberty, and the interplay between stringent statutory provisions and constitutional mandates.

The Enforcement Directorate (ED) filed a prosecution complaint against the applicants under the PMLA, 2002. The complaint was based on an earlier investigation conducted by the Serious Fraud Investigation Office (SFIO). The predicate offense, investigated by SFIO, resulted in charges under Section 447 of the Companies Act, 2013, alongside Sections 409, 467, 468, 471, and 120B of the Indian Penal Code (IPC). In the prosecution complaint filed by ED, the allegations are that as per the SFIO investigation report, ex-promoters of M/s Bhushan Steel Ltd. (hereafter, the BSL) had obtained a loan of Rs. 56,000 Crores from various banks and financial institutions before BSL went into insolvency and CIRP was initiated. These funds were allegedly siphoned off using a complex network of over 150 shell companies. The applicants were accused of playing an instrumental role in aiding the ex-promoters. Both applicants had been in custody with ED relying primarily on statements recorded under Section 50 of the PMLA. Section 50 of the PMLA pertains to the powers of the authorities during the course of an investigation under the Act including the power of ED to summon individuals, record statements, and collect evidence in connection with money laundering offences. The High Court was tasked with determining whether prolonged incarceration and an indefinite delay in trial constituted a violation of the applicants' fundamental rights under Article 21 of the Constitution.

While addressing the nature of the allegations against the applicants, the court observed that while the ED accused them of critical involvement in the fraudulent scheme, no money had been shown to flow into their accounts, nor were they identified as direct beneficiaries. For one of the appellants, the ED relied on unsigned draft Letter of Credit (LC) templates seized from his residence as evidence. The Court noted that these documents were mere templates and unsigned, making their evidentiary value questionable. Further, the allegations regarding Zinc ingot sales were countered by the fact that BSL had already settled the matter with the Excise Department by paying a penalty, thus closing the issue. For another appellant, the allegations pertained to his role as a dummy director in several shell companies. However, the Court noted that his direct involvement or knowledge of financial transactions was not substantiated. The statements implicating him were primarily recorded under Section 50 of the PMLA, which, while admissible, would need rigorous scrutiny during trial.

It was further noted that Section 45 of the PMLA imposes strict conditions for bail and the Court must have reasonable grounds to believe that the accused is not guilty and he is not likely to commit an offense while on bail. The Court, citing the landmark case of Vijay Madanlal Choudhary v. Union of India (2022 SCC OnLine SC 929), reiterated that these twin conditions do not impose an absolute bar on bail and the discretion to grant bail lies with the court, especially when constitutional rights under Article 21 are at stake. The Court observed that certain circumstances like prolonged pre-trial incarceration and the fact that the trial's conclusion is unforeseeable would render Section 45 unduly restrictive. In this context, the Court relied heavily on recent Supreme Court judgments including Manish Sisodia v. Directorate of Enforcement (2024 SCC OnLine SC 1920), wherein the Supreme Court underscored that prolonged incarceration before trial, particularly where the accused's guilt is yet to be established, violates Article 21. Similarly, in Prem Prakash v. Union of India (2024 SCC OnLine SC 2270), the Court held that statutory bars under Section 45 must align with constitutional guarantees, emphasizing that detention should not become a substitute for punishment. The Court also referred to V. Senthil Balaji v. ED (2024 INSC 739), where the Supreme Court held that when trials are unlikely to conclude within a reasonable timeframe, courts must ensure that constitutional protections prevail over stringent bail conditions.

Hence, the Delhi High Court placed significant emphasis on the applicants' right to a speedy trial which is a cornerstone of Article 21. It noted that the investigation in the present case began in 2019, with the ED filing charges against 156 accused persons and listing 82 witnesses. Given the voluminous evidence (over 2.5 lakh pages), the Court found no realistic possibility of the trial concluding anytime soon. Citing Union of India v. K.A. Najeeb (2021) 3 SCC 713, the Court emphasized that courts cannot allow statutory provisions like Section 45 of PMLA to subjugate constitutional rights indefinitely. The court further noted the Supreme Court's instance wherein it has held time and again that "bail is the rule, and jail is the exception," and pre-trial detention must not become a punishment. Moreover, in the present case, the primary accused and other key officials had already been granted bail. Given the applicants' comparatively minor roles and lack of direct financial gain, their continued detention could not be justified on grounds of parity. In light of the foregoing analysis, the Delhi High Court granted regular bail to the applicants. The Court reasoned that the allegations, though serious, were yet to be established, and prolonged incarceration without trial infringed upon the applicants' constitutional rights under Article 21. Also, the twin conditions under Section 45 were satisfied, as the applicants posed no flight risk and had cooperated with the investigation.

Analysing SC direction for mandatory compensation to sexual assault victims by Sessions Court

The Supreme Court earlier in Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.2023 (12) SCC 1, clarified that proceeds of crime must arise from a criminal activity related to a scheduled offense that has already occurred. If the crime forming the basis of money laundering is not proven or is quashed, the entire case under PMLA would lose its foundation.

Despite the clarity provided by Vijay Madanlal's judgment, the Madras High Court recently in Vijayraj Surana adopted a different approach. In this case, the petitioner was accused of misappropriating loans taken by companies he managed. The Central Bureau of Investigation (CBI) registered a case (Regular Case "RC") and the Serious Fraud Investigation Office (SFIO) also filed a complaint under Section 447 of the Companies Act, a scheduled offense under PMLA. Section 447 deals with the punishment for fraud in relation to the affairs of a company. It is one of the most stringent provisions introduced under the Companies Act, 2013 to address fraudulent activities. The Karnataka High Court later quashed the CBI's RC, holding that the SFIO had exclusive jurisdiction to investigate the matter. Following this, the petitioner approached the Madras High Court, seeking to quash the PMLA proceedings initiated by the ED. However, the Madras High Court refused to quash the PMLA proceedings. It reasoned that the RC was quashed only on technical grounds (jurisdictional issues), not on the merits of the case. Further, the SFIO complaint under Section 447 was still pending before the Special Court in Chennai. Since a scheduled offense was still being pursued, the ED could continue its investigation under PMLA. The Court further observed that technical or procedural flaws leading to the quashing of an FIR do not automatically invalidate PMLA proceedings. Each case must be evaluated individually to decide if money laundering charges can continue. This judgment in Vijayraj Surana creates a potential conflict with earlier decisions. Under the PMLA, the Enforcement Case Information Report (ECIR), an internal document prepared by the ED, is directly tied to the existence of a predicate offense ("scheduled offense"). If the FIR or the criminal case forming the scheduled offense is quashed, the ECIR would naturally lose its legal basis. For instance, the Supreme Court in Vijay Madanlal and the Delhi High Court in Rajinder Singh Chada v. Union of India 2023 SCC OnLine Del 715 both held that an ECIR cannot survive if the predicate FIR is quashed. Moreover, the Punjab and Haryana High Court in Chetan Gupta v. Directorate of Enforcement 2024 SCC OnLine P&H 1326 explained that the scheduled offense is like a wall, and the money laundering case under PMLA is the plaster on it. If the wall collapses, the plaster cannot hold up by itself. In contrast, the Madras High Court in Vijayraj Surana gave the ECIR an independent existence, allowing it to survive even when the FIR was quashed. This interpretation introduces confusion and raises concerns about the misuse of enforcement powers.

TAX

Bharti Airtel Ltd. vs. Commissioner Of Central Excise, Pune [CA No. 10409 of 2014 judgment dated 20.11.2024]

In this ruling, the Hon'ble Supreme Court, decided the question of validity of availment of CENVAT credit on mobile tower and prefabricated buildings (PFB). There was conflicting views of two High Courts: (i) Bombay High Court in Bharti Airtel Ltd. vs. CCE [2014 (9) TMI 38] held that mobile service providers (MSPs) are not entitled to such credit; and (ii) Delhi High Court in Vodafone Mobile Services Limited v. CST, Delhi 2019 [(27) G.S.T.L. 481 (Del.)] held that MSPs are entitled to such credit. The primary point was contention was the nature of mobile towers: immovable property or movable property.

Explaining the working of the mobile towers it was stated that the mobile towers are brought to the site of installation in completely knocked down condition (CKD) or semi-knocked down condition (SKD) by the service provider. The tower is installed at an appropriate site based on technological viability. On this mobile tower the antenna is hoisted and fixed at an appropriate height. The mobile tower, in turn, is fixed to the ground or on the top of a building to provide stability and make it wobble free, for effective functioning of the antenna as it requires a particular height and stability. Excise duty paid on such towers has been claimed as credit by the MSPs.

Analysing the relevant legal provisions, the Court observed that Rule 3(1) of the CENVAT Credit Rules, 2004 ('Rules') enables a provider of taxable service to claim CENVAT credit paid on any "capital goods" or "input" received. The terms "capital goods" and "input" have been defined under Rule 2(a)(A) and the Rule 2(k) of the Rules. The Court observed that if mobile towers qualify as either "capital goods" or as "inputs" then credit will be available.

Based on such factual and legal position, the Court framed two major issues:

(i)Whether, for the purposes of availment of CENVAT Credit, mobile tower is an immovable property or movable property ('goods')?
(ii)Whether the mobile tower can be 'capital goods' as an "accessory" to the antenna which sends and receives signals?

(i) Whether, for the purposes of availment of CENVAT Credit, mobile tower is an immovable property or movable property ('goods')?

To interpret the various terms, the Court relied upon the definition of relevant terms from various statues:

(a) **goods:** Section 2(7) of the Sale of Goods Act, 1930:
"goods" means every kind of movable property other than actionable claim and money; and includes stocks, shares, growing crops, grass, and things attached to forming part of the land which are agreed to be severed before sale or under contract of sale.

(b) **movable property:** Section 3(36) of the General Clauses Act, 1897
"movable property" shall mean property of every description **except immovable property.**

(c) **immovable property:** Section 3(26) of the General Clauses Act, 1897:
"immovable property" shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.

(d) **attached to earth:** Section 3 of the Transfer of Property Act, 1882:
"attached to the earth" means—
(a) rooted in the earth, as in the case of trees and shrubs;
(b) imbedded in the earth, as in the case of walls or buildings; or
(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

After going though, a catena of case laws on characteristics of an immovable property and movable property, the Court summarised the tests which have to be applied in such case and made following observations:

Tests	Explanation	Application of test to Mobile Tower
Nature of annexation	If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is immovable.	The mobile tower is bought and brought in the CKD or SKD form from the manufacturers and same is installed at the site by assembling and fixing to the earth. The tower can be dismantled by unbolting of the nuts and bolts and without any damage to the nature of the tower.
Object of annexation	If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable.	Attachment of the plant to the foundation is not meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded. *[Relying upon CCE, Ahmedabad v. Solid and Correct Engineering Works & Ors (2010) 5 SCC 122]*
Intendment of the parties	If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.	The intention was to permanently attach it to the earth but a foundation was necessary to provide a wobble free operation to the machine.
Functionality Test	If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, then such property is movable.	Mobile tower is affixed only for the purpose of maintaining stability of the tower and keep it wobble free so that the antenna which is hoisted on it can receive and transmit the electromagnetic signals effectively and without any disturbance.
Permanency Test	If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary	Dismantling the tower may entail some damages, but such damages will be on the cables which may be required to be stripped of but no damage is caused to the tower. There may also be some damage to the
Marketability Test	If the property, can be removed from the immovable property and sold in the market, it can be said to be movable.	Removing and dismantling the tower which is affixed to the earth from the existing site can be re-assembled without causing any change in its character. It can be moved to any other place and sold in the market.

Based on the above observations the Court held that mobile towers are movable property.

W&B Comments: The question whether mobile towers are movable property or immovable property has been a long standing issue for the purposes of taxation. This question is also relevant for GST because under Section 17(5) of the CGST Act, 2017, ITC of goods and services received for construction of an immovable property (except plant and machinery) is blocked. Further, the Explanation to Section 17(5) excludes 'telecommunication towers' from the expression 'plant and machinery'. However now that the telecommunication tower has been held to be movable property such exclusion shall not result in disallowance of credit.

Aalidhra Texcraft Engineers vs, Union of India [R/SCA No. 14554 of 2024 judgment dated 12.12.2024]

In this decision Hon'ble Bombay High Court ruled on the eligibility for refund of tax paid in excess, voluntarily by way of self-assessment. The petitioner is in the business of manufacturing textile machinery and equipment and for such business imported various inputs, raw materials and capital goods during the period May 2019 to March 2020. The imports were made on the clearance of bills of entry on payment of import duties and IGST, which was admissible as ITC.

Such IGST credit was availed by the petitioner. However, due to mismatch in the figures of import IGST credit in GSTR 2A and the monthly returns filed in form GSTR 3B, petitioner got into a mistaken belief that he had availed excess ITC of Rs. 40,00,00/-. Under such mistaken belief he paid such amount by way of DRC 03 on 13.11.2020. Further, the department did not take any action on such DRC 03 and till the date of hearing of the writ petition, GST portal showed status of "pending for action by Tax officer" on the GST portal, against such DRC 03.

In 2024, during the audit conducted by the range Superintendent, it came to be light that there was no tax liability against the petitioner of such amount. ASMT 10 was issued to the petitioner to clarify about the payment of Rs. 40,00,000/-. The petitioner replied that he had made excess payment by mistake. ASMT 12 was issued to the petitioner dropping the proceedings and the petitioner filed a refund application for such amount.

The refund application was rejected on the ground that it was filed after the expiry of limitation period of 2 years as per Section 54 of the CGST Act.

The Court relying upon its earlier judgment held that amount paid by mistake or through ignorance as self-assessment cannot be retained by the revenue. Such a payment is hit by Article 265 of the Constitution which mandates that no tax shall be levied or collected except by authority of law.

The Court held that such amount is not covered by Section 54 of the CGST Act and quashed the impugned refund rejection order. The court also held that since the amount was deposited by mistake, the petitioner shall not be entitled to interest on such refund amount.

W&B Comments: It is a well settled principle of tax law that any amount paid to the Revenue which is in not a part of the tax liability is not governed by the regular statutory refund provisions and the taxpayer shall always be entitled to get its refund.

Anand Steel vs. Union of India WP No. 2164 of 2024 judgment dated 22.11.2024:

In this judgment, the Hon'ble Bombay High Court held that the appellate authority cannot reject appeal when there is sufficient proof of payment of pre-deposit. The petitioner filed an appeal and his appeal was rejected by the appellate authority, inter alia, on the grounds that pre-deposit has not been made by the petitioner and that lack of any proof that the authorised person has been given such authority.

In the petition, the petitioner exhibited the Form APL-01, showing at Sr. No. the amount of thereof that pre-deposit paid has been paid, screenshots of the Electronic Credit Ledger, and the Electronic Cash Ledger from the GSTN portal and system generated provisional acknowledgement of the appeal, which is generated automatically by the Respondents' portal once an assessee files an appeal.
The Court held that such system generated acknowledgment is itself proof of payment of pre-deposit and of compliance with condition of Section 107(6) of the CGST Act.

The second ground on which the appeal is dismissed is that the Appellant has not submitted any valid documents, such as a Board resolution appointing the said person as an authorised signatory to sign the appeals. The Court noted that the concerned person is already registered on the GST portal as the authorised signatory.

The Court order the quashing of the impugned order and remand it to the department for de novo consideration.
W&B Comments: This case highlights a continuous problem in the GST regime where the department frequently either ignores the data already available on the GST portal or ignores the proof submitted by the taxpayer. To be on the cautious side, the taxpayer should always save the provisional acknowledgment generated after the appeal has been filed. The acknowledgment in form APL 02 is often delayed even after submission of physical copies of appeal and holding of personal hearing, and in such situations provisional acknowledgment can help the courts in clearly determining the date of filing appeal, pre-deposit amounts etc.

Bamapada Jana West Bengal AAR No. 14/WBAAR/2024-25 dated 26.11.2024

In this ruling, the Authority has held that the canteen service provided by the entity to whom it is outsourced by the hospital shall not be exempt from levy of GST.

The hospital outsourced the provision of canteen service to the applicant. The applicant supplies meals to the indoor patient as per the diet chart provided by the medical officers of the hospital. The applicant raised the question that whether the service provided by the applicant is exempt under Sr. No. 74 of Notification No. 12/2017-CT(R) dated 28.06.2017 read with Circular No. 32/06/2018-GST dated 12.02.2018.

The applicant, in particular, highlighted point no. 5 of Circular No. 32/06/2018-GST, stating: "Food supplied to the in-patient as advised by the doctor/nutritionist is a part of composite supply of healthcare and not separately taxable". The applicant submitted that the services provided by it are part of such composite supply and 'Health care services by a clinical establishment' are exempt under Notification No. 12/2017, and hence, the services provided by it are also exempt.

The Authority rejected the contentions of the applicant on the grounds that the hospital itself, directly is not providing service to the in-patients but is rather providing such service in an outsourced manner. The service provided by the applicant is a stand-alone service and cannot form part of the 'composite supply' made by the hospital / clinical establishment. The applicant does not provide any health care services. The authority also took reliance of the words written in column labelled 'Issue' (Serial No. 5) in the circular. Here the circular states that when the canteens are not run by the hospitals by are outsourced to outdoor caterers, then supplier shall charge tax as applicable. The Authority observed that the food supplied by the hospital shall form part of the composite supply made by such hospital.

W&B Comments: The question the sub-contracting forms a separate supply has already been decided, and hence, in view of such a legal position, the services by the outsourced caterer and the hospital could not been clubbed to form a composite supply under Section 8 of CGST Act, 2017. However, the confusion may have been borne out of the way in which the particular circular has been drafted. The clarification part of the circular does not specifically deal with the situation when canteen service is outsourced. It only states that food supplied to the in-patients as advised by the doctor/nutritionists is not separately taxable.

Articles

GST and Production Linked Incentive (PLI) Scheme: Understanding the Tax Compliance Nexus

To increase the share of industrial sector in the country's economy, from the current 27.6%[1], the government had adopted the policies of 'Atmanirbhar Bharat' and 'Make in India' and in line with such policies launched the Production Linked Incentive Scheme ("PLI" or "PLI Scheme") in 2020. Currently expanded to 14 sectors, the purpose of PLI is to attract investments in key priority sectors and, ensure efficiency in the manufacturing and make Indian manufacturing globally competitive[2].

Simultaneously, Goods and Services Tax (GST) was going through its nascent stage, being touted as One Nation One Tax, by reducing the compliance burden and removing the cascading effect of multiple taxes.

Now that both GST and PLI have reached certain maturity, the time is right to analyse how changes in the GST regime can enhance the effectiveness of the PLI Scheme.

[1] As share of overall GVA at current prices as per Economic Survey 2023-24
[2] Press Note dated 02.08.2023 of Ministry of Commerce & Industry

Two pronged approach to create conducive Industrial ecosystem

To boost manufacturing, the government seeks to create an ecosystem which, firstly facilitates swift setting up of new manufacturing units and secondly makes the business of such manufacturing units economically viable.

For the first step, the setting up of new units can be encouraged with efficiencies in the government regulatory processes, for instance, single window for essential regulatory licences, availability of industrial plots, state incentives and availability of multi-modal logistics.

For the next stage, the focus should be on improving the demand-supply factors and the mechanism of levy of taxes and duties. The supply and demand should be made conducive to domestic production, to the extent of imposing trade barriers like anti-dumping duty or other quantitative barriers, if necessary. GST being a transaction-based tax can create much more hiccups for the businesses and require immediate attention but if used effectively, the meticulous GST regime can facilitate PLI schemes. Additionally, the plans of the present government to overhaul the Income-tax Act, 1961 also provides a unique opportunity to consider PLI while framing the direct tax provisions.

In this article, we will focus on identifying the friction points in the current GST regime that can be tweaked or reshaped to create synergies with the PLI Schemes.

1. Burden of Blocked Credit on investments by Manufacturers under PLI Scheme

A manufacturing unit constructs structures to carry out its operations: production, warehousing etc. Hence, a common but necessary expense, whether in a green field project or a brown field project, is land acquisition and subsequent construction on it. While there is no levy of GST on sale of land[1], the credit of such inward works contract service or any other goods or services for construction of a building is blocked under Section 17(5) of the Central Goods and Services Act, 2017 ("the CGST Act").

[1] Sr. No. 5 of Schedule III of the CGST Act, 2017

In its recent judgment, the Hon'ble Supreme Court[1] has provided a small window for an assessee to avail the credit if the building can be proved to be "plant", based on the functionality test[2]. This creates a huge financial burden on the manufacturers at the initial stage of investment itself. Additionally, the PLI scheme does not take into consideration the expenditure on land and building and taxes paid thereon to calculate the 'investment' or incentive. As a result, the cash flow of the manufacturing unit is affected and even the PLI scheme does not provide any relief.

The figure of blocked ITC is already filled in GSTR 3B on the GST portal. The GST portal and PLI claim can be synchronised for the data to be available directly for PLI application/claim. Based on that the PLI applicant should get benefit either to meet threshold investment limits or addition to the incremental sales for incentive. The reason for non-inclusion might be to prevent the abuse of money speculated in land / non-productive asset for PLI benefit. However, once it is established that the manufacturing unit is using the building and land for production then ignoring this huge liability will go contrary to the desired goals of PLI scheme.

2. Valuation under the GST laws and PLI

Under the PLI scheme, the applicants have to first submit an 'application for eligibility' and then periodically submit 'disbursement claims', both to the Project Monitoring Agency ("PMA"). The disbursement claims are primarily based on the statutory audited balance sheets and returns filed under various laws but are also based on other documents like CA certificate, CS Certificate etc., wherever required. The disbursements claim brings out the 'incremental sales of manufactured goods'.
Here the hands of the PMA are however not tied to accept the claims mechanically. To verify the claim amount it may examine other documents.

[1] Chief Commissioner Of Central Goods and Service Tax vs. M/s Safari Retreats Private Limited [TS-622-SC-2024-GST]
[2] Para 52 of Safari Retreats (supra): "This Court held that if it is found on facts that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance."

Except two sectors, the respective ministries have appointed IFCI Limited as the PMA. IFCI, being a Systematically Important Non-Deposit Taking Non-Banking Finance Company, established in 1948, can be expected to have expertise to exercise such function satisfactorily.

It is worth noting that, GST also contains valuation provisions, and the proper officer may issue show cause notice[1] to dispute the valuation of the supply. In case of a PLI beneficiary/applicant, the GST officers should avoid raising valuation dispute. Firstly, it will be frustrating for a manufacturer to justify his valuation on two fronts for the same goods. Secondly, dispute on identical issue by GST department should not become the basis to seek refund of any PLI claim disbursed. Thirdly, in case of confiscation of goods[2], the GST department may impose fine upto the extent of market value of the goods. Seven years of experience has shown that orders under GST are often passed with impunity, disregarding the detailed submissions of the assessee. It is suggested that the CBIC[3] may issue instructions/circular to the department to exercise restraint and application of mind before raising a valuation dispute against a PLI beneficiary. Prior consideration should have to be made to the valuation settled and accepted at the PLI desk. Otherwise, it would amount to tax terrorism and would derail the PLI Scheme.

3. Non-creditable duties and levies on inputs to produce Eligible Products

Though GST was enacted with the object of removing multiple taxation systems in the country and to avoid cascading effect[1], there are still a lot of levies and duties which have not been aligned with such objects.

Petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel have been kept out of the purview of GST[2] and VAT is levied on sale of these products.. Such fuels are used for transportation as well as in operation of machinery. Additionally, there is also levy of state excise duty on liquor/alcohol which has industrial application.

[1] Section 73/74 of the CGST Act or Section 74A for supply pertaining to FY 2024-25 or later.
[2] Section 130 of the CGST Act.
[3] Central Board of Indirect Taxes & Customs.
[4] Statement of Objects and Reasons (CGST Bill, 2017).
[5] Section 9(2) of the CGST Act.

These are major day-to-day expenses for any manufacturing plant and no set off is allowed of such taxes and duties and hence become part of the cost of business. The PLI schemes consider such non-creditable taxes and duties paid on plant and machinery as part of the “investment” for verifying the eligibility, but these are not factored in during the disbursement of claims. To stay competitive, all these non-creditable levies incurred on operations may not always be added to the cost of goods. PLI scheme should also allow addition of such levies to the claim amount, otherwise such mounting expenses can affect the cash flow of manufacturers. One way to implement this could be the reflection of the amount paid as duties, VAT etc. on the GST portal. Both centre and states are already connected on the nationwide portal of GST and often the same department, at state level, levies GST and VAT/Sales tax.

4. GST on Plant and Machinery

Most of the plant and machinery required for manufacturing are classified under Chapter 85 and 98 of the HSN. Classification under GST is also based on the same system of classification. Most of the goods belonging to such chapters are taxed at a high rate of 18%[1].

While the credit of the ITC on such capital goods may be available under GST, this will further add up to the initial costs of the manufacturer, in addition to the costs associated with land and building. PLI scheme counts non-creditable levies in ‘investment’ but GST paid will not be added to prove eligibility. The Government may issue a notification that new or expanding manufacturing units under the PLI scheme shall be eligible to purchase such machinery at a lower rate of 5% or 12%. This will be in line with the long-standing need of rationalisation of GST rates. In such cases, the suppliers will also be eligible for refund, if faced with an inverted duty payment[2].

5. Single window and Integration of GST Registration and PLI application

Before starting operations, a business has to obtain various approvals ranging from labour laws, environmental law, shops and establishment law, registration under GST, obtaining PAN card, industrial laws, etc

[1] Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017
[2] Circular No. 173/05/2022-GST

These laws are at different levels of our federal structure: national, state and municipal. The issues faced here are (i) registration on multiple government department portals/offices; and (ii) lack of time limit on the department to approve or reject the application.

Getting GST registration is an absolute necessity for any business. Along the lines of cooperative federalism, governments should develop GST portal into a single window for obtaining all the relevant approvals. GST registration already records the core business of the person: 'Manufacturer', 'Trader' or 'Service Provider and Others'. It also contains annual turnover data in Table 5 of GSTR 9C. So, the option to apply for PLI scheme can be enabled on the GST portal. Such a system would be far more effective if there was a single point of interaction with the government: from application to issuance of approval. The Central Government has already launched the National Single Window System (NSWS) in September 2021 however this platform has some shortcomings: (i) it is an advisory tool to identify approvals based on user input and is to be used for guidance purpose only[1]; (ii) the applications for which it does accept approvals are forwarded to the respective ministries/departments[2].

6. Levy of GST on fees paid for obtaining various approvals.

Directorate General of GST Intelligence ("DGGI") has been demanding GST on based on reverse charge mechanism (RCM) from the businesses who have obtained a statutory approval from government / governmental authorities / government bodies. The government also omitted a slew of exemptions under the Notification No. 12/2017-CT(R)[3] to enable this. Additionally, GST considers activity of the Central Government, State Government or any local authority in which they are engaged as public authorities to be "business"[4].
Calculating the taxable value in such transactions and the time and method to discharge such liability is itself a complex exercise. There are no guidelines for the department in this regard. Even though the payment of GST under RCM on such services may be revenue neutral, this will heavily impact the cash flow of the business as on date.

[1] https://www.nsws.gov.in/about-us
[2] https://www.nsws.gov.in/faqs
[3] Partial omissions from Sr. No. 6 and complete omission of Sr. Nos. 26, 32, 33, 47A and 51
[4] Section 2(17)(i) of the CGST Act.

The government may allow exemption on governmental approvals for manufacturers who have received acknowledgment of receipt of application from the PMA. The GST may become payable if the application is not finally accepted.

7. Schedule of Services Imported from Foreign Related party by PLI Beneficiaries

When a foreign company invests in India, it often relies upon its parent company for technical know-how, seconded employees and other intellectual property like brand name. The DGGI frequently raises demand of RCM liability on such Indian entities alleging import of services. Recently such demands have been raised on Infosys and domestic arm of various airlines.

This issue in particular highlights the disconnect within the department itself because CBIC has already issued Circular No. 210/4/2024-GST dated 26.06.2024 which provided that under Rule 28 of the CGST Rules when the foreign affiliate provided certain services to the related domestic entity, then the value of such services may be deemed to be Nil.

However, despite such circular, the DGGI continues to issue notices on this point on the ground that one of the two conditions to avail this circular is not fulfilled: full ITC is not available to the related domestic entity to whom notice has been issue. Further, the ad hoc style adopted by CBIC, specially to solve the issue of invoices reflects poorly on the domestic tax regime. GST Council had the opportunity to conclusively clarify the meaning of 'full credit' in Circular 210. The GST Council rather limited itself to exempting the import of certain services by the airlines from foreign related parties[1] and then the CBIC issued two circulars[2] on the same issue.

As a result, the disputed issue still stands open for action by the department creating apprehensions in the minds of PLI investors who are expected to invest millions in manufacturing.

[1] Sr. No. 10L – Notification No. 08/2024-Integrated Tax (Rate) dated 08.10.2024
[2] Circular No.234/28/2024-GST and Circular No.236/30/2024-GST both dated 11.10.2024

8 .Refund – Rules 89 and Rule 96 – Make in India, Make for the World

In January 2022, the Prime Minister in his speech at the World Economic Forum, Davos Summit, announced that India is moving ahead with the spirit of Make in India, Make for the world[1]. Full realisation of this dream would involve not just capacity building but also competitive pricing. Delay or denial of refund increases the tax burden on the exporter-manufacturer. If the value of the export goods increases and are not sold as a result, the purpose of reimbursing the cost of eligible products under PLI schemes would be defeated.

For refund, CGST Rules contains two provisions: Rules 89 (refund of unutilised credit when exports made 'under Letter of Undertaking') and Rule 96 (rebate of on exports are made 'with payment of IGST').

Both Rule 96(10) and Rule 89(4A)/(4B) contained restricts as to refund for beneficiaries of schemes like advance authorisation. These provisions were amended multiple times and were bitterly contested by the government even upto the Supreme Court. Due to this, legitimate refund claims were withheld and sometimes even adjusted against arbitrarily tax demand without any notice. Finally based on the recommendation of the 54th GST Council Meeting, these provisions were finally deleted from the CGST Rules on 08.10.2024. However, the issue still stands alive for the period prior to such omission. Further, Rule 89 limits the turnover of zero-rated supply of goods to be maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier. While this provision has already been held to be unconstitutional by a High Court,[2] it continues to be in the statute creating a legal uncertainty.

If a PLI beneficiary relies upon this decision and later it is overruled by the Supreme Court, it may be vulnerable to demand of refund of incentives disbursed to it.

Conclusion

To get the desired results from the PLI schemes it is imperative that the government broadens their vision and PLI should not be limited to incentives but should create an incentive ecosystem, ultimately reducing the costs and increasing the production. Taxes paid by businesses are a massive cost to the business. Tax mechanisms should be intertwined with the PLI in such a way that frictions like cascading, non-availability of credit, multiple compliance windows etc. reduce the tax burden. Unpredictable tax position and compliances discourage investors, and the capital flees to other jurisdictions. It is apposite that compliances in PLI and GST are aligned and at the earliest PMA considers adopting the turnover / valuation, registration, forms etc. as per the GST framework.

Analysing GST dispute resolution: How GSTAT can transform Tax Litigation

The Goods and Services Tax Appellate Tribunal (GSTAT) has been one of the much-needed adjudicatory mechanisms ever since the Goods and Services Tax (GST) regime came into existence. It is important because it holds significant potential in transforming the landscape of GST-related tax litigation in India. When the GST regime was introduced in 2017 via the Constitution (101st Amendment) Act, 2016, it was envisioned as a unified, simplified taxation system under the broader commitment of 'One Nation, One Tax, One Market'. It subsumed multiple taxes like VAT, Service Tax, Excise Duty, and others and consolidated them into a single system. On the other hand, the GST act has been successful in fulfilling most of its promises like the Creation of a Common National Marke t[63.9 lakh taxpayers transitioned from service tax, VAT, and Central Excise frameworks and currently, there are 1.4 crore registered taxpayers under GST law], Boost to Revenue Collection of the government [GST collections hit a record high in April 2024 at ₹2.10 lakh crore marking a significant 12.4% year-on-year growth, driven by a strong increase in domestic transactions (up 13.4%) and imports (up 8.3%). After accounting for refunds, the net GST revenue stood at ₹1.92 lakh crore, which is 15.5% growth compared to the same period last year], Promotion of Exports [Zero Rating of Exports], Reduction in Tax Evasion [From 65 lakh suppliers registered with the government in pre-GST regime to 1.4 crore in GST 2023], it failed to fulfill its promise of establishing an Appellate Tribunal, aimed at providing swift justice and reducing litigation costs. Although the Tribunal was legislatively mandated, it remains unconstituted even after 7 years of the GST Act, leaving taxpayers without a common appellate body to resolve disputes. A ray of hope emerged in 2024 wherein the government not only received the notification for establishing the Appellate Tribunal but also released a roadmap providing information regarding cities where the benches will be set up and the possible deadline for their establishment. However, before understanding the provision related to the establishment of the Tribunal, it is pertinent to delve into the challenges faced for the 7 years due to the delay of GSTAT and the possible outcomes post its establishment.

The proposal for setting up the GST Appellate Tribunal across the country was approved in its 49th meeting of the GST Council and the Council recommended the rules governing the appointment and conditions of the President and Members of the proposed GST Appellate Tribunal in its 50th meeting. Ultimately, the Finance Ministry via a fresh notification dated 31.07.2024 notified 31 benches of GSTAT to be set up in all states and Union Territories. The GST Council had cleared the way in its meeting on July 11, 2024, and the first set of tribunals might be operational sometime between November 2023 and January 2024. GSTAT will be operational with its principal bench in Delhi and 31 regional benches comprising of 63 judicial members and 33 Technical Members for the Centre and States together.. It will be a successor to the Customs Excise Service Tax Appellate Tribunal (CESTAT) and State VAT tribunals. The new notification will supersede all previous notifications and has added a new column 'sitting/circuit'. Uttar Pradesh and Maharashtra (along with Goa) will have three Benches each, while other larger States, like Gujarat, Karnataka, Rajasthan, and Tamil Nadu will have two benches each. 'Circuit' locations will be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States/jurisdiction while the additional 'sitting' will function with one Judicial Member and one Technical Member. Panaji, Puducherry, Aizawl, Agartala and Kohima, Mumbai, Chennai, Kolkata etc have been designated as circuits while Visakhapatnam, Rajkot, Hissar, Srinagar, Thiruvananthapuram, Thane, Chhatrapati Sambhajinagar, Chandigarh, Coimbatore, Prayagraj, Agra etc will have sittings. The Principal Bench will take up matters related to inter-state disputes and the Benches in States will take up other issues. The aggrieved parties have the option to move to the High Courts and Supreme Court. With GSTAT coming into force, the country will have specialized bodies to handle disputes related to GST in a timely and efficient manner.

The absence of GSTAT has led to a surge in litigation and ambiguity in tax matters. As per data provided by Minister of State for Finance Pankaj Chaudhary in Lok Sabha during the Monsoon Session of 2024, the number of appeals relating to Central GST authorities has more than doubled since 2020-21 with 5,499 cases pending. This increased further to 9,759 cases by the end of fiscal 2021-22, 11,899 in 2022-23, and 14,227 in 2023-24 (up to June 2023) with cases increasing since then. The lack of a single appellate authority forced taxpayers dissatisfied with decisions by lower authorities to approach High Courts, which not only led to overburdening the judiciary and delaying justice but also other complex trends of divergent High Court decisions and accessibility.

Seeking justice through High Courts made it affordable only to the ones who could afford it. This made justice expensive for small businesses like MSMES who might not always be able to afford the same thus leading to differential treatment. This further widens the gap between big businesses with strong roots and small enterprises already surviving on Government aid like Priority Sector Lending, Pradhan Mantri MUDRA Yojana (PMMY), etc. The need for aid is not only important for them to compete but is also important for their survival and hence when justice becomes expensive, they are either forced to divert funds otherwise required for the functioning of their business to resolving disputes via High Courts or are simply forced to not seek resolution at all. This violates the objective of Article 14 of the Constitution of India which prohibits discrimination and promotes the right to equality. Some other issues such as pending refunds, increased interest liabilities, and cash flow challenges have compounded the difficulties for businesses, which face repeated show-cause notices without a resolution mechanism in place since High Courts which lack expertise, qualifications, and experience of the sector-specific challenges faced by various businesses cannot be accepted as a replacement of an expert appellate authority mandated for the purpose specific to GST. Hence, the constitution of GSTAT is attributed to positive factors such as the required qualification of members, balancing judicial and technical expertise, and the central and state government's participation. Although the Government has released the notification, the tribunal is yet to become functional, exacerbating the backlog of cases.

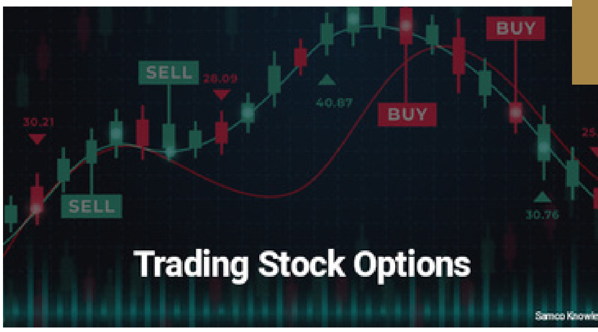
There has been a renewed push for the formation of GSTAT, with a Group of Ministers (GoM) recently proposing amendments to address the lingering challenges. Stakeholders hope that once operational, the tribunal will enhance efficiency in dispute resolution, reducing both costs and delays. However, GSTAT will likely face an immediate backlog upon its establishment, as several years of pending cases await adjudication. In such a situation, it will be pertinent for the tribunal to bunch the appeals with common issues together and start hearing matters.

The appellate will adjudicate anti-profiteering cases with a “sunset date” of April 1, 2025, after which filing of such complaints will not be allowed. This is based on the recommendation of the law committee under the GST Council taking into consideration the view expressed by the Competition Commission of India (CCI) which stated it is unable to handle such matters.

This is in line with the recommendation of the law committee under the GST Council after the Competition Commission of India (CCI) expressed its inability to handle such matters, saying that it was not its core function. CCI has disposed of almost 27 cases since December 1, 2022, while almost 140 cases are still pending for adjudication. Additionally, almost 184 matters are pending in various high courts challenging orders of previous authority.

The anti-profiteering provisions under the GST law mandate suppliers of goods and services to pass on the benefit of any lenient tax provisions to recipients by way of commensurate reduction in prices. National Anti-Profiteering Authority which was set up in November 2017 under Section 171 of the Central Goods and Services Tax Act, 2017 to deal with unfair profiteering activities by registered suppliers was subsumed with CCI on December 1, 2022, as per Notification No. 23/22-C.T. When NAA was in charge, it had issued penalties to over 100 companies, including Hindustan Unilever, Patanjali, Jubilant Foodworks, Reckitt Benckiser, Phillips, Gillette India, and several others, who had moved the High Court against the anti-profiteering provisions. These parties have moved to the Supreme Court after the High Court upheld the constitutional validity of the provision. Some leniency will be provided with regard to the sunset clause and the mandate will be given to the principal bench of GSTAT to specify the said date from which the authority will not accept any request of anti-profiteering issues. Later, if required, the matter will be transferred to the benches across the country. The creation of GSTAT is essential not only to fulfill the original promise of a streamlined GST regime but also to alleviate the burden on the judiciary and provide timely justice to taxpayers. Moving forward, it is imperative for the government to expedite the tribunal's formation and ensure that it functions efficiently from day one to meet the rising demand for GST dispute resolution. Under the GST Law, there is no concept of amicable settlement for disputes. Appeals are resolved based on the legal provisions and regulations in place. This will lead to a higher volume of cases being brought before appellate authorities, tribunals, and courts, leading to increased costs and time delays. A purely legal approach to dispute resolution can foster an adversarial relationship between the parties leading to discouragement for voluntary compliance and fostering mistrust in the system. The government can consider introducing a settlement commission or a dispute resolution mechanisms under the GST regime. Periodic amnesty schemes or settlement windows can be introduced to encourage taxpayers to come forward voluntarily and resolve disputes by paying the tax or penalty, thereby avoiding litigation. The government must also consider implementing a Taxpayer Facilitation Scheme to allow for early resolution of disputes through communication and clarification of issues between tax officers and taxpayers. This could help minimize disputes.

Stock Options in India: A Comprehensive Legal Framework for Startups and Non-Startups



Employee stock options, commonly referred to as ESOPs, are an instrumental tool for startups and established firms in India to attract and retain talent. ESOPs are a structured mechanism to allow employees to gain ownership in a company. However, the regulatory framework, legal requirements, and tax implications differ for startups and non-startups in India. Startups have specific advantages under the regulatory framework. The Companies (Share Capital and Debentures) Rules, 2014 allows startups to issue ESOPs to employees, including directors, consultants, and advisors. However, these cannot be granted to promoters or directors holding more than 10% equity unless they meet specific startup criteria defined by the Department for Promotion of Industry and Internal Trade (DPIIT).

The exercise of ESOPs is taxed as a perquisite, with different tax options available for eligible startups, benefiting employees significantly. ESOPs allow employees to purchase company shares at a predetermined price after a vesting period. In India, ESOPs are governed under the Companies Act, 2013, SEBI (Share-Based Employee Benefits) Regulations, and relevant taxation laws.

For established non-startups, regulations are more stringent. Non-listed companies must follow Rule 12 of the Companies (Share Capital and Debentures) Rules, which dictates that employees gain no shareholder rights (e.g., voting or dividends) until shares are issued upon exercising options. The board and shareholders' approval is mandatory, with specific e-forms like MGT-14 and PAS-3 requiring submission to the Registrar of Companies (RoC).

For listed companies, ESOPs are governed by the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021. SEBI mandates detailed disclosures, trustee governance, and reporting requirements. Furthermore, secondary acquisitions (buying shares for ESOP purposes) are capped at 2% annually and 5% overall of paid-up share capital.

The Indian government, through initiatives like Startup India, has introduced several relaxations for startups in areas such as taxation and compliance. These measures are intended to help startups compete effectively, conserve cash, and incentivize employees through equity-based compensation.

Startups recognized by the DPIIT (Department for Promotion of Industry and Internal Trade) are eligible for special benefits, including the ability to issue ESOPs to promoters and directors owning more than 10% of the company, which is not allowed for non-startups. This flexibility is especially advantageous for startups during their formative years when cash flow constraints prevent them from offering competitive cash salaries.

On the other hand, non-startups must strictly comply with general ESOP rules as outlined in the Companies (Share Capital and Debentures) Rules, 2014, which impose restrictions on who can receive stock options. Non-startups cannot issue ESOPs to independent directors or promoters holding significant equity stakes, limiting their ability to use ESOPs as a tool to incentivize top leadership or founders.
Under the Finance Act, 2020, employees of DPIIT-recognized startups can defer the payment of tax on ESOPs. Instead of being taxed at the time of exercising the options, the tax liability arises later—either when the employee sells the shares or leaves the company, or after five years from the exercise date, whichever is earlier. The compliance burden for issuing ESOPs is reduced compared to non-startups, with fewer disclosures and procedural requirements.

Non-startups operate under stricter regulatory conditions. ESOPs cannot be issued to promoters, directors owning more than 10% equity or independent directors. Shareholder approval through a special resolution is mandatory before ESOPs can be issued. This includes detailed disclosures about vesting schedules, exercise prices, and the dilution impact on shareholders. Listed non-startups must also adhere to the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, which emphasize transparency and investor protection. These regulations require periodic disclosures to stock exchanges and compliance with detailed reporting requirements.

Employees of startups recognized by DPIIT enjoy a deferment of tax liability, reducing their financial burden and making ESOPs a more attractive compensation tool.

For employees in non-startups, ESOPs are taxed as salary income at the time of exercise. The tax is calculated based on the difference between the fair market value (FMV) of the shares on the exercise date and the price paid by the employee. When employees sell their shares, any additional gain is subject to capital gains tax. If the shares are held for over one year, long-term capital gains tax rates apply.

Tax implications for ESOPs vary based on the employee's timeline of exercising options and selling shares. At the time of Exercise, the difference between the Fair Market Value (FMV) of the shares on the date of exercise and the exercise price paid by the employee is treated as a perquisite and taxed under Income from Salary. At the Time of Sale, when employees sell the shares, capital gains tax is applicable. The tax rate depends on the holding period of the shares. Short-Term Capital Gains (STCG) if sold within one year, gains are taxed at 15% and Long-Term Capital Gains (LTCG) if sold after one year, gains exceeding ₹1 lakh are taxed at 10% without indexation.

Stock options and sweat equity are two powerful tools companies use to reward and retain employees, founders, or other contributors. While both mechanisms involve the transfer of equity, they differ significantly in terms of purpose, regulatory requirements, tax implications, and the benefits provided to the recipients. Stock options, particularly Employee Stock Option Plans (ESOPs), are a method of granting employees the right to purchase a company’s shares at a pre-determined price after meeting certain conditions, such as vesting periods. Stock options grant ownership only after the employee exercises the options and purchases the shares. Employees do not enjoy rights like voting or dividends until they exercise their options and acquire shares. ESOPs can be tailored with specific terms for vesting, exercise periods, and eligibility criteria, offering flexibility for businesses to structure them according to organizational goals. Employees benefit from stock price appreciation, which aligns their interests with the company's growth. Sweat equity shares are issued to individuals in exchange for their contribution of intellectual property, technical know-how, or other non-cash resources. Unlike stock options, sweat equity shares grant immediate ownership, including voting and dividend rights. Recipients become shareholders as soon as the shares are allotted, granting them all associated rights. Sweat equity shares are often issued at a significant discount or for non-cash consideration, such as the assignment of intellectual property rights.

There are limits on the percentage of sweat equity a company can issue. Startups have more relaxed caps, allowing issuance of up to 50% of paid-up capital within the first 10 years.

Startups, particularly those recognized under the Startup India Initiative, are allowed to issue sweat equity shares at a discount or for non-cash considerations like intellectual property. This enables startups to conserve cash while rewarding employees and contributors for their expertise. Vesting periods for ESOPs in startups must be a minimum of one year, but they can extend over several years to ensure long-term alignment with the company's goals. Pricing rules are relatively lenient, allowing startups to issue options at a lower valuation compared to non-startups. For non-startups, the issuance of stock options and sweat equity is more tightly regulated. Pricing must adhere to the Fair Market Value (FMV) as determined by a registered valuer. Vesting schedules and exercise periods must be clearly defined in the ESOP scheme and disclosed to shareholders.

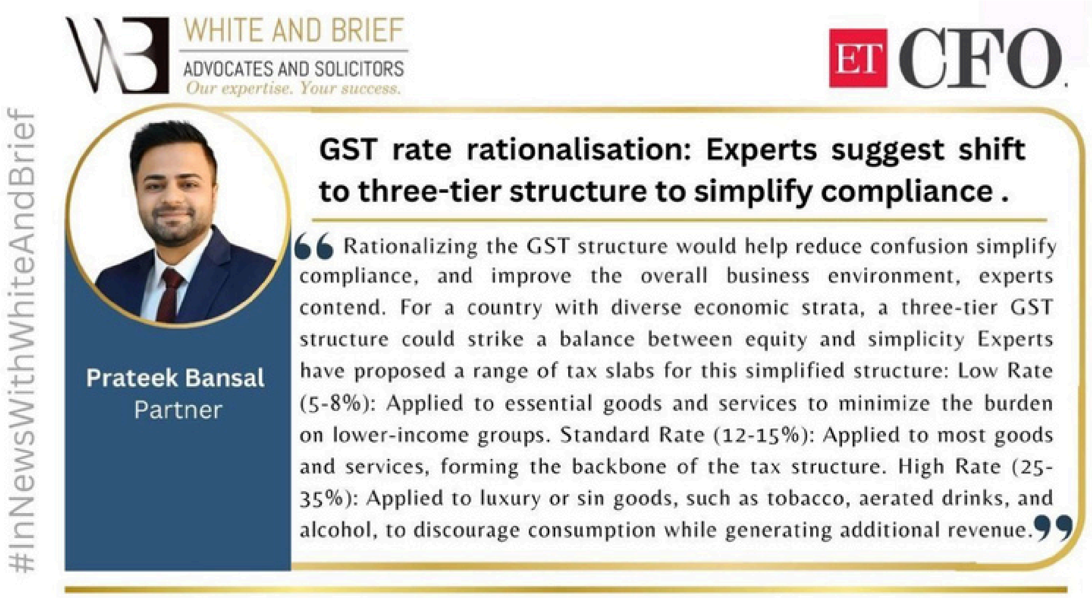
Stock Appreciation Rights (SARs) are cash-settled instruments that provide employees with the benefit of share price appreciation without requiring them to purchase shares. These are increasingly used by companies to avoid dilution and eliminate the tax burden at the exercise stage. SARs are particularly useful for non-startups seeking to reward employees without navigating the complexities of stock option issuance. SARs are subject to taxation under the Income Tax Act, of 1961, and are taxed similarly to Non-Qualified Stock Options (NSOs). The tax implications arise at two stages. At the Exercise stage, for cash-settled SARs, the payout received by the employee is treated as salary income and taxed at the applicable slab rates. For equity-settled SARs, the difference between the FMV of shares on the exercise date and the grant price (if any) is also treated as salary income. At Sale stage, if the SAR payout is converted into shares and these shares are subsequently sold, the gains are subject to capital gains tax. Short-Term Capital Gains (STCG) Taxed at 15% if shares are held for less than 12 months and Long-Term Capital Gains (LTCG) Taxed at 10% on gains exceeding ₹1 lakh if shares are held for more than 12 months.

Incentivizing founders with stock options presents unique challenges and opportunities, especially in companies that do not qualify as startups under the Startup India Policy. While recognized startups can issue stock options to promoters and founders, companies over 10 years old or subsidiaries of larger corporations must explore alternative mechanisms.

Additionally, structuring such incentives requires careful negotiation with investors and compliance with regulatory and tax frameworks. A clawback provision is a contractual clause that allows companies to recover stock options or equity benefits granted to employees or founders in cases of misconduct, breach of agreements, or failure to meet performance targets. For founders, clawback provisions provide a safeguard for investors and companies while still aligning the founder's incentives with the company's long-term growth. In most cases, clawbacks are incorporated into stock option agreements or equity allocation schemes. For management stock options, clawback clauses are particularly critical to mitigate risks associated with significant equity grants. The Companies Act, 2013, under Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014, does not allow non-startups to issue stock options to promoters or directors holding more than 10% of the company's equity. However, startups defined under the Startup India Policy are exempt from this restriction and can issue ESOPs to promoters and directors.

A Closer Look at Our Recent Features

Our Partner Mr. Prateek Bansal has been featured in ETCFO article



We are delighted to share that our Partner Mr. Prateek Bansal has been featured in ETCFO article titled- GST rate rationalisation : Experts suggests shift to three-tier structure to simply compliance.

Read the full article here:
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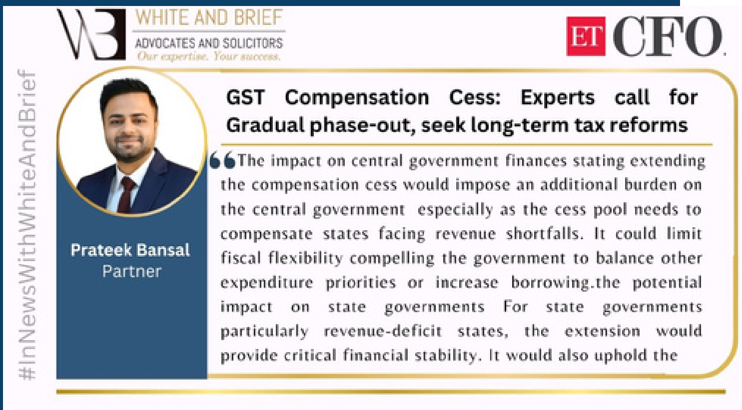

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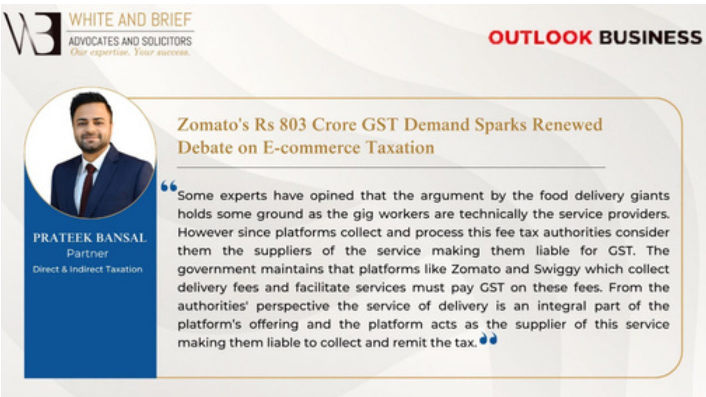

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To read the full article click here: https://www.outlookbusiness.com/start-up/explainers/zomatos-rs-803-crore-gst-notice-highlights-ambiguity-over-taxation-of-food-delivery-fees

Our Partner, Prateek Bansal and Associate, Jatan Mudgal have co-authored an insightful article

We are delighted to share that our Partner, Prateek Bansal and Associate, Jatan Mudgal have co-authored an insightful article titled, “GST and Production Linked Incentive (PLI) Scheme: Understanding the Tax Compliance Nexus”, published by BW Businessworld

The article delves into the interplay between the GST regime and the PLI scheme, highlighting key areas where tax compliance can be streamlined to enhance the effectiveness of incentives, reduce costs, and create a robust industrial ecosystem.

This analysis offers valuable perspectives on addressing friction points in the current framework and proposes actionable recommendations for better alignment between GST provisions and the goals of the PLI scheme.

To read the full article click on the link :
https://www.businessworld.in/article/gst-and-production-linked-incentive-pli-scheme-understanding-the-tax-compliance-nexus-542854#goog_rewarded

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Festive Moments: Christmas Glimpses from Our Office

Tis the Season to Celebrate and Shine! 🎄✨

Delighted to share joyful moments from Christmas celebrations at our Delhi office—overflowing with cheer and holiday spirit!

The Christmas cheer keeps sparkling at our Delhi office!

One evening just wasn't enough to soak it all in, so we gathered once again with our amazing clients and friends. It was a night brimming with laughter, delicious food, and heartwarming moments.

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