



**“The path to success is  
to take massive, deter-  
mined action.”**  
**Tony Robbin**

# *Connection*

Volume XII, Issue I

April 2024

Just to Remind You:

- April 20 - Payment of GST & filing of return for Inward & Outward Supplies for March 2024 by Regular & Casual Suppliers
- April 30 - Due date payment of TDS deducted in March 2024
- April 30 - Due date for filling GSTR 4
- April 30 - Due date for Disclosure of dues of more than 45 days to MSME Suppliers by companies from October to March of FY 2023-24.

Inside this issue:

1. Income Tax Updates.	01
2. Customs Update	01
3. GST Update	04
4. Corporate Law Update	05

## Time limit for verification of return of income after uploading

In pursuance of the powers conferred under Rule 14 of the Centralised Processing of Returns Scheme, 2011, Notification No. 05 of 2022 dated 29.07.2022 was issued by the DGIT(Systems) specifying the time limit for verification of Income Tax Return (ITR) as 30 days from the date of transmitting the data of ITR electronically. 2. It is clarified that: (i) Where the return of income is uploaded and e-verification/ ITR-V is submitted within 30 days of uploading - In such cases the date of uploading the return of income shall be considered as the date of furnishing the return of income. (ii) Where the return of income is uploaded but e-verification or ITR-V is submitted after 30 days of uploading - In such cases the date of e-

verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow, as applicable. 3. The duly verified ITR-V in prescribed format and in the prescribed manner shall be sent either through ordinary or speed post or in any other mode to the following address only: Centralised Processing Centre, Income Tax Department, Bengaluru - 560500, Karnataka. 4. The date on which the duly verified ITR-V is received at CPC shall be considered for the purpose of determination of the 30 days period from the date of uploading of return of income. 5. It is further clarified that where the return of income is not verified after uploading within the

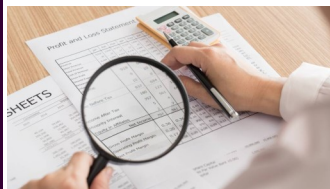
specified time limit as per paragraph 2 of this notification, such return shall be treated as invalid. 6. It is reiterated for the sake of assessee convenience that e-verification, immediately upon filing of the return is the most desirable action. 7. This Notification shall be applicable for returns of income uploaded/submitted on the e-filing portal (incometax.gov.in). This issues by the power conferred to the undersigned under the Rule 14 of Centralized Processing of Returns Scheme, 2011 (CPR Scheme 2011) dated 04.01.2012, notified by the CBDT Notification No. 02/2012- F.No. 142/27/2011 -SO(TPL). 8. This notification will come into effect from 01.04.2024.

## Gender-Specific Infrastructure in Custodian CCSP-CFS/AFS/ICD: HCCAR, 2009

Attention is invited to the Notification No. 26/2009-Customs (N.T.) dated 17.3.2009 notified the Handling of Cargo in Customs Area Regulations (HCCAR) 2009 to regulate the functioning of Customs Cargo Service Providers including custodians of ICDs/CFSS. Further, Circular No. 13/2009-Customs dated 23.03.2009, Circular No. 04/2011-Customs dated 10.01.2011, Circular No. 45/2013-Customs dated 31.12.2013, Circular No. 40/2016-Customs dated 26.08.2016, Circular No. 49/2018-Customs dated 03.12.2018, Circular No. 44/2020- Customs dated 08.10.2020, Circular No. 50/2020-Customs dated 05.11.2020, Circular No. 20/2021-Customs dated

16.08.2021 were also issued to streamline various procedures relating to ICDs/CFSS including annual audit of CFS, AFS and ICD to closely monitor their performance and to bring accountability, standardization and better facility for cross-border trading which in turn improve ease of doing business. 2. Further, the attention is also invited to the Circular No. 50/2020-Customs dated 05.11.2020, which provides that the custodian shall also take steps to bring about necessary improvements in the infrastructural facilities and other amenities required to be provided to the trade and to Customs staff, as may be necessitated from time to time, consequent upon the growth in the volume of Import and Ex-

port Trade handled at the CFS/AFS/ICD. Further, as per the check list of this Circular, the custodians should create gender specific and mainstreaming infrastructure facilities including special Exim counters for the female customs brokers/traders, separate workplace, customer care cells, essential utilities, restrooms etc. 3. In this context, it is also worth mentioning that the participation of women at the CFS/AFS/ICD has increased significantly through the different job roles and functions of trades in the recent past which demands for providing safe working places for women at such facilities for fostering an inclusive and respectful work environment for them. To harness the full potential of trade



as a driver for equality, it is imperative that women are adequately represented across all levels and functions of trade. In view of the Government of India dedication to promote Nan Shakti, it is imperative to provide safe and secure working environment to women for furtherance in respective career field. 4. Accordingly, it has been decided that in addition to the existing infrastructural facilities as provided by the Custodian CFS/AFS/ICD under Regulation 5 of the HCCAR 2009, the following gender specific infrastructure facilities may also be provided to encourage inclusiveness of women participation: i. Gender responsive infrastructure at the logistics facilities to improve workplace efficiency of women workforce including sufficient

lightening, panic buttons etc; ii. Provision for care infrastructure and services, especially creches, per the rules laid out in the Maternity Benefits Act, 2017; iii. Establishment of Internal Complaints Committees (ICC) in accordance with the provisions of the Prevention of Sexual Harassment At Work Places Act, 2013; iv. Holding regular gender sensitization training sessions for all the staff of CFS/AFS/ICD and field formations; v. Regular upgradation of facilities from a gender perspective; vi. Any other gender specific facilities to have inclusive work place ecosystem. 5. In this regard, All the CFSs(Container Freight Stations) / CCSPs (Customs Cargo Service Providers) under Chennai IV (Export) Commissionerate shall take suitable steps towards ensuring

the availability of such gender specific infrastructural facilities and take appropriate action towards improving/upkeeping the above infrastructure. These initiatives aim to foster inclusivity and empower women in the international trade arena. All the CCSP of CFSs are requested to provide such gender specific infrastructural facilities in proactive manner at the CFSs etc., It is also suggested that the custodian may provide wide publicity in their official web-portals that are available for the benefit of all stakeholders involved and in suitable places in the CFS premises, on such gender specific facilities and information about Prevention of Sexual Harassment At Work Places Act, 2013 etc.,



## Import Exemption for High-Value Medical Equipment: New Customs Instructions

Reference is invited to Ministry of Environment, Forest and Climate Change (MOEFCC) (HSM Division) OM dated 15.12.2023 enclosing OM dt. 19.06.2023, 19.05.2023 and 06.07.2023 (copies attached.) and Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2022 on 23rd December, 2022. Vide above OM, MOEFCC has stated that Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2022 dated 23rd December, 2022 where notified wherein High End and High Value Used Medical Equipment other than Used Critical Care Medical Equipment is included in Part 'B' of Schedule III of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOWM Rules, 2016) and are allowed to be

imported by actual user or by Original Equipment Manufacturers (OEM) or Indian Subsidiary of OEM or Trader on behalf of actual user for reuse. Further, it has been informed that as this item falls under Schedule III Part 'B' of HOWM Rules, 2016, hence import of above referred equipment is restricted and cannot be imported without permission from the MOEFCC, with conditions imposed in the permission. 3. In this regard, A list of 50 High End and High Value used/refurbished Medical Equipment other than critical care medical equipment have been provided vide MoEFCC OM dated 19.06.2023, which have been allowed to be imported as per above mentioned conditions. 4. It is to note that, Used Critical care medical equipment is covered under Basel NO. B1110 of Schedule VI of the HOWM Rules, and is pro-

hibited for import for re-use. For reference, MoEFCC vide their OM dated 19.05.2023 (copy attached) has provided a list of 14 critical care medical equipment as follows: i. High End Ventilators ii. Nitric Oxide Generator iii. Flexible Bronchoscope iv. ABG Machines v. Haemodialysis machines vi. Continuous Renal Replacement Therapy (CRRT) vii. CO,SVR, ScvO2 Monitor viii. Intubating video scope ix. ICU dedicated Ultrasound and Echo Machine x. Beside X-ray machine xi. Extra-Corporeal Membrane Oxygenator (ECMO) xii. IABP xiii. Percutaneous dilatation tracheostomy kit xiv. Defibrillator with transcutaneous pacemaker 5. It is requested that necessary action may be taken to sensitize officers under your jurisdiction regarding the said matter. The difficulties, if any, may be brought to the notice of the Board.



## Non-issuance of notices in case of voluntary compliance under Sections 73 and 74 of KSGST Act, 2017

In exercise of the powers conferred under Section 168 of the KSGST Act, 2017, the following instructions are issued to bring uniformity in the matter of issuing notices while proceeding under Section 73 and Section 74 of the KSGST Act, 2017.

1. Taxpayers have the option to voluntarily comply with their tax obligations before any formal notice is issued. If a taxpayer, upon his own ascertainment or based on the proper officer's ascertainment, discovers that they have any additional tax liability, they can choose to pay such tax dues along with the applicable interest under section 50 of the KSGST Act, 2017. Additionally, they are liable to pay a reduced penalty amounting to fifteen percent of the unpaid tax when the payment is made under Section 74(5) of the KSGST Act, 2017.

2. The relevant provisions of Section 73 and 74, *ibid* are as below:

i. "Section 73(5): The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

ii. Section 73 (6): The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

iii. Section 73(7): Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually

payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

iv. Section 74(5): The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

v. Section 74(6): The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

vi. Section 74(7): Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable."

3. Detailed Breakup of Payments:

i. In case of own ascertainment, it is crucial for the person chargeable with tax to provide a detailed breakup of the amounts paid, including the tax, interest, and penalty. In the case of taxes that are not paid or short paid, the persons chargeable with tax may inform the manner of computation of such tax dues under the respective heads of IGST, CGST, KSGST and Compensation Cess and the tax period it is attributable to, as per their ascertainment.

ii. In case of wrong availment or wrong utilization of Input Tax Credit, the persons chargeable with tax may inform the details of such

Input Tax Credit wrongly availed or utilized under the respective heads of IGST, CGST, KSGST and Compensation Cess, and the tax periods in which such wrong availment or utilization occurred, as per their ascertainment.

iii. Similarly, in case of an erroneous refund, the persons chargeable with tax may inform the details of such erroneous refund received including the tax period to which such refund pertains.

4. The above submissions can be made by the person chargeable with tax in the FORM GST DRC-03 itself through the common portal.

5. While the person chargeable with tax can provide the necessary information through the FORM GST DRC-03, if such details are not available in the FORM GST DRC-03, the proper officer can request the same from the persons chargeable with tax through a letter. This will enable the proper officer to accurately calculate and verify the correctness of the tax amount, interest and penalty payments towards such taxes that are not paid or short paid or Input Tax Credit wrongly availed or utilized or of erroneous refunds. Failure to provide this detailed breakup will result in the proper officer not being able to ascertain the nature and quantum of payment and may lead to discrepancies and issuance of Show Cause Notice.

6. Issue of Notice in cases of voluntary payment: The proper officer on receipt of the written communication/ information in FORM GST DRC-03 of payment as specified in Para 3 (*supra*), shall not issue any notice for the tax amount already paid with interest; or with interest and penalty as applicable in view of the provisions contained in sub-section (6) of Section 73, and sub-section (6) of Section 74 of the KSGST



Grievance  
Policy



Act, 2017, respectively. 7. Issue of Notice in cases of shortfall in voluntary payment : In cases where it appears to the proper officer that the amount of tax paid with interest as per Section 73(5) of the KSGST Act, 2017 or the amount of tax paid with interest and applicable penalty as per Section 74(5) of the KSGST Act, 2017 by the person chargeable with tax falls short of the amount actually payable, the proper officer shall issue notice only

for the amount which falls short of the actual amount payable. For example, assume that a Person A has a tax liability of Rs 300 and is required to pay a penalty of Rs 45 and an interest of Rs 30 under Section 74(5): Case 1: if A pays Rs 100 towards his tax liability along with penalty of Rs 15 and interest of Rs 10 (which covers the complete interest liability of this Rs 100), then SCN shall be issued only for the remaining Rs 200 along

with applicable penalty (on Rs 200) and interest. Case 2: if A pays Rs 100 towards his tax liability but does not pay any amount towards penalty and/or interest, then SCN shall be issued for the entire tax amount of Rs 300 along with applicable penalty (on Rs 300) and interest. 7. Further, in all cases falling under Section 73 of the KSGT Act, 2017, the provisions of sub-section (11) shall be adhered to wherever applicable.

### Advisory: Self Enablement For e-Invoicing



1. If your turnover exceeds INR 5 crores in the financial year 2023-2024, you will be required to start e-Invoicing from the next financial year, i.e., from 1st April 2024 onwards 2. For those who meet the notification criteria but have not yet been enabled on the portal, you can self-enable for e-Invoicing by visiting [h t t p s : / /](https://)

[einvoice.gst.gov.in](https://einvoice.gst.gov.in) and start reporting through any of the 4 new Invoice Registration Portals (IRPs) – from e-Invoice IRP 3 to e-Invoice IRP 6 [h t t p s : / /](https://einvoice3.gst.gov.in) [einvoice3.gst.gov.in](https://einvoice4.gst.gov.in) [https://einvoice4.gst.gov.in](https://einvoice5.gst.gov.in) [https://einvoice5.gst.gov.in](https://einvoice6.gst.gov.in) <https://einvoice6.gst.gov.in> 3. To report e-Invoices through NIC IRP 1 & 2, taxpayers can self-

enable at <https://einvoice1.gst.gov.in> <https://einvoice2.gst.gov.in> For any assistance, please feel free to contact us at the GST Helpdesk number 1800-103-4786 or visit the Grievance Redressal Portal at <https://selfservice.gstsystem.in/> to log a ticket.

### RBI Circular: Amendments to WMD Act Compliance



Please refer to Section 52 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which, inter alia, “Regulated Entities (REs) shall ensure meticulous compliance with the “Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005” laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated September 01, 2023, by the Ministry of Finance, Government of India

(Annex III of the Master Direction on Know Your Customer).” 2. Further, in terms of Section 53 of our MD on KYC “the REs shall verify every day, the ‘UNSCR 1718 Sanctions List of Designated Individuals and Entities’, as available at <https://www.mea.gov.in/Implementation-of-UNSC-Sanctions-DPRK.htm>, to take into account any modifications to the list in terms of additions, deletions or other changes and also ensure compliance with the ‘Implementation of Security Council Resolution on Democratic People’s Republic of Korea Order, 2017’, as amend-

ed from time to time by the Central Government” 3. A reference is also invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated Lists of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation. Amendments to the entries in the Lists are carried out from time to time. The last such amendment was notified vide our circular DOR.AML.REC.83/14.06.001/2023-24 dated March 11, 2024. 4. In this regard, Ministry of

External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718 (2006) has enacted the amendments, specified with strikethrough and/or underline in an entry on its Sanctions List of individuals and entities (enclosed with this

circular). Hence, the 'designated list' as referred in Para 2.1 and other relevant paras of the aforementioned Order dated September 01, 2023 is amended in accordance with the changes in the relevant entry. 5. The latest version of the UNSC Sanctions lists on

DPRK is accessible on the UN Security Council's website at the following URLs: <https://www.un.org/securitycouncil/sanctions/1718> 6. The REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

## Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2024

In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

1. (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2024. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in Schedule I, in the Table, for serial number 12 and the entries relating thereto, the following shall be substituted, namely:-

(1) (2) (3) (4) '12. Space Sector

12.1 (a) Satellites-Manufacturing and Operation (b) Satellite Data Products (c) Ground Segment and User Segment 100% Automatic up to 74%. Government route beyond 74%

12.2 (a) Launch Vehicles and associated systems or sub-systems (b) Crea-

tion of Spaceports for launching and receiving Spacecraft 100% Automatic up to 49%. Government route beyond 49%

12.3 Manufacturing of components and systems or sub-systems for satellites, Ground Segment and User Segment 100% Automatic

12.4 The investee entity shall be subject to sectoral guidelines as issued by the Department of Space from time to time.

12.5 Definitions: (a) "Satellites - Manufacturing and Operation": End-to-end manufacturing and supply of satellite or payload, establishing the satellite systems including control of in-orbit operations of the satellite and payloads; (b) "Satellite Data Products": Reception, generation or dissemination of earth observation or remote sensing satellite data and data products including Application Interfaces (API); (c) "Ground Segment" and "User Segment": (i) "Ground Segment": Supply of satellite transmit or receive earth stations including earth observation data receive station, gateway, teleports, satellite Telemetry, Tracking and

Command (TTC) station, and Satellite Control Centre (SCC) etc.; (ii) "User Segment": Supply of user ground terminals for communicating with the satellite, which are not covered under the ground segment; (d) "Launch Vehicles and Associated Systems or Sub-systems": A vehicle and its stages or components that is designed to operate in or place spacecraft with payloads or persons, in a sub-orbital trajectory, or earth orbit or outer space; (e) "Creation of Spaceports for launching and receiving Spacecraft": - A spaceport (also referred as launch site) may be regarded as the base from which spacecraft are launched, and consists of facilities involving devices for transportation to, from and via outer space; (f) "Manufacturing of components and systems or sub-systems for satellites Ground Segment and User Segment": Comprises the manufacturing and supply of the electrical, electronic and mechanical components systems or sub-systems for satellites, Ground Segment and User Segment.'

## FoSCoS Licensing: Proof of Premises in Shared Workspaces – FSSAI Advisory

FSSAI is in receipt of representation from Food Business Operators (FBOs) who are operating from shared work-

places, instead of the conventional approach of securing a dedicated floor or building with a lease agreement. These type

of food businesses are providing documents such as Work Orders/Work Contracts with the shared Workspace Provid-





er during the filing of licensing application through FoSCoS. 2. In order to address these challenges, and taking the concept of evolving workplace into consideration, it has been decided that if an FBO is able to provide the relevant proof of premise [such as Lease or Rent or Contractual or any Agreement which stands valid in court of law] between the FBO and the Workspace Provider, the same may be considered subject to the condition that FBO has to provide the permanent address of the Authorised signatory within any Indian State/UT. Additionally, if the FBO already possesses certificates from other Government Agencies, an

additional document such as GST, PAN/TAN or CIN (whichever is possessed) is also required to be enclosed. Further, this provision of document for proof of premises [shared workspace] is restricted to following Kind of Businesses [KoBs] only, where activities are limited to office-related functions or record-keeping tasks and not for any storage of food items: i. Relabeller ii. e-Commerce ii. Importer [If Import Export code (IE code) is issued on same location] iv. Trader/Merchant — Exporter [If Import Export code (IE code) is issued on same location] v. Food Vending Agencies vi. Transportation vii. Head Office/ Registered Office Note: During

the scrutiny of the application, if the Licensing Authorities come across any instance of storage of food inventory in the said premises, they may request clarification from the FBO before allowing such premise to be used for above purpose. 3. It is to be noted that FBO holds the responsibility for acquiring Permissions/No Objection Certificates (NOCs) from other government bodies whenever necessary. This responsibility shall be acknowledged through a tick-based self-declaration when applying for a license/ registration. 4. This issues with the approval of the CEO, FSSAI

## IBBI warns & Penalises IP for not representing CD before NCLT effectively



This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/63/2023-IBBI/814/1448 dated 27.10.2023 issued to Ms. Jovita Reema Mathias who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00337/2017-2018/10941 and a Professional Member of the ICSI Institute of Insolvency Professionals residing at A-1, 302, 3rd Floor, Shubham Centre, Cardinal Gracious Road, Andheri East, Mumbai Suburban, Maharashtra - 400099. 1. Background 1.1 The Hon'ble NCLT, Mumbai (AA) vide order dated 29.08.2018, admitted application under section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by M/s Maiia Commodity Management Private Limited (Corporate Debtor/CD) on the basis of special resolution passed in extraordinary general meeting dated 25.04.2018 of CD, for initiating Corporate Insolvency Resolution Process (CIRP) against

it. In the same order, Ms. Jovita Reema Mathias was appointed as Interim Resolution Professional (IRP) of CD and was later confirmed as Resolution Professional (RP). Subsequently, one resolution plan was received from erstwhile directors of the CD. The Committee of Creditors (CoC) in its 8th CoC meeting dated 14.02.2019 rejected the resolution plan so received for the reason that it is not in the best interest of the CD and decided to liquidate the CD with 96.32% voting. The AA passed order for the liquidation of the CD on 25.07.2019 and appointed Ms. Jovita Reema Mathias as the liquidator. In the 18th progress report for the quarter ending on 31.12.2023 filed before the AA, Ms. Jovita Reema Mathias informed that CD does not have any immovable assets. Most of the assets of CD are in form of receivables and she is in process of realizing the same. Ms. Jovita Reema Mathias further stated that she has initiated process for refund of income tax of Rs. 34,82,448/-

(Rupees Thirty four lakhs eighty two thousand four hundred and forty eight only) for assessment year 2019-2020. She also stated that application has also been filed before the AA pertaining to recovery of amount from certain bank which is pending adjudication. Due to pending litigations, she is not able to proceed with the dissolution of the CD. 1.2 The Board, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Ms. Jovita Reema Mathias. Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to Ms. Jovita Reema Mathias on 15.05.2023 with a request to clarify the observations made by the AA in its order dated 31.03.2022. She submitted her reply to the said notice on 20.05.2023 and made additional submissions on 06.06.2023. Thereaf-





ter, the IA submitted investigation report to the Board on 19.06.2023. 1.3 The IBBI issued the SCN to Ms. Jovita Reema Mathias on 27.10.2023 based on the findings in the investigation report in respect of her role as a liquidator of the CD. She replied to the SCN on 10.11.2023. 1.4 The IBBI referred the SCN, reply to SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Jovita Reema Mathias availed the opportunity of personal hearing before the DC on 16.02.2024. She filed additional submissions on 21.02.2024 to the queries raised by the DC. 1.5 The DC considered the SCN, the reply to SCN, submissions of Ms. Jovita Reema Mathias and proceeds to dispose of the SCN. 2. Alleged Contraventions, Submissions, Analysis and Findings The contravention alleged in the SCN and Ms. Jovita Reema Mathias's written and oral submissions thereto are summarized in the following paragraphs. 3. Contravention Non-representation of CD before AA. 3.1 It was noted that as on 31.03.2022, the liquidation process of the CD had been continuing for more than two and a half years, against the mandated period of one year for its completion as provided under regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016. Despite this substantial delay in the process, Ms. Jovita Reema Mathias chose not to appear before the AA in the hearing held on 31.03.2022. 3.2 In reply submitted to the IA, Ms. Jovita Reema Mathias mentioned that she faced certain technical issues in joining through Webex on the said hearing before the AA, due to which she could not join. However, not only did she fail to appear before the AA on the said date, but she also did not

instruct her counsel in the matter, as observed from the following remarks of the AA in its order dated 31.03.2022: "The Bench when enquired the counsel appearing for the Liquidator, he mentioned that he does not have any instruction from the liquidator. The Bench further notice that the Liquidator Ms. Jovita Reema Mathias is also not present before this Bench. Keeping in view that the Liquidator has not completed the liquidation process even after 3 years and she decides not to appear before this Bench in spite of mentioning in the cause list that the liquidator should be present before this Bench. The Bench, therefore, would request the IBBI to look into the conduct of the liquidator and take appropriate action against her." 3.3 In view of the above, the Board held the prima facie view that Ms. Jovita Reema Mathias had contravened section 35(1)(k), 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 14 of the Code of Conduct specified thereunder. 4. Submissions by IP. 4.1 Ms. Jovita Reema Mathias submitted in her reply to SCN clarifying that she had no intention to disrespect the orders of the AA and submitted that there was no order of the AA directing her to remain present in person at the time of the hearing scheduled on 31.03.2022. She further submitted that the liquidation of the CD was substantially complete so far as the assets had already been sold. However, the liquidation process is not able to be closed due to pendency of certain litigation and receipt of income tax refund of Rs. 1.47 crores. Various applications were filed both for and against the liquidator, which has been listed from time to time even before 31.03.2022. 4.2 She has placed on record various or-

ders of the AA and submitted that prior to 31.03.2022, the matter was taken up for hearing on 23.11.2021 and 04.02.2022. On either of these dates, the AA did not issue any direction for her personal presence. Also, her counsel did not inform her any requirement regarding her personal presence. As such, she was under the bona fide belief that her presence was neither called for nor required. As a general matter of course, she had logged in through video conferencing at the time of hearing of matter wherein she has been appointed as a RP or liquidator. She submitted that on 31.03.2022, her office was facing connectivity issues due to which she was unable to remain logged in. She further submitted that she did not receive any intimation from her counsel that her personal presence has been ordered or directed by the AA else she would have made any alternate arrangements to ensure her virtual presence at least. 4.3 She submitted that she was informed subsequently by a colleague about the practice of the National Company Law Tribunal, Mumbai Bench, around the time was to insert a line into the cause list that they are required to be present. She submitted that it was the duty of her counsel to check the cause list and inform her of the same; as she has no legal background, and thus, not aware of the technical and procedural aspects of the functioning of the AA and being an IP can only abide by the specific orders or directions which are passed. 4.4 Thus, in the absence any intimation that there was any specific direction requiring her presence before the AA, she could not be present. Further, she was subsequently informed that the AA had orally asked her counsel as to why the pending litigation could not have been avoided, to which





## GST Amnesty scheme

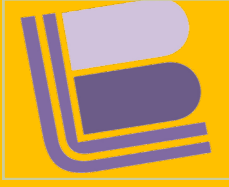
www.aa.com



the AA sought a specific answer in this regard from her and was not satisfied with what was submitted by her counsel. 4.5 The DC raised the following queries on 16.02.2024 during the personal hearing – (a) any steps taken for clarification of observation in AA order dated 31.03.2022; (b) communication with your counsel regarding having no instructions from the liquidator. Ms. Jovita Reema Mathias replied to the said queries vide mail dated 21.02.2024 and submitted that she was advised against filing an appeal since she could seek recall on the next date of hearing. Vide order dated 31.03.2022, she was required to be present in court on 10.05.2022 wherein she was advised to put forward her position in clarity before the bench and request the bench to recall the previous order. However, the matter could not be taken up due to paucity of time and thereafter the bench changed. The said matter was not taken on subsequent dates for the same reason. The probable course should have been to file an application for recall of the order before the AA, however under advice, she chose the above course. 4.6 She submitted that the counsel Mr. Piyush Deshpande, appeared before the AA on 31.03.2022, under instructions from main counsel Mr. Amir Arsiwala. She had shared proper instructions with Mr. Arsiwala who was instructed to appear in the matter. However, as he was appearing before another bench, he instructed his junior to appear before the relevant bench which passed the order dated 31.03.2022, to seek a passover, so that Mr. Arsiwala could appear and apprise the bench about the matter. 4.7 When the bench enquired from Mr. Piyush Deshpande about instructions, being a junior counsel, he said that he had no instructions. However, the true position was that Mr. Arsiwala, his senior,

was instructed in the matter and had adequate instructions to apprise the AA about the updates on the matter. The subsequent proceedings in the matter and timely filing of the updated reports indicate towards the progress made in the matter and her efforts in completing the liquidation. She annexed the copy of email sent to the counsel updating him with the status of income tax refund in the case of CD. 4.8 She submitted that she acted under legal advice in appearing before the AA on subsequent dates for appraising the AA about the progress in the matter and praying for recall of order dated 31.03.2022. However, the matter could not be taken up. She submitted that present situation could have been avoided if she would have been able to apprise the AA about the actual progress on 10.05.2022 and could have persuaded the AA to recall the order dated 31.03.2022. However, the matter was not taken up on subsequent dates. She apologised for not being present before the AA on 31.03.2022 and submitted that no penal action be taken for this avoidable inadvertence. 5. Analysis and Findings. 5.1 The DC observes that the adverse observation of the AA as emerging from its order dated 31.03.2022 is that Ms. Jovita Reema Mathias was not present during the course of hearing before the AA despite standing instructions in the cause list for IP to appear in their matters via VC. The cause list of the AA for 31.03.2022 stated that “The IRP, RP & LIQUIDATOR should be present in person (VC) during the Hearing.” making it mandatory for the IP to be present before AA during the proceedings of its case. 5.2 Another adverse observation evident from the order dated 31.03.2022 is that the counsel present on behalf of the liquidator stated that “he does not have any instruction from the liquidator. 5.3 It is pertinent to note that under the Code, IRP/

RP/Liquidator after his appointment is required to take charge of the CD and perform all necessary actions under the Code for resolution of the CD. Such scope of charge is wide and includes performing various tasks on behalf of the liquidator. Thus, vide provision of section 35(1)(i) of Code, he has been entitled to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities. The intent of the Code is very clear which provides “to discharge his duties, obligations and responsibilities” which means that although any assistance has been availed by liquidator, it does not discharge the liquidator from the duties enlisted rather it is merely an assistance availed by liquidator to get the duties and obligations discharged. Therefore, plea of the Ms. Jovita Reema Mathias that she did not receive any intimation from her counsel or did not know about the practice of the NCLT, Mumbai Bench requiring the presence of an IP through VC does not augur well and shows lack of awareness and seriousness required for discharging the duties as an IP. 5.4 Regarding the observation of the AA that the counsel was not having any instruction from the liquidator, the DC observed that she has brought out in her reply that she had updated the counsel with the latest status of the case a day before the date of hearing before the AA and also furnished copy of an email to the counsel written a day prior to the date of hearing fixed before the AA. However, Ms. Jovita Reema Mathias has submitted that the junior of the counsel was before the AA as the counsel engaged by her was before another bench. Since, junior counsel had instructions for pass over and was not aware of the facts of the case, he could not make submissions before the AA.



## LLB & CO.

525, The Summit Business Bay,  
Behind Gurunanak Petrol Pump,  
Near W.E. Highway Metro and  
Cinemax, Andheri (East),  
Mumbai - 400 093

Office No.: 5, Barsana,  
Salasar Brij Bhoomi,  
Near Maxus Mall,  
Bhayandar (West),  
Thane - 401101

Phone: +91 93202 30112  
+91 - 22 - 26831036  
+91 - 22 - 49242456  
+91 - 22 - 28040048  
E-Mail: info@llbco.in  
Web: www.llbco.in

Since, Ms. Jovita Reema Mathias could not attend the hearing because of connectivity issues, she should have informed the counsel or his junior counsel regarding the difficulty faced by her in attending the hearing before the AA to apprise the bench about her situation. Such lack of effort reflects a lackadaisical attitude on her part. 5.5 Further, on the issue as to why the same could not be brought before the AA at a later stage for modification of its order, Ms. Jovita Reema Mathias has explained with copy of orders of subsequent date that the matter could not be taken up. However, the DC

notes that the matter was listed on next date, i.e., 10.05.2022 where there is no record of submissions made by Ms. Jovita Reema Mathias. The DC notes that on 10.05.2022, one of the members of the bench was same as that on 31.03.2022. Further, on the next date of hearing i.e. on 23.06.2022, the same bench which heard the matter on 31.03.2022 was present. Constitution of the bench was finally changed after 23.06.2022 only. Further, such change in composition does not create any bar for presenting case before the AA. Hence, the DC holds that appropriate corrective

measures were not taken showing that she did not have full conviction of her defence about the adverse remarks made. 5.6 In view of the forgoing discussion and AA order dated 31.03.2022, the DC finds that Ms. Jovita Reema Mathias did not represent the CD before the AA effectively as alleged in SCN. Thus, the DC holds that Ms. Jovita Reema Mathias has failed to act as per section 35(1)(k), 208(2)(a) & (e) of the Code, regulation 7 (2)(a) & (h) of the IP Regulations read with clause 14 of the Code of Conduct specified thereunder.



### Disclaimer:

This newsletter is prepared strictly for private circulation and personal use only. This newsletter is for general guidance on matters of interest only and does not constitute any professional advice from us. One should not act upon the information contained in this newsletter without obtaining specific professional advice. Further no representation or warranty (expressed or implied) is given as to the accuracy or completeness of the information contained in this newsletter.