

NEWSLETTER APR 2020

"Strive not to be success but rather to be of value"

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DIRECT TAX

INCOME TAX

Pandhes Infracon (P.) Ltd. v. ACIT [2020] 116 taxmann.com 376 (Mumbai - Trib.)

Granting of Stay Applications (interest & penalty) and lifting of garnishee proceedings in view of Covid – 19 pandemic where the assessee has paid the entire tax liability.

Facts

1. Assessee was engaged in the business of construction as a civil contractor, builder and developer. The assessee was granted various contracts by the statutory authorities under Prime Minister Awas Yojna.
2. Return of Income was filed declaring a total income of approx. Rs. 16 crores and the same was accepted by AO under scrutiny assessment. Subsequently the case was reopened, and addition was made to the tune of Rs. 34 crores on account of bogus purchases.
3. Aggrieved by the said order, the assessee preferred an appeal before the CIT(A) and CIT(A) deleted the addition of Rs. 5crores but the OGE was pending of the said order. However, out of the total demand of Rs. 6.47 crores, 3.56 crores has been paid which is little more than the tax component of Rs 3.48 crores and the balance outstanding demand represented interest and penalty only.
4. The stay petitions had also been filed before AO and PCIT but without much success. All the bank accounts and debtors had been attached under the garnishee proceedings.
5. The assessee was not in a position to pay its labourers despite the directions of the GOI. Further, the assessee also received directions from Collector to complete his building for providing quarantine facilities to the Covid 19 patients.
6. The assessee sought vacation of garnishee proceedings initiated against the assessee.

Held

1. In this difficult face of Covid 19 pandemic in which the poorer sections of society are hardest hit, it is more important for the employers to take care of the employees. In view of attachment of bank account and debtors, the assessee is not in a position to perform certain obligations.
2. The assessee has paid the tax amount and if the assessee opts for VSVS scheme he will have nothing further to pay and thus it will not be prejudicial in the interest of the revenue if stay is granted on the balance amount.
3. Thus, considering the facts of the case, stay has been granted for the balance outstanding of Rs. 2.91 crores till the disposal of the appeal or six months from the date of the order whichever is earlier with the condition that the amount available after this stay order will be utilized in the following sequence –
 - a. Payment of Wages and Salaries to the workers and employees
 - b. On construction activity for the purpose of providing quarantine facilities as directed y collector
 - c. Other construction activities of the business.

DIRECT TAX

INCOME TAX

INCOME TAX: Where assessee-builder had already paid his entire tax liability, in view of Covid 19 pandemic, a stay on collection/recovery of outstanding demands relating to interest and penalty was to be granted on condition that amount available to assessee would first be used for making payments of wages/salaries payable to labourers/employees and balance amount would be used for purpose of carrying out construction activity in partially completed building as necessary for providing quarantine facilities as per direction of Collector and any surplus thereafter would be used for construction activities of business

Assessment of assessee, a civil contractor, builder and developer, was reopened and additions were made on account of bogus purchases - While appeals were pending, all bank accounts and debtors of assessee had been subjected to attachment - Out of total demand of Rs. 6.48 crore, assessee had already paid Rs. 3.57 crore which was more than tax component of Rs 3.48 crore - Balance demand represented interest and penalty only - Due to Covid 19 pandemic, work of assessee came to standstill - Collector directed assessee to make its partially completed building available for providing quarantine facilities to Covid 19 patients - Ministry of Labour and Employment had repeatedly advised employers not to terminate services of employees, particularly casual or contractual workers or to reduce their wages - Held, that as all of us are traversing through one of toughest patch of time, facing Covid 19 pandemic and poorer sections of society are hardest hit, it is all more necessary for every employer company to take care of its employees - Current situation calls for Tribunal's interference in instant matter - Since assessee had already paid his entire tax liability, legitimate interests of revenue cannot be prejudiced by grant of stay on remaining outstanding dues which were primarily on account of levy of interest, and consequential levies - A stay on collection/ recovery of outstanding demands of Rs. 2.91 crore is to be granted till disposal of appeal/end of six months - Any amount available to assessee will be first used for making payments of overdue and current wages/salaries payable to labourers/employees - Balance amount will be used for purpose of carrying out construction activity as necessary for providing quarantine facilities - Any surplus amount thereafter will be used for construction activities of business.

Note: ITAT Mumbai created history by hearing a stay petition, on humane ground during period of complete lockdown, through video conferencing from home offices of Coram Members.

[2020] 116 taxmann.com 376 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH

Pandhes Infracon (P.) Ltd.

v.

Assistant Commissioner of Income Tax

P.P. BHATT, PRESIDENT

AND PRAMOD KUMAR, VICE PRESIDENT

SA NO. 184/MUM/2020

[ASSESSMENT YEAR 2010-11]

APRIL 24, 2020

Vipul Joshi and Dinkle Hariya for the Appellant. Avneesh Kumar for the Respondent.

ORDER

INCOME TAX

1. **Pramod Kumar Vice-President** - The assessee applicant, by way of an email, sought an extremely urgent hearing of this stay petition. On a perusal of the reasons on record, and on a consideration of all the related facts, it was deemed fit and proper to hear this petition on urgent basis. However, as our physical office at Mumbai is not functioning at present, in view of the lockdown and in view of guidelines of the Government of Maharashtra, it was considered appropriate to hear this stay petition, through web based video conferencing, from home offices of the respective Members of this coram.
2. By way of this petition, the assessee applicant seeks vacation of coercive measures against recovery of Rs 2,91,05,660, in respect of the remaining demands for interest and penalty for being assessee in default, in respect of the assessment year 2010-11. Out of total demand of Rs 6,47,75,090, the assessee applicant has already paid Rs 3,56,69,430, which is little more than the tax component of Rs 3,48,13,919, and the balance outstanding demand represent interest and penalty only. The assessee applicant seeks vacation of garnishee proceedings initiated against the assessee.
3. The assessee appellant before us is a private limited company engaged in the business of construction as a civil contractor, builder and developer for last 25 years. It is stated that the assessee has been granted several contracts by the statutory authorities for the poor and economically weaker sections of the society, under the Prime Minister Awas Yojna. The assessee had filed income tax return disclosing taxable income of Rs 16,09,04,440 and the assessment was completed under section 143(3) of the Income Tax Act, 1961. Subsequently, however, the assessment was reopened and additions of Rs 33,93,97,197 were made on account of, what was termed as, bogus purchases. The total income was thus assessed at Rs 50,94,56,524. The assessee carried the matter in appeal before the CIT(A) but without much success, inasmuch as the addition to the extent of Rs 5,09,09,688 are said to have been deleted by the CIT(A) but, according to the assessee, the Assessing Officer is yet to give effect to the CIT(A)'s order. The assessee is now in appeal before us. In the meantime, the stay petitions filed by the assessee before the Assessing Officer and the PCIT, but without any success. All the bank accounts of the assessee have also been subjected to attached by garnishee proceedings under section 226(3). The Assessing Officer has also attached all the debtors, including Malegaon Municipal Corporation, by issuing garnishee notices to them under section 226(3). The work of the assessee has now come to standstill. It is also submitted that the assessee is not in a position to pay its labourers, even though there are directions from the Government to pay the labourers, support staff and other employees, and to take care of them. It is also stated that the assessee applicant also moved to Hon'ble Bombay High Court for immediate intervention, so as to enable the assessee to take care of its employees, but when the matter was taken up, at the time of mentioning, "it was suggested that the applicant should approach the ITAT first". The assessee is now in stay petition before us. The assessee has also informed us that in terms of the directions of the Collector, that he has received only yesterday evening, he has to make available his partially completed building for providing quarantine facilities to the Covid 19 patients.
4. We have heard the parties, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. As all of us are traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. It is, therefore, all the more necessary for every employer company to take care of its employees Ministry of Labour and Employment, Government of India, vide circular dated 20th March 2020, has advised as follows:
6. On 23rd March, 2020, Secretary, Ministry of Labour and Employment, Government of India, in a communication to Secretary, Ministry of Housing and Urban Development, as advised as follows:
7. We find that in view of the attachment of assessee's bank accounts and assessee's debtors, the assessee is stated to be not in a position to perform these obligations. Given this situation, we are satisfied that this situation calls for our interference. In any case, even though we refrain from commenting upon merits of the case at this stage, we find that prima facie the assessee has an arguable case in appeal. We have also taken note of the fact that the assessee has already paid his entire tax liability, and in case the assessee is to opt for Vivad se Vishwas Scheme, he will have nothing further to pay. In these circumstances, the legitimate interests of the revenue cannot be prejudiced by our grant of stay on the remaining outstanding dues which are primarily on account of levy of interest, and consequential levies. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to grant a stay on collection/ recovery of the outstanding demands of Rs. 2,91,05,660 till the disposal of appeal or till the end of six months from the date of this order- whichever is earlier, subject to the following conditions:
 - (a) Any amount available to the assessee, as a result of this stay order and as a result of garnishee proceedings being lifted, will be first used for making payments of overdue and current wages payable to the labourer working with the assessee, and for making payment of overdue and current salaries to its employees. The amount available, after this exercise, will be used for the purpose of carrying out construction activity as necessary for providing quarantine facilities, as directed by the Collector. Any surplus amount thereafter will be used for construction activities of the business. The assessee will give an undertaking to this effect in writing.
 - (b) The assessee will file a statement showing utilization of funds, so available to the assessee on account of the garnishee proceedings being lifted, within 15 days from the date of this order.
 - (c) The assessee will fully cooperate in expeditious disposal of this appeal on out of turn basis, on 8th June 2020, and will not seek any adjournment. All the requisite paper books etc will be filed sufficiently in advance.
8. We also direct the Registry to fix the related appeal, for hearing on out of turn basis, on 8th June 2020.
9. In view of the above, all the garnishee orders issued by the revenue authorities on the bankers and debtors of the assessee are hereby suspended. These orders are thus declared to be no longer in force.
10. We also deem it appropriate to direct the learned Departmental Representative to convey this order to the field authorities. We also direct the Assistant Registrar ITAT, who is present in these proceedings, to send a certified copy of the order, by email, to the parties as soon as possible.
11. In the result, the stay application is allowed in the terms indicated above.

INDIRECT TAXATION

GST Notifications

- Amendment in CGST Rules**
 - Allow more time for opting into Composition Scheme for FY 2020-21.**
 - CMP-02 filing for FY 2020-21 is extended up to 30 June 2020.
 - ITC-03 filing extended up to 31 July 2020.
 - Amendment in ITC availment Provision stated under Rule 36(4), of CGST Rule, 2017.**
 - Matching of Input Tax Credit (ITC) relaxed for the period of February 2020 to August 2020. Cumulative adjustment of said months shall be made in return GSTR3B for period September 2020.
- (Notification No. 30/2020 – Central Tax Dated 3 April 2020)**
- Due date extended for composition dealer**
 - Composition dealers can submit CMP-08 for the quarter ending 31 March 2020, before 7 July 2020 and Return GSTR-4, for FY 2019-20, till 15th July 2020.
- (Notification No. 34/2020 – Central Tax Dated 3 April 2020)**
- Waiver of late fees for filing FORM GSTR-1**
 - Late fee for filing of GSTR 1, has been waived for the period March 2020, April 2020, May 2020 and for quarter ending 31 March 2020, if return is furnished on or before 30 June 2020.
- (Notification No. 33/2020 – Central Tax dated 3 April 2020)**
- Reduced interest rate and conditional waiver of late fees, provided for filing GSTR-3B, on the bases of different class of taxpayers as follows:**

Sr. No.	Tax Return Period	Original Due Date	Revised Due Date (No Interest applicable)	Due Date (No Late Fee applicable)
A	B	C	D	E
1	For Registered dealer having aggregate turnover exceeding 5 crores in previous financial year			
	Feb 20	20 Mar 20	04 Apr 20	24 Jun 20
	Mar 20	20 Apr 20	05 May 20	
	Apr 20	20 May 20	04 Jun 20	
2	For Registered dealer having aggregate turnover exceeding 1.5 crores and upto 5 Crores in previous financial year			
	Feb 20	20 Mar 20	29 Jun 20	29 Jun 20
	Mar 20	20 Apr 20		
	Apr 20	20 May 20	30 Jun 20	30 Jun 20

3	For Registered dealer having aggregate turnover upto 1.5 crore in previous financial year			
	Feb 20	20 Mar 20	30 Jun 20	30 Jun 20
	Mar 20	20 Apr 20	3 Jul 20	3 Jul 20
	Apr 20	20 May 20	6 Jul 20	6 Jul 20

(Notification No. 31/2020 and 32/2020 – Central Tax Dated 3 April 2020) These notifications shall be deemed to have come into force with effect from 20 March 2020.

• Due date for Other Compliances

- Time limit specified for completion or compliance of any proceeding, passing of order, issuance of any notice / intimation / notification by any authority or filing of an appeal, reply or application or furnishing of any report, document, return, statement by whatever name called by any person which falls between 20 March 2020 to 29 June 2020 has been extended upto 30 June 2020.
- Extension of Time shall not be applicable for compliance of following provision of CGST Act and rules framed thereunder such as:
 - Time and Value of Supply related provisions as per Chapter IV,
 - Where option exercise by Composition dealer lapses with effect from the day when aggregate turnover during a financial year exceeds the specified limit as per section 10 (3),
 - Registration as per section 25,
 - Special provisions relating to casual taxable person and non-resident taxable person as per section 27,
 - Tax Invoice as per section 31,
 - Furnishing of Return under section 37,
 - Furnishing of Return as per section 39 – GSTR-3B excluding TDS, ISD and registered non-resident taxable person related returns,
 - Levy of Late fees as per section 47,
 - Levy of Interest as per section 50,
 - Issuance of E-way bill as per section 68,
 - Power to arrest as per section 69,
 - Liability of partners of firm to pay tax as per section 90,
 - Penalty for certain offences as per section 122,
 - Detention, seizure and release of goods and conveyances in transit as per section 129.

(Notification No. 34/2020 – Central Tax Dated 3 April 2020)

- In case of E-way Bill generated and its validity expiring during 20 March 2020 to 15 April 2020 then the validity shall be deemed to be extended till 30 April 2020.

(Notification No. 35/2020 – Central Tax dated 3 April 2020)

GST Notifications

- Extension of due date GSTR-3B Return for May 20:

Sr. No.	Class of Taxpayers based on Aggregate Turnover	Tax Return Period	GSTR-3B Due Date (DD)
1	Registered dealer having aggregate turnover exceeding 5 crores in previous financial year	May 20	27 Jun 20
2	Registered dealer having aggregate turnover upto 5 Crores in previous financial year	May 20	12 July 20 or 14 July 20*
* depending upon state in which principal place of business is located			

(Notification No. 36/2020 – Central Tax dated 3 April 2020)

- Transfer money available in Electronic Cash ledger, between various major and minor heads of GST

Form GST PMT - 09 is made effective from 21 April 2020. Now taxpayer can transfer any amount of tax, interest, penalty, fees, or any other amount available in electronic cash ledger to electronic cash ledger for integrated tax, state tax or union territory tax or cess.

(Notification No. 37/2020 – Central Tax Dated 28th April 2020)

- No Late Fees on PT Return for periods up to March 2020 in Maharashtra

Late fee payable by registered employer for monthly or annual returns pertaining to periods up to March 20 and Monthly period of April 2020 is exempted due to technical difficulties faced by the tax payers subject to fulfillment of eligibility conditions as follows.

- Any amount payable as per return should have been/shall be paid on or before the filing of returns.
- Aforesaid employers should submit returns pertaining to any periods up to April 2020 on or before 31 May 2020.

(Trade Circular No. 06T of 2020 dated 30 April 2020)

- Kerala Flood Cess Return filing dates extended for Feb 20 to May 20

Sr.No.	Class of registered persons having an aggregate turnover of	Tax Period	Date extended
1	2	3	4
1	More than rupees 5 crores in the preceding financial year	Feb, 20, Mar, 20 and Apr, 20	24 Jun 20
2	More than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Feb, 20 and Mar, 20	29 Jun 20
		Apr, 20	30 Jun 20

3	Up to rupees 1.5 crores in the preceding financial year	Feb, 20	30 Jun 20
		Mar, 20	3 Jul 20
		Apr, 20	06 Jul 20
4	More than rupees 5 crore rupees in the previous financial year	May,20	27 Jun 20
	Up to rupees 5 crore rupees in the previous financial year	May,20	12 Jul 20

(Notification No. 7/2020-State Tax dated 28 April 2020)

Circulars

- **Compliance requirements under various provisions of CGST Act, clarified as follows:**
 - Taxpayer can apply for refund under “Excess payment of tax” category, in following circumstances:
 - In cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under excess payment of tax, through FORM GST RFD-01.
 - In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, then taxpayer is required to issue a “refund voucher” in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules and can claim refund under excess payment of tax, through **FORM GST RFD-01**.
 - In terms of Notification No. 35/2020-Central Tax, time limit for filing of following shall stand extended to 30.06.2020, when the timeline for compliances falling during the period from 20.03.2020 to 29.06.2020,
 - LUT (RFD -11) for 2020-21.
Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.
 - Due date for furnishing of return in FORM **GSTR-7** along with deposit of tax deducted for the said period.
 - Filing of refund application, falling during the said period has also been extended till 30.06.2020.

MCA UPDATES

A. RELAXATION IN CONDUCTING EXTRA ORDINARY GENERAL MEETING THROUGH VIDEO CONFERENCING:

- MCA vide its General Circular 14/ 2020 dated April 8, 2020 has issued relaxation for holding Extra-Ordinary General meeting (not Annual General meeting) of members of the company through video conferencing (VC) or other audio-visual means (OAVM) till June 30, 2020 or till further order whichever is earlier.
- MCA has further issued the clarification under Circular no. 17/ 2020 dated April 13, 2020 clarifying on various difficulties faced by the Company in serving Notice for conducting EGM and gave more clarity on modalities/mechanism to follow while conducting EGM or transacting items through Postal Ballot without conducting EGM.
- The links for the aforesaid Circulars is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf
http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

B. FAQs ON CORPORATE SOCIAL RESPONSIBILITY:

- MCA vide its General Circular 15/ 2020 dated April 10, 2020 has provided various clarification in the form of FAQs on the contributions made in certain fund will be treated as CSR contribution or not. It clarifies as follow:
 - a. Contribution made to 'PM CARES Fund' shall qualify as CSR expenditure under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum . No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020.
 - b. Contribution made to 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.
 - c. Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23rd March, 2020.
 - d. Ministry vide General Circular No. 10/2020 dated March 23, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.
 - e. Payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) shall not qualify as admissible CSR expenditure.

- f. Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.
- g. If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

- The link for the aforesaid Circular is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf

C. RELAXATION IN FILING FORMS U/S 124 AND 125 OF THE COMPANIES ACT, 2013:

- MCA vide its General Circular 16/ 2020 dated April 13, 2020 clarified that MCA has noted that there are difficulties in complying with the procedures relating to transfer of money remaining unpaid or unclaimed for a period of 7 years in terms of provisions of Section 124 (5) of the Companies Act, 2013 and transfer of shares under section 124 (6) of the Companies Act, 2013 read with the IEPFA (Accounting, Audit, Transfer and Refunds) Rules, 2016, the relaxation is already provided to file the forms without an additional fee levied till September 30, 2020 as per General Circular 11/ 2020 and 12/2020 dated March 24, 2020 and March 30, 2020, respectively.
- The link for the aforesaid Circular is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Circular16_13042020.pdf

D. RELAXATION IN HOLDING ON ANNUAL GENERAL MEETING BY COMPANIES WHOSE FINANCIAL YEAR ENDED ON 31ST DECEMBER, 2019:

- MCA vide its General Circular no. 18/ 2020 dated April 21, 2020 provided relaxation to the Companies whose financial year (other than first financial year) has ended on 31st December, 2019, to hold their Annual General Meeting (AGM) for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall construed accordingly.
- The link for the aforesaid Circular is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf

E. PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

- The Name Availability or the name can be reserved for formation of a Company for a period of 20 days and in case of change in name of the company the name can be reserved for maximum 60 days. Apart from this, in case of LLP the name is reserved for 90 days for new incorporation as well as for change in name of LLP. However, considering the difficulties faced during lockdown period, the names expiring any day between March 15, 2020 to May 03, 2020 would be extended by 20 days beyond May 03, 2020.
- Also, where the last date of resubmission for any form for the company or LLP falls between March 15, 2020 to May 03, 2020 would be extended by additional 15 days beyond May 03, 2020. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non-resubmission during this extended period as mentioned above.
- The link for the aforesaid Notification is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

F. TIME EXTENDED TO APPLY WITH INSTITUTE ADDING NAME IN DATA BANK FOR INDEPENDENT DIRECTOR:

- On April 29, 2020, the Ministry of Corporate Affairs notified an amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014 ("the Rules") as the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020 ("the 2nd Amendment Rules, 2020").
- The 2nd Amendment Rules, 2020 has brought amendment in Rule 6 which deals with compliances required by any individual who is eligible and willing to be appointed as an Independent Director to apply online with the Indian Institute of Corporate Affairs at Manesar, for inclusion of his name in the data bank within seven months (earlier it was five months). This seven months is from December 1, 2019 when the 5th amendment Rules 2019 was notified. Now the extension of time is given and the new date to apply online with institute for inclusion of name in the Data Bank of Independent Director is June 30, 2020.
- On 22nd October, 2019, Rule 6 of the Rules was amended as the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 which was made effective from December 1, 2019, notifying a new requirement of passing of proficiency test in one year from the date of application of inclusion of name online with the Indian Institute of Corporate Affairs at Manesar, an Institute, which will be creating and maintaining data base for Independent Director. Such application to the Institute to be made in 3 months from the date of notification that is three months from December 01, 2019 so by February 28, 2020. He can include his name for a period of 1 year or 5 year or for his life-time and from time to time he shall take steps to renew it as long as he continues hold the office as an Independent Director in any company.

- However , further on February 28, 2020 , MCA has notified and extended the period of making such application with the Institute for a further period of 5 months (earlier it was 3 months). This five months is from December 1st 2019 when the 5th amendment Rules 2019 was notified. The extension of time was given till April 30, 2020.
- The link for the aforesaid Notification is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pd

G. EXTENSION FOR FILING OF FORM NFRA-2

- MCA vide its General Circular no. 19/2020 dated April 30, 2020 extended the time limit for filing of Form NFRA-2 for the reporting period F.Y. 2018-19. The said period will be 210 days from the date of deployment of this form on NFRA website.
- The link for the aforesaid Notification is mentioned below:
http://www.mca.gov.in/Ministry/pdf/Circular19_30042020.pdf

SEBI UPDATES

A. RELAXATION IN ADHERENCE TO PRESCRIBED TIMELINES ISSUED BY SEBI DUE TO COVID-19:

- In wake of the current nationwide lock down of 21 days as directed by Government of India due to Covid-19, SEBI vide its Circular dated April 13, 2020 has issued directions to extend the timelines for processing investor requests pertaining to physical securities and Compliance and disclosures to be made under SEBI Regulations and various SEBI circulars.
- Directions are issued for Registrar to an Issue and Share Transfer Agent / Issuer Companies holding SEBI Registration under Category 1 or Category 2 of RTA/STA.
- Relaxation is hereby being given to intermediaries / market participants for 21 days over and above the prescribed time limits, respectively, for activities / investor requests / compliance.
- The Link for aforesaid circular is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-adherence-to-prescribedtimelines-issued-by-sebi-due-to-covid-19_46511.html

B. THE MINISTRY OF HOME AFFAIRS (MHA) REVISED GUIDELINES ON MEASURES FOR CONTAINMENT OF COVID-19:

- MHA vide Order No. 40-3/2020- DM-I (A) dated April 15, 2020 has issued revised guidelines on the measures to be taken for containment of COVID-19 and directed that these will remain in force upto May 03, 2020.
- These guidelines permit continuation of certain services which includes the Securities and Exchange Board of India and Capital and Debt Market Services as notified by SEBI.
- The Link for aforesaid notification is as mentioned below:
<https://www.mha.gov.in/sites/default/files/MHAorder%20copy.pdf>

C. ADDITIONAL RELAXATIONS / CLARIFICATIONS IN RELATION TO COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 ('LODR') DUE TO THE COVID – 19 PANDEMIC:

- SEBI vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated April 17, 2020 has further issued clarifications regarding provisions of the LODR in the face of challenges faced by listed entities due to the COVID-19 pandemic.
- Requirement under Regulation 29 (2) of LODR of prior intimation to Stock Exchange about meeting of Board before 5 days / 2 working days shall be reduced to 2 days, for board meetings held till July 31, 2020.

- Regulation 39 (3) of LODR requires listed entities to submit information regarding loss of share certificates and issue of the duplicate certificates to stock exchange within 2 days of its getting information. However, it has been decided that any delay beyond the stipulated time will not attract penal provisions for intimations to be made between March 1, 2020 to May 31, 2020.
- Any authentication / certification of any filing / submission made to stock exchanges under LODR may be done using digital signature certifications until June 30, 2020.
- The Link for aforesaid relaxation is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/additional-relaxations-clarifications-in-relation-to-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-lodr-due-to-the-covid-19-_46525.html

D. ONE TIME RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS:

- SEBI vide Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/66 dated April 21, 2020 has granted One Time Relaxation in view of impact of COVID-19 in compliance of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred as 'ICDR Regulations, 2018'). This circular has come into force with immediate effect.
- Regulation 44(1), 85 and 140 of ICDR Regulations, 2018 requires an opening of Public issue/ Right issue within 12 months from date of issuance of observations by SEBI. However, if the same have expired/ will expire between March 1, 2020 and September 30, 2020 it has been extended by 6 months, from the date of expiry of such observation, provided an undertaking from lead manager of the issue confirming compliance is submitted with the updated offer document to the Board.
- Any increase or decrease in estimated fresh issue size by more than 20% of the estimated fresh issue size shall require fresh filing of the draft offer document along with fees. An issuer shall be permitted to increase or decrease the fresh issue size by up to 50% of the estimated issue size without requiring to file fresh draft offer document with the Board subject to conditions. This relaxation is applicable for issues (IPO/ Rights Issues/ FPO) opening before December 31, 2020.
- The Link for aforesaid circular is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/one-time-relaxation-with-respect-to-validity-of-sebi-observations_46536.html

E. RELAXATION FROM CERTAIN PROVISIONS OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 IN RESPECT OF RIGHTS ISSUE:

- Due to COVID-19, SEBI vide its Circular No. SEBI/HO/CFD/CIR/CFD/DIL/67/2020 dated April 21, 2020 has provided temporary relaxations in the provisions related to Rights Issues

as contained in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations). These temporary relaxations are applicable for Right Issues that open on or before March 31, 2021 and not applicable for issue of warrants.

- Temporary Relaxations are provided for the following: a) Relaxations with respect to the eligibility conditions related to Fast Track Rights Issues. b) Relaxation with respect to Minimum Subscription c) Relaxation with respect to the minimum threshold required for not filing draft letter of offer with SEBI.
- The Link for aforesaid circular is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxations-from-certain-provisions-of-the-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-in-respect-of-rights-issue_46537.html

F. RELAXATION IN REGULATION 24(I)(F) OF THE SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 2018 DUE TO THE COVID 19 PANDEMIC:

- Due to COVID-19, SEBI has issued relaxation in SEBI (Buy-Back of Securities) Regulation, 2018 vide Circular No. SEBI/HO/CFD/DCR2/CIR/P/2020/69 dated April 23, 2020 and shall come in force with immediate effect. This relaxation will be applicable till December 31, 2020. As per this circular, for Regulation 24(i)(f) of SEBI (Buy-Back of Securities) Regulation, 2018 provides that the Companies shall not raise further capital for a period of 'six months' (earlier it was 'one year') from the expiry of buyback period, except in discharge of their subsisting obligations.
- The Link for aforesaid circular is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-regulation-24-i-f-of-the-sebi-buy-back-of-securities-regulations-2018-due-to-the-covid-19-pandemic_46547.html

G. RELAXATION IN HOLDING AGM BY TOP 100 LISTED ENTITIES BY MARKET CAPITALIZATION, DUE TO THE COVID –19 PANDEMIC:

- SEBI vide its Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/71 vide dated April 23, 2020 deals with Relaxation in relation to Regulation 44(5) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR') on holding of Annual General Meeting (AGM) by top 100 listed entities by market capitalization. This Circular has come into force with immediate effect.
- Top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial year (i.e., by September 30, 2020).
- The Link for aforesaid circular is as mentioned below:
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-relation-to-regulation-44-5-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-lodr-on-holding-of-annual-general-meeting-agm-by-top-100-listed-entitie-_46552.html

MUMBAI

4A, Kaledonia-HDIL,
2nd Floor, Sahar Road,
Near Andheri Station,
Andheri (East),
Mumbai - 400069,
T: +91 22 6625 6363
E: businessmum@krestonsgco.com

NEW DELHI

No.402,
Arunachal Building,
19 Barakhamba Road,
New Delhi-1100001
T: +91 1141251489
E: businessdel@krestonsgco.com

BENGALURU

GR Plaza IV floor
433, 17th cross,
Sector IV, HSR Layout
Bengaluru – 560102
T: +91 80 25725432
E: businessblr@krestonsgco.com

KOCHI

5A, Oxford Business Centre,
Sreekandath
Road, Ravipuram,
Kochi- 682016
T: +91 484 2383133
E: businesskochi@krestonsgco.com

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