MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

Corporate Update

April | 2025

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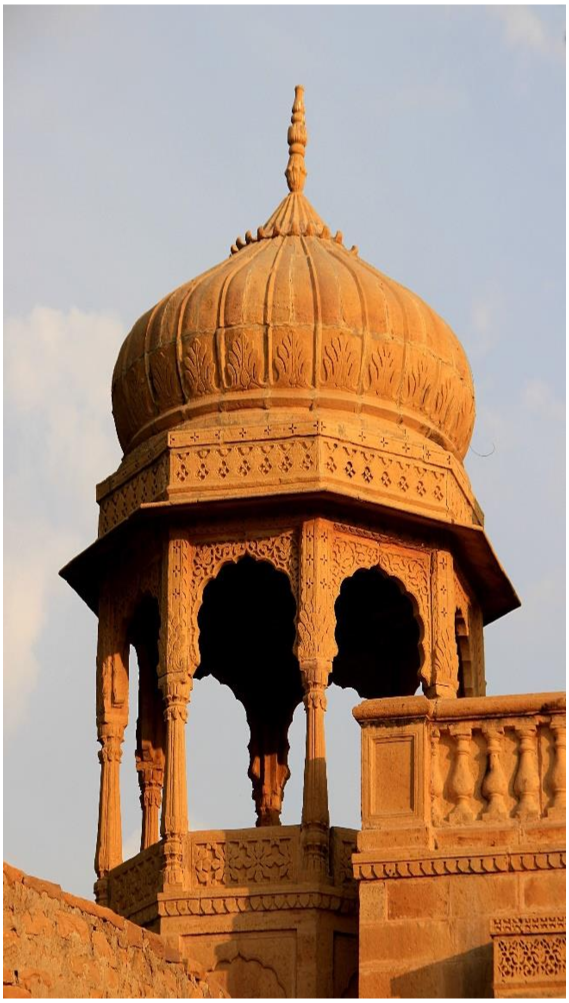

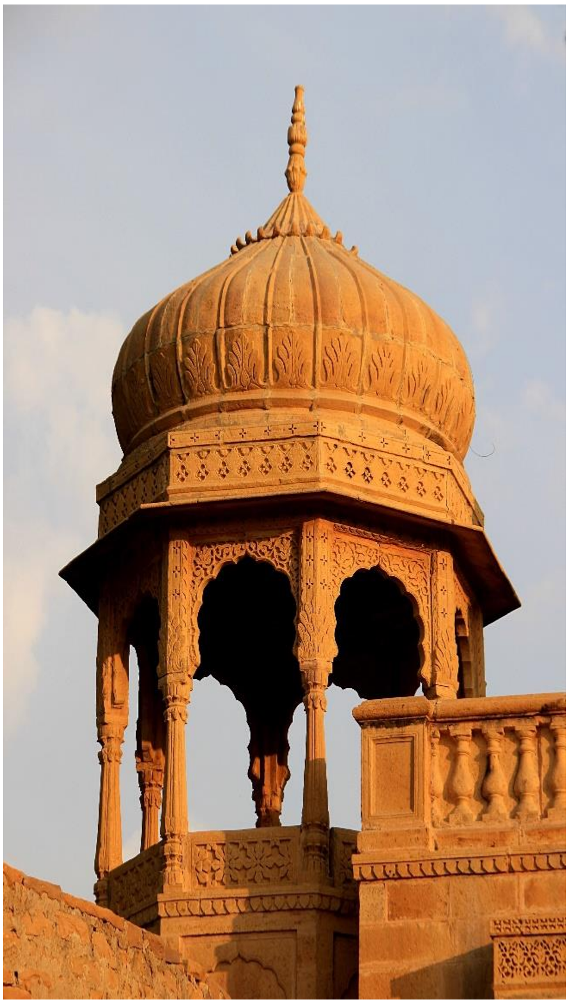

FOREWORD

Dear Reader,

This Update contains important decisions both under the domestic and international taxation, regulatory notifications under the Exchange Control as well as GST Regulations.

As indicated in the last Corporate Update, India and UK finalized a Free Trade Agreement on May 6, 2025 which covers tariff elimination on 99% of Indian tariff lines, 90% UK tariff lines and covers many concessions from both the sides. In due course, the agreement would become effective.

As per the Press Reports, negotiations with India and EU for the Free Trade Agreement are also at a very advanced stage and it is expected that an “Early Harvest” Trade Agreement may be signed with European Union as soon as in July 2025. This Agreement may also be on the same lines as that finalized with UK.

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DIRECT TAXES

INTERNATIONAL TAXATION

Subscription fee for subscription towards e-magazines and content which is standardised is not Fee for Technical Service

CIT v Springer Nature Customer Service Centre GmbH TS 473-HC-2025(Del-HC)

In a recent judgment, the Delhi High Court held that the standardized subscription fee received towards subscription to e-magazines and content which is standardized cannot be regarded as Fee for Technical Services (FTS).

The taxpayer, a German company was part of Springer group which was engaged in the business of publishing books and academic journals.

The taxpayer received subscription fee from various customers in India for provision of online journals and books. Additionally, the taxpayer also received commission from its Indian group company for marketing activities of the products of its Indian group affiliate.

During the course of the scrutiny proceedings, both the aforesaid receipts were taxed as FTS under the provisions of the domestic tax law as well as Article 12 of the Double Taxation Avoidance Agreement between India and Germany (**DTAA**).

Furthermore, the Tax Tribunal decided the matter in favour of the Assessee following the decision of the Delhi High Court in Assessee's own case in *CIT v. Springer Nature Customers Services Centre GMBH [2023] 458 ITR 728 for AY 2013-14.*

It may be mentioned that in the said earlier decision of the High Court, it was opined that such subscription fee cannot be regarded as Royalty in terms of Article 12 of the DTAA. However, as the aforesaid decision did not decide the aspect of taxability of subscription fee as FTS. Based on this premise, the revenue authorities contested the order of the Tax Tribunal for the subject year before the High Court of Delhi.

While deciding the issue of taxation of subscription fee as FTS, the Delhi High Court observed as under:

1) For any income to be construed as FTS, it is necessary that the said service should be exclusive or customized. As such, the same would not include standardized automated services, the access of which could be granted to all on payment of charges.
2) The expression rendering of "managerial, technical or consultancy services" should be understood to involve human intervention.
3) Mere access to technical database or technical literature cannot be said to provision of technical services.

While holding so, the High Court also referred to the commentary on Article 12A of the United Nations Model Double Taxation Convention between developed and developing countries, 2021.

Accordingly, it was held that standardized subscription fee collected from various third parties cannot be regarded as FTS either under the provisions of the Act or the provisions of Article 12 of the DTAA. Furthermore, as regards the issue of taxability of commission income, the High Court relied on its earlier order wherein, the said income was held to be outside the ambit of FTS and therefore, not liable to tax in India.

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Delhi Tax Tribunal allows set off of losses of PE business with FTS income

Hyosung Corporation v ACIT [TS-443-ITAT-2025(DEL)]

Recently, the Delhi Tax Tribunal in the above case allowed the set off of losses of Permanent Establishment ('PE') against income earned from Fee for Technical Services ('FTS') under section 71 of the Act.

In the present case, the assessee, a foreign company is a tax residence of Korea, filed its return of Income ('ROI') for AY 2021-22, wherein the assesee claimed set off of business loss of PE against income under the head 'income from other source' which include FTS income charged to tax @ 10% as per India-Korea DTAA ('DTAA'), as per section 71 of the Act.

The case of the assessee was selected for scrutiny and an order u/s 143(3) was passed as per direction issued by Dispute Resolution Panel ('DRP') u/s 144C(5) of the Act, wherein it was held that set off of business loss of PE against FTS income of HO is not allowed as FTS income cannot be attributed to PE and above two incomes are practically from separate entities and gain/loss cannot be set off against each other.

Aggrieved by the order, the assessee filed an appeal with Delhi Tax Tribunal, the assessee relied on the decision of Mumbai Tax Tribunal in the case of Sumitomo Mitsui Banking Corporation vs DDIT (2012) 19 taxmann 364 (Mumbai)(SB), wherein it was held that PE in India and group entity abroad of which said PE is a part are not independent persons and the taxable entity is only one i.e. overseas group entity.

The assessee also made reference to the order of ITAT Mumbai in the case of DCIT v Music Networks Ltd. (2012) 143 taxmann.com 41(Mumbai-Trib), wherein brought forward business loss has been allowed to be set off against royalty income.

On the other hand, the Ld. DR submitted that the income of PE is determined u/s 44DA of the Act and income of non-PE as per section 115A of the Act and accordingly income of non-PE is chargeable to tax u/s 115A(1)(b) of the Act. Therefore, income of PE should not be allowed to be set off from the income of FTS.

Delhi Tax Tribunal noted that assessee has earned FTS income without the assistance of PE in India. Hence, FTS earned is not taxable as per Section 44DA of the Act. It has also noted section 115A of the Act prescribes for determination of the total income under the Act including FTS income and thereafter FTS income will be charged to tax at special rate provided u/s 115A(1)(b) of the Act.

Delhi Tax Tribunal also referred to section 115BBD(2) and 115BBH(2) of the Act, which specifically restrict the set-off of losses under the provisions of the Act. Since the provisions of section 115A of the Act is silent regarding any such restrictions, the Tribunal allowed the set off of loss of the PE business against the FTS income earned through other sources in India under the provisions of section 71 of the Act.

Accordingly, the appeal of the assessee was allowed.

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Receipts of foreign company towards offshore supply of drawings and designs and offshore supply of plants and equipment not liable to tax in India

SMS Siemag AG vs. Addl. DIT/DDIT IT) [2025] 173 taxmann.com 403 (Delhi - Trib.) dated April 09, 2025

Recently, the Tax Tribunal, Delhi Bench inter-alia held that consideration received by foreign company towards offshore supply of designs and drawings and offshore supply of plant and equipment was not liable to tax in India.

On facts, the taxpayer SMS Siemag AG is a German company engaged in the business of supply of plant, equipment, drawings and rendering of technical services to customers in the metallurgical sector world-wide. In the tax return filed by the taxpayer, it offered to tax only receipts from rendering technical services while the receipts from offshore supply of plant and equipment and offshore drawing and designs were claimed as not taxable in India. In the assessment proceedings, the tax officer subjected to tax receipts from offshore supply of design and drawings as Fees for Technical Services ('FTS') and also attributed 75% of the profits from offshore supply of plant and equipment to India alleging that the taxpayer had fixed place Permanent Establishment ('PE') in India.

It was contended by the taxpayer before the Dispute Resolution Panel ('DRP') that payments received in respect of supplies of drawings and designs could not be subject to tax in India as the same were inextricably linked to supplies of plant and equipment consideration of which represented Business Profits and not rendering of technical services. It was the argument of the taxpayer that the Explanation 2 to Section 9(1)(vii) of the Act that defines FTS does not apply where the consideration is for outright sale of plant with essential drawings and designs and not for rendering of engineering and technical services. The taxpayer contended that such payments would fall in the definition of business profits and could not be subjected to tax unless the taxpayer had PE in India and supplies were connected therewith. The taxpayer submitted that a separate price was stipulated under the Agreements for such supplies, which was payable outside India. Terms of delivery, involving transfer of title outside India were also specified under the Agreements. The taxpayer further argued that in terms of the provisions of Protocol 1(a) of the DTAA between India and Germany, no part of consideration for supply of equipment from Head Office is attributable to PE, if any, in India.

The taxpayer did not get relief from the DRP on the issue of offshore supply of design and engineering. However, the DRP reduced the profit attribution rate to alleged PE from 75% to 30% in respect of offshore supply of plant and equipment.

On appeal, the Tax Tribunal relied on its earlier decision in taxpayer's own case [2025] 170 taxmann.com 245(Delhi) on same issues and also on the decision of SMS Concast AG vs. DDIT [TS-328-ITAT-

2023(DEL)] wherein, relying on various decisions of High Courts including jurisdictional High Court decision in the case of Linde AG vs. DDIT [2014] 44 taxmann.com 244, it was held that the contract for supply of drawings and designs was inextricably linked to the contract for supply of plant and equipment and when the supply of plant and equipment had been treated as sale transaction completed outside India, hence, not taxable in India, the supply of drawings and designs relating to plant and equipment had to be treated similarly. Accordingly, the Tribunal concluded that receipts from offshore supply of designs and drawings and offshore sale of plant and machinery were not liable to tax in India both under the provisions of the Income Tax Act and the DTAA between India and Germany.

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Granting of tax deduction certificate (TDC) at lower tax rate is not sustainable instead of `NIL' rate, when the Assessee was being granted the TDC at Nil rate for earlier years

In a recent case of Lufthansa Cargo AG v. ACIT & Ors., [W.P (C) 11376/2024] the Delhi High court (Delhi HC) held that issuing of Lower Tax Determination certificate (TDC) at lower tax rate is not sustainable when the Assessee was being granted TDC at Nil rate for several earlier years and the nature of business/ income in current year has not undergone any changes.

Lufthansa Cargo AG (Lufthansa), a tax resident of Germany engaged in international air cargo transportation through operation of aircrafts in international traffic, filed an application for TDC under Section 197 of the Income Tax Act, 1961 for FY 2024–25 seeking nil withholding tax certificate. Lufthansa claimed that it is a tax resident of Germany and its income is not chargeable to tax in India in terms of Article 8 of the India-Germany Double Taxation Avoidance Agreement. It further submitted that it had also been issued TDC for NIL withholding tax in the past several years.

The Assessing Officer (AO) instead of issuing a certificate of NIL withholding, directed a tax rate of 0.10% for the withholding. Aggrieved by the AO's order, Lufthansa filed a writ petition against the rejection of its application for a 'Nil' withholding before the Delhi HC.

Before the High Court Lufthansa claimed that it operates through IATA-registered agents and its income arises solely from international cargo services. Its income is exempt under Article 8 of the India-Germany DTAA, which exempts profits from international air transport operations from Indian taxation. Lufthansa contended that the nature of income and operations remains unchanged from previous years. Lufthansa asserted that it had been consistently granted TDC at Nil rate for over a decade.

The department argued that reduced WHT rate (0.10%) was directed in TDC to protect the Revenue's interest.

Delhi HC observed that Lufthansa had received TDC at Nil rate consistently, and the Revenue did not dispute this record. There was no evidence of change in income/services. The AO did not dispute the petitioner's DTAA-based claim of exemption under Article 8. The High Court thus held that issuance of TDC at a reduced rate instead of NIL rate could not be sustained. Consequently, Delhi HC quashed the AO's orders requiring WHT at 0.10%.

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Mumbai ITAT deletes the penalty under Section 43 of the Black Money Act (BMA), for non-disclosure of foreign Assets, as revised return was filed within prescribed timeline with due disclosures of Foreign Assets

Timothy John Brinkman [TS-425-ITAT-2025(Mum)]

On the facts of the case, the Assessee, a British citizen, came to India for employment for the first time in January 2019. He was employed with an Indian company for a period of five-years and left India in January 2024. He held various assets in the United Kingdom accumulated by him over the course of his career from Income earned outside India.

For FY 2021-22 the Assessee filed the original return of Income under the residential status of “Resident” but failed to disclose his foreign Assets details and also not offered his overseas income to tax in India.

Upon receiving a summons under Section 131(1A) of the Income-tax Act, 1961 (“The Act”) from the Directorate of Investigation, the Assessee filed a revised return of income within the statutory timeline by offering income earned overseas to tax in India and fully disclosed his foreign assets, which was duly accepted as per Intimation order passed under section 143(1) of the Act. During the course of investigation proceedings, revised return along with the complete disclosure of facts and figures were produced before the Investigating officer (‘IO’). Despite the disclosures in the revised return of Income, the IO levied a penalty of Rs. 10,00,000/- under the Black Money Act,2015, (‘BMA’) alleging non-disclosure and failure to furnish information about foreign assets in the original return of Income.

The assessee field an appeal before the CIT(A), who upheld the order of the IO.

The Assessee further filed an appeal before the Hon’ble Mumbai ITAT.

Before the Hon’ble Mumbai ITAT, the Assessee submitted that the omission was neither deliberate nor intended to conceal any income and the original return was filed under the wrong professional advice that global income would only be taxable in India post completion of four years in India. Further he submitted that the revised return was filed within the statutory time limit, including full and accurate disclosure of all foreign assets.

The Assessee relied on the judgement of Hon’ble Karnatak High Court in **K Mohammad Haris vs. ITO (2022) 448 ITR 707** and Mumbai ITAT in the case of **ACIT, CC-22(1) vs. Rohit Krishna** wherein, the courts have held that a revised return filed within the permitted time disclosing foreign assets precludes finding of wilful non-disclosure and hence cannot attract penalty under the Black Money Act.

The revenue submitted that assessee has failed to furnish the information in the original return which is sufficient for “non- disclosure of foreign assets” and hence liable for penalty u/s 43 of BMA.

On examining of the facts and based on the judgements, Hon’ble ITAT held that the penalty u/s 43 of the BMA is unwarranted as the revised return was filed within the statutory timelines and the disclosure was accepted by the authorities without any objections. It further noted that the legislative intent behind the BMA is to address the issue of undisclosed foreign income and assets, which is not satisfied in the present case.

Hence, penalty was deleted by the Hon’ble ITAT.

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DOMESTIC TAXATION

Revisionary powers under section 263 can be exercised by making additions on merits and not by way of remanding the matter to tax officer

In a recent Special Leave Petition (SLP) filed in the case of **Pr. Commissioner of Income Tax Vs. M/s V-Con Integrated Solutions Private Ltd. [TS-408-SC-2025]**, the Supreme Court (SC) upheld the decision of the High Court (HC), holding that the power under section 263 of the Income Tax Act, 1961 can be exercised by the Principal Commissioner of Income Tax (PCIT), by going into the merits and making an addition, and not by way of a remand, merely recording that there was failure to investigate**.**

In the instant case, the PCIT invoked revisionary jurisdiction under section 263 stating that the Assessing Officer (AO) had not conducted proper enquiry relating to share capital received by the assessee. The ITAT after examining the records noticed that the AO had raised several queries and demanded documents vide its questionnaire dated December 28, 2020. The assessee answered and furnished the documents to the AO and the same were also informed to the PCIT, who ensued proceedings under section 263 of the Act.

The PCIT did not mention any further enquires which were required to be made by the AO, which were not so made. The HC held that the scope of section 263 of the Act is apparently to see whether the concerned AO has failed to conduct a proper inquiry, and therefore, committed an error resulting in causing loss to the revenue. Simply by holding that the AO was required to make more enquiries, would not be a valid ground for treating the order of the AO, as erroneous and prejudicial to the interests of the revenue.

The revenue department filed a SLP in the SC against the order of the HC. The SC upholding the order of the HC held that the assessee does not have control over the pen of the AO and once the AO carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee. SC further held that there is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.

The SC observed that there may be cases where the AO undertakes a superficial and random investigation that may justify a remit. However, in such cases, the Commissioner of Income Tax must record the abject failure and lapse on the part of the AO to establish both the error and the prejudice caused to the revenue in order to exercise revisionary power under section 263. The SC thus dismissed the SLP of the revenue.

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Certain laws notified for non-admissibility of expenses under Section 37(1) of the Income-tax Act ("The Act")

Notification S.O. 1838(E) [NO. 38/2025/F. NO 370142/11/2025-TPL] dated 23-4-2025

Section 37(1) of the Act provides for the allowability of expenditure which is laid out or expended wholly and exclusively for the purpose of business or profession. Explanation 1 to Section 37(1) provides that any expenditure incurred by an assessee for any purpose which is an offence or prohibited by law, shall not be deemed to have not been incurred for the purpose of business or profession and, no deduction or allowance shall be made in respect of such expenditure.

Further, Explanation 3 to Section 37(1) introduced vide Finance Act, 2022 clarifies that the "expenditure incurred by an assessee for any purpose which is an offence or prohibited by law" mentioned in Explanation 1 above, shall be deemed to include certain specified expenditure within its ambit. One such expenditure included the expenditure incurred to settle proceedings initiated in relation to contravention under such laws may be notified by the Central Government in the official Gazette in this behalf.

Accordingly, the Central Government had by Finance (No. 2) Act, 2024 amended Explanation 3 to Section 37(1) to further clarify that the expenditure incurred to settle proceedings initiated for contravention under such laws s may be notified by the Central Government. shall not be admissible as a deduction under Section 37(1).

The Central Government has now notified the following laws for the purpose, with effect from April 23, 2025:

a) Securities and Exchange Board of India Act, 1992 (15 of 1992);
b) Securities Contracts (Regulation) Act, 1956 (42 of 1956);
c) Depositories Act, 1996 (22 of 1996); and
d) Competition Act, 2002 (12 of 2003).

Further, the Central Government has also issued another Notification No. 23/2025 dated March 28, 2025 amending the Form No. 3CD of Income-tax Rules, 1962. Vide such an amendment, modifications have been made to Form No. 3CD to capture details pertaining to such expenses. The Form No. 3CD is a detailed statement of particulars forming part of the Tax Audit Report required to be furnished by Assesses liable for a tax audit.

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INDIRECT TAXES

GOODS AND SERVICES TAX

Instruction No. 03/2025-GST dated April 17, 2025 for processing of application of GST Registration

To provide clarity on GST registration process and documents required by GST Authorities to process GST registration application, CBIC has Instruction No. 03/2025-GST, dated April 17, 2025 issued instruction to streamline processing of application of GST registration.

Due to increasing number of registration related complaints, a comprehensive instruction is being issued to take care of the latest developments and to provide clarity to the officers for processing of registration application. Accordingly, in suppression of instruction No. 03/2023-GST dated June 14, 2023, Instruction 03/2025 is issued.

Said Instructions are issued to provide clear framework of documents required/sought from applicant by GST Authorities for processing GST registration application and instructions are summarised as below:

- In case of owned premises – Any document such as Electricity Bill/Property Tax receipt or copy of Municipal Khata of the owner is required;
- In case where premises is rented– Rent/lease agreement along with one document for ownership;
- In case of shared premises – Consent letter along with one document for ownership

Said instruction restricts officers from raising presumptive queries based on assumptions, such as residential addresses not matching the application location or HSN Code of goods being banned in the state.

Further, the said instructions laydown that Principal Chief Commissioners and Chief Commissioners may take strict action against officers deviating from these guidelines.

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REGULATORY COMPLIANCE

CORPORATE LAW

Merger/Amalgamation of Insurance Companies with Non-Insurance Companies

In the recent decision of National Company Law Appellate Tribunal [NCLAT] in the matter of The Insurance Regulatory and Development Authority of India [Appellant] Vs. Shriram General Insurance company Ltd., has been decided by NCLAT on March 10, 2025.

In the instant case, the judgement was passed against four company appeals preferred u/s 421 of the Companies Act, 2013. In each of these Company Appeals, challenge is being given to the Orders of respective Learned Tribunal approving the Scheme of two cases of Amalgamation i.e. first one **"Shriram General Insurance Company Ltd.", the "Transferee Company", which is being merged with "Shriram GI Holdings Private Ltd."**, the **"Transferor Company"** and other one of the Petitioner **"Shriram Life Insurance Company Ltd." with its "holding Company" i.e. "Shriram LI Holdings Private Ltd." which is the "Transferor Company".**

The NCLAT noted that amalgamation of the two or more companies can be carried out, resulting in the assets and liabilities of the amalgamating Companies becoming the assets and liabilities of the amalgamated Company.

The prime question which was agitated by the Appellant is that `as to whether, at the stage of amalgamation whether at all any prior approval was required to be taken from the Authority under Section 35(1) of the Insurance Act. The objection raised by the learned counsel for the Appellant had confined its argument from the perspective that the Insurance Companies have been registered under Section 3 of the Insurance Act with their sole objective to carry out their business in the field of Life Insurance, General Insurance and Health Insurance and hence, amalgamation with other entities should be done in accordance with Section 35 of the Insurance Act.

Sec 35(1) of the Insurance Act provides for a prior approval of the Authority for transfer / amalgamation of an insurance business of an insurer to / **with the insurance business of any other insurer**. Accordingly, the counsel for the Respondent has argued that the **necessity of seeking of an approval prior to amalgamation as per Section 35, would be limited to in relation to an amalgamation of two Insurance Companies only**, meaning thereby, the provisions contained under Section 35, do not per se necessitate taking of an approval from the Authority, in those situations where an insurance company is being sought to be amalgamated with a Company, which is not engaged in the insurance business, as applicable in the instant case, and hence Section 35 of Insurance Act, will not create an embargo in amalgamation of the Insurance Company with a non-insurance entity any other business.

The counsel for the Appellant has also argued that the consequential effect of amalgamation will have a bearing on the **Share** configuration of the respective insurance Companies, so it will attract section 6A of the Insurance Act and therefore, without the compliance of the provisions contained under Section 35 of Insurance Act, the merger cannot be done without the approval of authority, because of the provisions contained under Section 6A of the Insurance Act.

However, the NCLAT concluded that amalgamation of the two Companies i.e. the Insurance Company with the company engaged in a non-insurance activity, will automatically result into the merger of the Share Capital and the Shareholding of the non-insurance company with the insurance company.

The learned counsel for the Respondent argued, that when the Companies Act, which has a feature of being a special Statute and has a self-contained provision, in respect of amalgamation in the light of the provisions contained under Section 230 to 232, the restrictions contemplated by Section 35(1) of the Insurance Act, cannot be held to be inconsistent with the provisions of the Companies Act governing amalgamation of Companies.

The NCLAT also noted that except for the Appellant herein who had filed their objection against the Scheme of Amalgamation owing to the non-compliance of the provisions contained under Section 35 of the Insurance Act, all other Authorities i.e. the Regional Director, Official Liquidator - Chennai, Income Tax Department, Competition Commission of India, Reserve Bank of India and Valuers Report had supported the Scheme of Amalgamation and conveyed their no objection to the Scheme.

The NCLAT finally concluded that since the controversy at hand falls well within the exercise of powers of amalgamation under Section 230 to 232 of the Companies Act, that it is not hit by Section 35(1) of the Insurance Act. NCLT also noted that the provisions of amalgamation as contained under Section 230 to 232 of the Companies Act, are not inconsistent with the provisions of the Insurance Act. and that, thus, the Insurance Company despite of being a Company as contemplated under the Insurance Act, would still have a right of amalgamation under provisions of Sections 230 to 232 of the Companies Act, under the facts and circumstances of the instant cases.

In view of the above, the Schemes of Amalgamation as proposed by the respective Petitioner Companies were confirmed by the NCLAT.

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REGULATORY UNDER FEMA

PROCESSING OF REGULATORY AUTHORISATIONS/ LICENSES/ APPROVALS THROUGH PRAVAAH

Reserve Bank of India **('RBI')** had launched the PRAVAAH portal (Platform for Regulatory Application, Validation And Authorisation) on May 28, 2024 to streamline online applications for regulatory authorisations, licenses, and approvals ensuring seamless, secure and faster delivery of services in a transparent manner.

PRAVAAH portal enables the submission of applications digitally and enables the applicant to monitor the status of the application through the portal itself via SMS and email. So far, 108 forms are available for use in the portal and further, more forms will get added on the portal as the need arises. The entire list of forms can be accessed at the following weblink: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=60211.

The portal also has a facility through which the applicant can submit additional information, or clarifications sought by RBI. RBI will communicate its decision through PRAVAAH in a time bound manner.

Effective May 1, 2025, all applicants, including Regulated Entities (REs) are advised to use PRAVAAH for submitting applications for regulatory authorisations, licenses, and approvals to RBI using the application forms available on the portal. Applications for which a specific form is not available can be submitted using the general-purpose form.

In exceptional cases, where members of the public are unable to submit their applications through PRAVAAH system, they may submit their applications directly to RBI as hereto. However, such applications will also be processed through the PRAVAAH system by RBI and the applicants will be duly notified of the same.

For convenience of the users, a user manual, FAQ and videos have been made available on the portal itself. PRAVAAH portal can be accessed at https://pravaah.rbi.org.in.

[Source: Press Release No. 2025-2026/96 issued by Reserve Bank of India on April 11, 2025]

COMPOUNDING OF CONTRAVENTIONS UNDER FEMA: KEY AMENDMENTS

RBI had issued amended Directions on Compounding of Contraventions under FEMA, 1999 vide A.P. (DIR Series) Circular No.17/2024-25 on October 01, 2024 **('RBI Circular').** The RBI has introduced certain amendments to the said RBI Circular on April 22, 2025 and April 24, 2025 which are as follows:

i. As per Para 5.4.II.v of the RBI Circular, 'If an applicant against whom a compounding order had been passed earlier and applicant didn't pay the compounding amount as mentioned in such order and reapplies for compounding of contravention relating to the same transaction, the amount calculated as above may be enhanced by 50% of earlier compounding amount subject to an overall ceiling of 300% of the sum involved in contravention.'
The said provision has now been deleted and in such cases, the applicant shall be deemed to have made a fresh application, and the compounding amount payable shall not be linked to the earlier compounding order vide A.P. (DIR Series) Circular. No 02/ 2025-26 dated April 22, 2025.

ii. As per the instructions laid down in Part B of Annexure I the RBI Circular dated October 1, 2024, when making payment through electronic mode, applicants are required to send an email communication to the concerned office of the Reserve Bank to reconcile the application fee/compounding amount received against the compounding applications submitted.

However, it has been observed that in some cases applicants do not make payment to the correct office of the Reserve Bank, and/or there is a delay in submitting the compounding application after making the application fee payment. These issues create difficulties in reconciling the received amounts and lead to delays in processing compounding applications. To address these challenges and improve turnaround time for processing compounding applications, RBI decided to include the following additional details in Part B of Annexure I of the above RBI Circular:

1. Mobile number of the applicant/ authorised representative.
2. Office of the Reserve Bank (i.e., Central Office, Regional Office or FED CO Cell) to which the payment was made.
3. Mode of submission of application (through PRAVAAH/ Physical).

iii. Earlier, with regard to 'all other non-reporting contraventions' as specified in row 5 of the computation matrix under Para 5.4.I, of the RBI Circular dated October 1, 2024, a fixed amount of INR 50,000/- plus a variable amount on the basis of duration of contravention was payable.

Para 5.4.II.vi has now been inserted in the RBI Circular, as per which, 'Subject to satisfaction of the compounding authority, based on the nature of contravention, exceptional circumstances/ facts involved in case, and in wider public interest, the maximum compounding amount imposed may be capped at INR 2,00,000/- for contravention of each regulation/ rule (applied in a compounding application) with respect to 'all other non-reporting contraventions' as specified in row 5 of the computation matrix."

[Source: A.P. (DIR Series) Circular. No 02/2025-26 dated April 22, 2025 and A.P. (DIR Series) Circular. No 04/2025-26 dated April 24, 2025]

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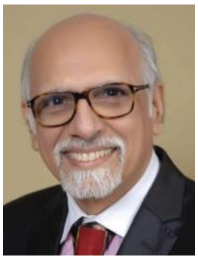

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