

SEPTEMBER
2021

THE NEWSLETTER
UPDATES

Your monthly guide to news, information and more...



▶ Reader's walk through ...

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Why Newsletter ?

“ One of the most important areas we can develop as professionals is competence in accessing and sharing knowledge ”

- Connie Malamed

We, KNKP Advisors are excited to publish our newsletter in association with Connect Easy as their Knowledge Partner, under the esteem guidance of Virag Shah. With our efforts and network of Connect Easy, we wish to reach all the professionals to give updates on variety of topics relevant for their daily practices, ranging from GST, Income Tax, Companies Act, SEBI & RBI compliances. Not to mention that this newsletter shall cover some interesting Advanced Excel traits & some motivational stories to ensure complete mix of learning.

Further, you can reach out to us on any of our platforms as mentioned in the new letter as we invite articles & blogs from all the aspiring writers and authors here on any relevant subjects to the businesses. We look to include best content for our readers across the nation from the best of the industry experts. We help professional firms in designing their news letter & videos as well. Furthermore, we include advertisement and promotions as well in our news letter, if you wish to reach our wide base of readers and stimulate traction & visibility for your business.

Who are we ?



KNKP Advisors is a result of continuous brainstorming and discussions regarding how we, as a professional, who have command over variety of areas such as Financial Reporting, Corporate Finance, Corporate Laws, Direct and Indirect Taxes, Cost and Performance Evaluation, Strategic Planning, Technology & innovation, come together and contribute to all the kinds of business houses, matured or the startups. Our ambitious common goal here at the firm is to offer the world's best in class products and services to our clients, making us an elite financial services and solutions company with the vision to perfect business, one emboldened entrepreneur at a time.

We believe that every business is unique, has unique needs and that the people who own and manage these companies have their own individual concerns and ambitions. With us you will be treated as an individual, as someone. Not as everyone.

We have seen the business landscape change dramatically and noticed that there are glaring problems arising as a direct cause of this. This ever-changing reality is eroding value, the same value you hoped to create when you started out on this journey and decided to work seven days a week to create. It's also destroying something you can never hope to recover physically or financially, and that's time. Not many people think of this as a commodity, (think of all those missed holidays and lost years) but imagine your life with much more of it?

That brings us around to the question; Why should you talk to us? We have noticed that a small fortune is being lost due to ineffective or nonexistent advice, planning, strategy, negotiation and execution. We believe this is not a systemic effect of the current environment and can be reversed and rectified. Given the right tools and a little bit of time, large tangible operational and financial improvements can be made that will make a huge difference to the way you run and look at your business. This is where we come in.

Core Areas of KNKP Advisors



Business Support Service



Corporate Advisory Service



Taxation



RERA



Valuation



Management Reporting

Lets Keep in Touch



September 2021- Compliance Calendar



- ✓ Due date for Payment of TDS for the month of August 2021

- ✓ GSTR 7 & 8 For the Month of August 2021



- ✓ GSTR1 For the Monthly Filers for August 2021

- ✓ GSTR 6 For the Month of August 2021
- ✓ Issue of TDS Certificate under Form 16B, 16C & 16D for tax deducted in June 2021



- ✓ Issuing TDS Certificate in Form 16B, Form 16C & 16D for Tax deducted in July 2021

- ✓ Second installment of Advance tax for A.Y. 2022-23
- ✓ Payment of PF & ESIC for the month of August 2021.



September 2021- Compliance Calendar



- ✓ GSTR 3B for the month of August - 2021
- ✓ GSTR 5 & 5A for the month of August-2021



- ✓ PMT-06 for August 2021 (QRMP Scheme)



- ✓ Form 26QB ,26QC & 26QD for the month of August 2021



- ✓ GSTR-3B Amnesty Scheme for the Period July 2017 to April 2021
- ✓ Payment under Vivad Se Vishwas

Direct Tax Updates



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Income tax (23rd Amendment), Rules, 2021

- ✓ In the Income-tax Rules, 1962, (hereinafter referred to as principal rules) after rule 10RA, the following rule shall be inserted, namely –
- ✓ “10RB. Relief in tax payable under sub-section (1) of section 115JB due to operation of subsection (2D) of section 115JB.- (1) For the purposes of sub-section (2D) of section 115JB, the tax payable by the assessee company under sub-section (1) of section 115JB, for the previous year referred to in that section, shall be reduced by the following amount, namely:-
 - ✓ $(A-B) - (D-C)$, where,
 - ✓ A = tax payable by the assessee company under sub-section (1) of section 115JB on the book profit of the previous year including the past income;
 - ✓ B = tax payable by the assessee company under sub-section (1) of section 115JB on the book profit of the previous year after reducing the book profit with the past income;
 - ✓ C = Aggregate of tax payable by the assessee company under sub-section (1) of section 115JB on the book profit of those past year or years to which the past income belongs;
 - ✓ D = Aggregate of tax payable by the assessee company under sub-section (1) of section 115JB on the book profit of past year or years, referred to in item C, after increasing the book profit with the relevant past income of such year or years;

- ✓ Provided that if the value of $(A-B)-(D-C)$ in the formula is negative, its value shall be deemed to be zero.
- ✓ (2) For the purposes of sub-rule (1) past income shall be the amount of income of past year or years included in the book profit or the previous year on account of an advance pricing agreement entered into by the assessee under section 92CC or on account of secondary adjustment required to be made under section 92CE
- ✓ (3) On application of provision of sub-rule (1), the tax credit allowed to the assessee under section 115JAA shall be reduced by the amount which is equal to the amount of reduction that has been allowed under sub-rule (1)
- ✓ (4) The assessee company shall make a claim for relief under sub-section (2D) of section 115JB in Form No. 3CEEA electronically by uploading signed printout of said Form in the manner specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be.
- ✓ (5) Form No.3CEEA shall be verified by the person who is authorised to verify the return of income of the assessee company under section 140
- ✓ (6) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall specify the procedure for filing of the Form No. 3CEEA and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements so furnished under this rule.
- ✓ Explanation 1.- The value of amount "A" in the formula shall be deemed to be zero, if there is no tax payable under sub-section (1) of section 115JB on the book profit of that previous year including the past income.
- ✓ Explanation 2.- The value of amount "B" in the formula shall be deemed to be zero, if there is no tax payable under sub-section (1) of section 115JB on the book profit of that previous year after reducing the book profit with the past income.
- ✓ Explanation 3.- For the purposes of calculation of amount "C" in the formula, if in any past year or years there is no tax payable under sub-section (1) of section 115JB on the book profit of that year or years, the tax payable for that year or years shall be deemed to be zero.

- ✓ Explanation 4.-For the purposes of calculation of amount “D” in the formula, if in any past year or years there is no tax payable under sub-section (1) of section 115JB on the book profit of that year or years after increasing the book profit with the relevant past income of such year or years, the tax payable for that year or years shall be deemed to be zero



https://incometaxindia.gov.in/communications/notification/notification_92_2021.pdf

Extension of time lines for electronic filing of various Forms under the Income-tax Act,1961

Sr. No.	Particulars	Original Due Date	Extended Due Date
1	The Quarterly statement in Form No. 15CC For Quarter ended on 30-06-2021	15-07-2021	30-12-2021
2	The Quarterly statement in Form No. 15CC For Quarter ended on 30-09-2021	15-10-2021	31-12-2021
3	The Equalization Levy Statement in Form No.1 for the Financial Year 2020-21	30-06-2021	31-12-2021
4	The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64D for the Previous Year 2020-21	15-06-2021	15-09-2021
5	The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64C for the Previous Year 2020-21	30-06-2021	30-09-2021

Sr. No.	Particulars	Original Due Date	Extended Due Date
6	Intimation to be made by a Pension Fund in India in Form No. 10BBB for the quarter ending on 30-06-2021	31-07-2021	30-11-2021
7	Intimation to be made by a Pension Fund in India in Form No. 10BBB for the quarter ending on 30-09-2021	31-10-2021	31-12-2021
8	Intimation to be made by Sovereign Wealth Fund in India in Form II SWF for the quarter ending on 30-06-2021	31-07-2021	30-11-2021
9	Intimation to be made by Sovereign Wealth Fund in India in Form II SWF for the quarter ending on 30-09-2021	31-12-2021	31-12-2021
10	Uploading of Declaration received in Form 15G/H for the Quarter ended on 30-06-2021	15-07-2021	30-11-2021
11	Uploading of Declaration received in Form 15G/H for the Quarter ended on 30-09-2021	15-10-2021	31-12-2021



<https://www.incometaxindia.gov.in/communications/circular/circular-no-16-of-2021.pdf>



Goods & Service Tax Updates



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Notification 29, 30 & 31/2021

- ✓ Section 110 & 111 of Finance Act, 2021 shall come into force from 1st August, 2021. Vide these sections of Finance Act, 2021 amendment in section 35 & 44 is made.
- ✓ Section 35(5) of the CGST Act, 2017 is omitted which is related to GST Audit.
- ✓ Vide Finance Act, 2021 new section 44 is substituted with original section. New section has allowed to file self certified reconciliation statement instead of audited reconciliation statement in Form GSTR 9C.
- ✓ Rule 80 & Instructions to Form 9 & 9C is also amended. By this rule person having aggregate annual turnover more than Rs. 2 Crore and aggregate turnover more than Rs. 5 Crore required to file GSTR 9 & 9C before 31st December of following financial year.



<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-31-central-tax-english-2021.pdf>



<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-30-central-tax-english-2021.pdf>



<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-31-central-tax-english-2021.pdf>



COMPANIES ACT

MCA Updates



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Exemption from provisions related to offering for subscription in the securities to the specified Companies:

- ✓ Foreign companies and companies incorporated or to be incorporated outside India are exempted from provisions of section 387 to 392, insofar as they relate to the offering for subscription in the securities, requirement related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.
- ✓ The same Notification can be accessed through following link.



<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzMzMjQ=&docCategory=Notifications&type=open>

Explanation on electronic based offering of securities:

- ✓ It has been clarified that electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act.



<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzMzMjM=&docCategory=Notifications&type=open>

Annual report on the capacity building of independent directors:

- ✓ It has been directed that the Institute maintaining databank of Independent Directors shall within sixty days from the end of every financial year send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in specified format.



<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzUUMTY=&docCategory=Notifications&type=open>

Exemption from passing online proficiency self-assessment test:

- ✓ Following persons are not required to pass the online proficiency self-assessment test for qualifying to be appointed as director, if they are or have been, for at least ten years:
 - a) an advocate of a court; or
 - b) in practice as a chartered accountant; or
 - c) in practice as a cost accountant; or
 - d) in practice as a company secretary



<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzUUMTU=&docCategory=Notifications&type=open>

FAQs on Corporate Social Responsibility:

- ✓ The Ministry has notified the amendments in Section 135 of the Act as well in the CSR Rules on 22nd January 2021 with an aim to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliances. In response to such amendments, MCA has issued a set of FAQs along with response, for better understanding and facilitating effective implementation of CSR.



<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0NzM=&docCategory=Circulars&type=open>



SEBI Updates

Disclosure of shareholding pattern of promoter(s) and promoter group entities:

- ✓ Regulation 31(4) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format(s) specified by the Board.
- ✓ Currently, the shareholdings of promoter(s) and promoter group entities are collectively disclosed under 'Statement showing shareholding pattern of the Promoter and Promoter Group'. In the interest of transparency to the investors, all listed entities shall now provide such shareholding, segregated into promoter(s) and promoter group. Revised format of disclosure is also given under the Circular. [📄](#)
- ✓ The same Master Circular can be accessed through following link



https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html

Automation of Continual Disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015:

- ✓ It is clarified that for listed companies who have complied with requirements of system driven disclosures, the manual filing of continual disclosures as required under Regulation 7(2) (a) & (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 is no longer mandatory.



https://www.sebi.gov.in/legal/circulars/aug-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-ease-of-doing-business_51848.html

Tendering of shares in open office, buy-back offers and delisting offers by making lien in the demat account of the shareholders:

- ✓ In consultation with Depositories, Clearing Corporations and Stock Exchanges, it has been decided that a lien shall be marked against the shares of the shareholders participating in the tender offers. Upon finalization of the entitlement, only accepted quantity of shares shall be decided from the demat account of the shareholders. The lien marked against unaccepted shares shall be released. The details procedure for tendering and settlement of shares under the revised mechanism is specified in the Annexure to the Circular.



https://www.sebi.gov.in/legal/circulars/aug-2021/tendering-of-shares-in-open-offers-buybacks-and-delisting-offers-by-marking-lien-in-the-demat-account-of-the-shareholders_51849.html

Penalty for Repeated Delivery Default:

- ✓ To strengthen the delivery mechanism and to ensure market integrity, it has been decided that in case of repeated default by a seller or a buyer, for each instance of repeated default, an additional penalty shall be imposed, which shall be 3% of the value of the delivery default. Repeated Default shall be defined as an event, wherein a default on delivery obligations takes place 3 times or more during a six months period on a rolling basis. The penalty levied shall be transferred to Settlement Guarantee Fund (SGF) of the Clearing Corporation.



https://www.sebi.gov.in/legal/circulars/aug-2021/penalty-for-repeated-delivery-default_51902.html



Article On GST: Business Restructuring through Demerger



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Brief about Business Restructuring and reorganisations

- ✓ Business restructuring and reorganisation have seen increasing frequency over the last several years. Businessmen, business-houses and investors have been cherry picking viable businesses as well as start-ups offering long-term potential.
- ✓ As organizations seek to sustain earnings or even continue to increase earnings through managing costs, as global competition continues to intensify, investors and businesses are demanding higher revenues from their top-line products as a way to further increase shareholder value. Therefore, reasons vary from business downturn, achieving economies of scale, establishing marketing leadership, ring fencing against predators, diversification and expansion, etc. or even exiting from non-core businesses or activities.
- ✓ These objectives are sought to be achieved through business restructuring or reorganization. This may involve complex restructuring such as amalgamation, mergers or demergers as well as hive off or transfer of business or dilution of shareholding through sale of shares

What is Demerger ?

✓ A de-merger is a corporate restructuring in which a business is broken into components, either to operate on their own, or to be sold or to be liquidated as a [divestiture](#). A de-merger (or "demerger") allows a large company, such as a [conglomerate](#), to [split off](#) its various [brands](#) or business units to invite or prevent an acquisition, to raise capital by selling off components that are no longer part of the business's core [product line](#), or to create separate legal entities to handle different operations. De-merger is not defined specifically in Companies Act, 2013. However, an explanation is given to section 230(1) of the said act prescribes it as an arrangement for the reorganization of the company's share capital by:

- Consolidation of shares of different classes
- Division of shares of different classes or
- Both

✓ Demerger is mentioned in section 2(19AA) of the Income Tax Act, 1961, subject to fulfilling the conditions stipulated in section 2(19AA) of the Income Tax Act and shares have been allotted by the 'resulting company' to the shareholders of the 'demerged company' against the transfer of assets and liabilities

The following are the major steps involved in the demerger of a company.

Preparation of the Scheme of Arrangement

✓ Scheme of arrangement or compromise is the most crucial document prepared by the Company contemplating to de-merge entity, by which the company binds all related stakeholders on the terms of the demerger. A scheme of arrangement would deal with aspects such as the share swap ratio (if applicable, details of the transfer of debt or payment to creditors, transfer of employees, assets, liabilities and more. The scheme of arrangement can be proposed by the directors of the company or the liquidator of the company. The scheme of arrangement would have to be accepted by the shareholders, creditors, employees and all related stakeholders.

❑ Application in Tribunal

✓ A demerger can be completed by making an application to the Tribunal and through orders issued by a Judge. Hence, to commence the demerger process, an application must be filed in prescribed Form along with the affidavits of the promoters and the following documents:

- Memorandum and Articles of Association of the Company
- Latest Audited Balance Sheets
- List of Shareholders and Creditors
- Extract of Board Resolution approving the Scheme
- Scheme of Arrangement
- Draft notice of Meeting, Explanatory Statements, and replacement or substitute

❑ Issue of Notice

✓ A notice must be sent to the interested parties by the authorized individuals, 21 days prior to the date of the meeting along with the proposed scheme of arrangement and proxy forms. This notice would be publicized in specified Form through newspapers that are well circulated among the interested parties.

❑ Holding of Meeting

✓ A meeting should be held according to the guidelines of the Tribunal and the output of such meetings should be recorded along with votes in support of or against the motion. The chairperson of the meeting must submit a report in Form 39 within the time approved by the Tribunal.

❑ Petition and Sanction of the Tribunal

✓ A petition has to be submitted to the Tribunal for authorizing the demerger. It has to be sanctioned by three-fourths of members/creditors to file an appeal. Once the Tribunal hears the objections, it verifies the applicability of the scheme submitted and later issues an order. The Tribunal would then pass an order approving the demerger in the same newspaper in which the notice of the meeting was advertised.

Whether Transfer of Business or reorganisation through merger, amalgamation or demerger is supply?

✓ GST is levied on supply of goods or services or both. The scope of 'supply' is provided in section 7 of the Central Goods and Service Tax Act, 2017 (CGST Act). Section 7(1)(a) states that supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, **the pre-requisites of a transaction of 'supply'** are;

(a) existence of **'goods'** or **'services'** or **'both'**, which is subject matter of the supply;

(b) supply in the **nature of** or similar to **sale, transfer, barter, exchange, licence, lease, etc.**

(c) **between two persons;**

(d) **for a consideration;**

(e) in the **course or furtherance of business** of the person making such transfer.

Therefore, it needs to be examined whether transfer of business satisfies all the criteria specified under section 7(1)(a) of the CGST Act.

✓ As discussed above, in the case of transfer of business, reorganisation there is an agreement to transfer a business as a whole, which is a conglomerate. There is no contract or bargain between the parties to transfer the individual assets, liabilities, entitlements, obligations, employees, etc. Business, as a conglomerate, by itself is not goods as already held by the Courts under the erstwhile sales tax laws. This conclusion will apply with equal force under the GST law also. However, the definition of 'services' under the GST laws will be relevant. Under section 2(102), 'services' are defined as 'anything other than goods'.

- ✓ Once it is concluded that **business is not goods**, by virtue of the definition under the GST law, **transfer of business would be treated as supply of services**. Having treated transfer of business as a service, it **must still be recognized that there is no supply of the individual components of the business that is the assets, liabilities, etc.** Therefore, there would be a transfer of the business as a whole, for which the consideration would be the price paid or issuance of shares.
- ✓ However at this juncture, it is pertinent to refer to an important criteria in the scope of supply, i.e., such supply should be in the course or furtherance of business. **The decision of the Courts should support the contention that transfer of a business is not in the course or furtherance of business and therefore it does not fall under the main clause of meaning of the term 'supply' under section 7(1)(a) of the CGST Act.** It may be noted that **'business' is defined under section 2(17) of the CGST Act and includes supply of goods or services in connection with commencement or closure of business.** However, it is contended that, in the case of transfer of business as a going concern, the business is not closed but is transferred. Moreover, the transfer of the business is not in connection with closure of business but the business itself is transferred (supplied). Therefore, arguably transfer of business should not be subject to the levy of GST. However, this will have to be tested before the Courts. Also it can be argued in the court of law that in case of Transfer of Business as a going concern will not be treated as supply than why Assets transfer on closure of business is considered as supply as there may be arguments regarding whether that supply is for business or furtherance of business.
- ✓ **Considering the potential for debate, a specific exemption has been provided vide Entry No.2 of Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017, which exempts 'Services by way of transfer of a going concern, as a whole or an independent part thereof'.** Therefore, transfer of business would, in any event not be liable to GST. As is evident, the exemption applies not only to transfer of business as a whole but also to an independent part thereof. The phrase 'going concern' signifies that a business for transfer should be in a conglomerate comprising of all elements of the business which are required to continue operation of the business independently by the transferee without any interruption. This would, therefore, include all assets, tangible or intangible, contracts, customers, resources and stocks (raw materials, semi-finished goods and finished goods), employees as well as liabilities and obligations including sales contracts, orders, etc.

Transfer of business assets,- Schedule – II Para 4

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b)

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, **unless,-**

(i) the business is transferred as a going concern to another person; or

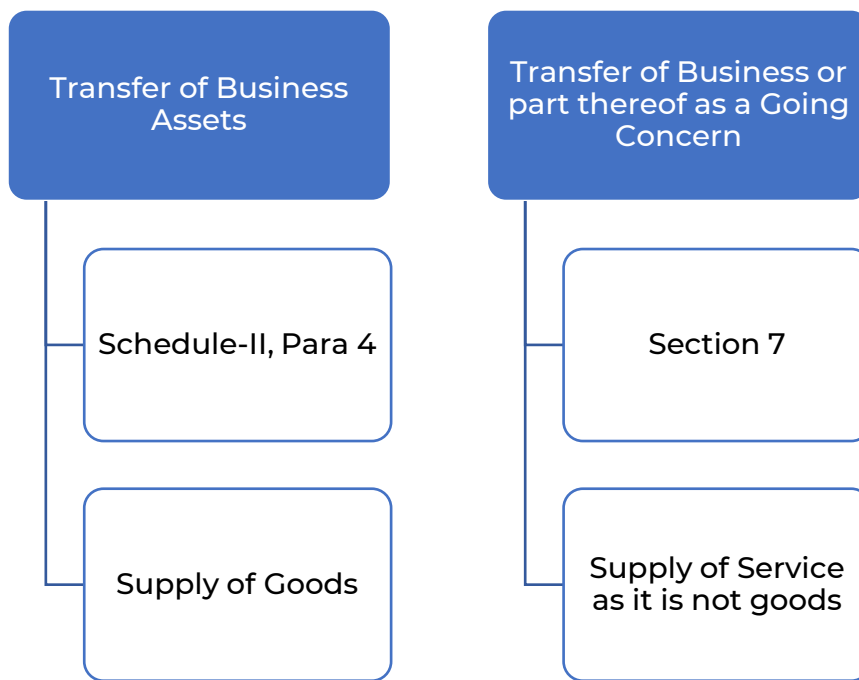
(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

Clause (a) of Para 4 refers to transfer or disposal of assets such that no longer forms part of the assets of the business. In such a case, the transfer or disposal of the assets shall be treated as supply of goods. From a careful reading, it will be evident that the entry envisages transfer or disposal of some of the business assets and continuity or use of the other remaining ones as part of or in the course of business. Therefore, this clause envisages and contemplates continuity of the business. Accordingly, transfer of business which results in transfer or disposal of all of the assets of business and discontinuation thereof by the transferor is not envisaged under this clause. Therefore, clause (a) of Para 4 of Schedule II has no application in such case. This will also be evident from the fact that clause (c) of Para 4 covers transfer or discontinuation of business.

Clause (c) of Para 4 considers transfer or transmission of business. However, the said entry does not apply when the business is transferred to another person as a going concern.

Therefore, entries of Schedules I and II of the CGST Act will have no application in the case of transfer of business.

With respect to entries in Schedule II is concerned it only applies for classification of supply into Goods or Services. Due to that reason Transfer of Business as a going concern is supply or not can't be determined from Schedule II.



Whether Rule 42 will be applicable or not?

✓ Transfer of Business as a going concern is supply of service and can be concluded on the basis of Notification 12/2017 CT but can be argued at the court and also previous judicial precedents can play role as well. plain reading of section 17(2) and rule 42 provide that in case of supply of exempt supply inputs and inputs services need to be reversed. While you read section 42 in detail than there is various conditions.

- ❑ Rule 42 is applicable to Inputs and Input services only.
- ❑ Rule 42(1)(g) will be applied at Invoice Level.
- ❑ Rule 42(1)(f) provides that inputs and input services which are Intended to be used exclusively for taxable supply.
- ❑ Rule 42(1)(a) provides for apportionment of Total Input tax involved on inputs and input services in a tax period. From where after deducting credits for exempt supply and taxable supply we can recognise common credit.
- ❑ Section 2(106) defines tax period as period for which return is required to be furnished.

✓ According to above mentioned provisions and conjoint reading of all the sub rules we can derive at a conclusion that Reversal of tax credit will be required but only **for the inputs & input services attributable to tax period** for which this exempt supply is supplied, But it raises few questions

- ❑ Which period is considered as a tax period as merger, demerger takes place over the period of time. – Here effective date of transfer of business should be considered for deriving tax period.
- ❑ According to Rule 42(1)(f) all the supply is intended for providing taxable supply. So here intended play very crucial role and how to identify this is not the intention is very difficult and can be litigative in future. i.e. If any goods purchased as raw material which was intended to be used for manufacture of taxable supply but demand for that supply in market decreased and in future it is used for manufacturing of exempt supply in that case credit for the raw material will not be available and Vice – Versa.

Example:

Company A has demerged Retail division in Company B at a consideration of issue of shares of Rs. 2000 Crore by NCLT Order as on 01.04.2021 with appointed date of 01.04.2019.

During April 2021 Company A had done following transaction.

1. Purchase of Rs.100 Crores of Material @ 18% GST.
2. Avail Service of Mr Brij Shah for transfer of Business and scheme of demerger by paying professional fees of Rs. 10,00,000 @ 18% GST.
3. Purchase of Plant & Machinery of Rs. 1000 Crore @ 18% GST.
4. Turnover of goods sold during April 2021 is Rs. 500 Crore.

Input tax credit available as on date of filling of ITC-02 is as follows

CGST = Rs. 10,00,000

SGST = Rs. 10,00,000

IGST = Rs. 20,00,000

Balance Sheet of Company A as on appointed date i.e. 01.04.2019 with assets and liabilities of Retail Division.

Particulars	Company A	Retail Division	Company A (After Demerger)
Share Capital	1000	-	1000
Current Liabilities	5000	-	5000
Secured Loans	2000	500	1500
Total Liabilities	8000	500	7500
Fixed Assets	4000	400	3600
Inventory	2000	1000	1000
Cash & Bank	500	100	400
Investments	1500	-	1500
Total Assets	8000	1500	6500

- ✓ How much credit need to be reversed according to Rule 42?
- ✓ How much credit need to transferred according to Rule 41 in ITC-02?

Answer 1.

Rule 42 will be applicable for the tax period April-2021 as transfer of assets take place as on 01.04.2021 by NCLT Order.

According to Rule 42

T (Total Input tax & Input services attributable to Tax Period) = 18,01,80,000.

T1 (Exclusive for other than Business) = 0

T2 (Exclusive for exempt supply) = 0

Professional fess paid is not exclusively for exempt supply as it is for the benefit of existing business as well.

T3 (17(5) Inputs) = 0

$C1 = T - (T1 + T2 + T3)$

$C1 = 18,01,80,000 - 0$

i.e. 18,01,80,000

T4 (Intended for taxable supply or zero rated supply) = 18,00,00,000

C2= 18,01,80,000 – 18,00,00,000

C2= 1,80,000

D1 (Amount attributable towards exempt supply) = (E/F)*C2

E= Aggregate value of exempt supply

F= Total turnover in a state for tax period

1,80,000*(2000/2500)

Input tax amount attributable to exempt supply is Rs. 1,44,000.

These are some of the major issues faced by corporates while undertaking a business transfer. There are various other ancillary issues relating to claim of refund, filing of subsequent returns and registration wherein there is substantial scope for clarity.

Considering the plethora of issues, the government should throw some light on these issues by issuance of suitable clarifications for ease of doing business while undertaking business transfers.

Answer 2.

According to circular 133/03/2020 central tax & Rule 41 in case of demerger to transfer credit to demerged unit in ITC-02 apportionment of credit should be done by on the proportion to value of asset as on appointed date as provided in Scheme approved by NCLT.

According to scheme of demerger Retail Division will have Total assets of Rs.1,500 Crore while Company A will have assets of Rs. 6500 crore.

Total Input tax credit available as on date of filling ITC-02 in electronic credit ledger is Rs. 40,00,000

Input tax credit transfer to demerged Unit (A) = 40,00,000*1500/8000

A = 7,50,000

When to File ITC-02 under Rule 41 and Whether it is optional ?

- ✓ According to Rule 41, A registered person **shall**, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:
- ✓ This rule is having various small points and due to which reason it can be challenged at courts as there is no circulars available as well. As this rule start with every registered person “shall” and due to that reason it can be argued that transferrer could not utilise credit pertains to transferee.
- ✓ Also under this rule there is no due date is provided for filling of ITC-02 so in case any person had not filled in that case it is not possible to determine how much amount of default has been happened.



Article On LLP (Amendment) Act , 2021



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Background

✓ The LLP (Amendment) Act, 2021 (herein after referred to as 'the Amendment Act') got the assent of Hon'ble President as on 13th August, 2021 and is thus operative since that date. It was introduced in Rajya Sabha on July 30, 2021 and was passed by Rajya Sabha on 4th August, 2021 and by Lok Sabha on 09th August, 2021. In view of the constant endeavor of the Central Government to facilitate greater ease of living to law abiding corporates and to decriminalize certain provisions of the Act, it became necessary to amend certain provisions of the Act. Hence the Act, namely, the Limited Liability Partnership (Amendment) Act, 2021 is enacted.

- ✓ The Act has converted certain offences into civil defaults and has changed the nature of punishment for these offences. It has also defined small LLP, provides for appointment of certain adjudicating officers, and establishment of special courts.
- ✓ Detailed amendments as introduced through the LLP (Amendments) Act, 2021 are as follows.

LLP (Amendment) Act, 2021

Omitted Sections:

Sr. No.	Section as per LLP Act, 2008	Section Name	Description
1	10	Punishment of contravention of Section 7,8 & 9	Penalty clause amended. Section 8 is removed from punishment of contravention
2	18	Application for Direction to change name in Certain circumstances	Any entity having a similar name to LLP may apply to Registrar to give direction to change its name Registrar should receive application within 24 months from date of registration of LLP under that name
3	73	Penalty on non compliance of any order passed by tribunal	Whoever fails to comply with any order made by the Tribunal under any provision of this Act shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees
4	81	Transitional Provisions	Until Tribunal and Appellate Tribunal are constituted company law board in sec 41(1)(b),43(1)(a),44 and highcourt in section 51,60 to 64,72(2) were substituted.

Section wise Amendments:

Sr. No.	Section as per LLP Act, 2008	Section Name	Description
1	2 (ta)	Small LLP	<p>NEWLY ADDED DEFINITION-</p> <p>"Small limited liability partnership" means a limited liability partnership—</p> <p>(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and</p> <p>(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or</p> <p>(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed</p>
2		Startup LLP	<p>Recognition to startup LLP-</p> <p>Amended act imposed lesser penalty to startup LLP</p>

Section

Sr. as per Section Name
No. LLP Act,
2008

Description

Newly added section-

The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,—

(a) prescribe the standards of accounting; and

(b) prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted under

section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.”.

Maintenance of books of account, other records and audit, etc.

3 34A

Substitution - The Amendment Act has provided to auto allot a new name to the LLP by the Central Government, in case of default in complying with the direction of the CG instead of imposing punishment for non-compliance for such default.

Application for direction to change name in certain circumstances

4 18

Substitution - Every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to five years instead of two years and with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees.

Unlimited liability in case of fraud

5 30(2)

Section		Section Name	Description
Sr. No.	as per LLP Act, 2008		

6	37	Penalty for false statement	<p>The overall number of criminal provisions under the LLP Act has been reduced to 22 from 24, which are bifurcated as follows: • compoundable offences to be reduced to 7 (earlier which was 21 as per the Act), • non-compoundable offences to be remained to 3, and • the number of defaults to be dealt with via the In-House Adjudication Mechanism (IAM) increased to 12 (no concept of IAM was prescribed earlier in the Act). Moreover, it has been provided to appoint as many officers as adjudicating officers to adjudicate penalties under the LLP Act, 2008.</p>
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7	67A	Application of provisions of companies act	<p>Newly added section-</p> <p>After section 67 of the principal Act, the following sections shall be inserted, namely:— “67A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.</p> <p>Accordingly, all offences specified under sub-section (1) of 67A shall be triable only by the Special Court instead of the Judicial Magistrate of first class or Metropolitan Magistrate as was prescribed earlier in the Act.</p>
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Section

Sr. as per
No. LLP Act,
2008

Section Name

Description

8	67B	Application of provisions of companies act	Newly added section - Under sub-section (1) of section 67A shall be triable only by the Special Court established or designated for the area in which the registered office of the limited liability partnership is situated if there are more than one special court it will be specified by high court.
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9	67C	Application of provisions of companies act	Newly added section - The High Court may exercise, so far as may be applicable, all the powers as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court."
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10	77(a)	Jurisdiction of court	No court, other than the Special Courts shall take cognizance of any offence punishable under this Act or the rules made thereunder save on a complaint in writing made by the Registrar or by any officer not below the rank of Registrar duly authorized by the Central Government for this purpose.
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Section

Sr. as per Section Name
No. LLP Act,
2008

Description

Addition in provision-

Any person aggrieved by an order of Tribunal may prefer an appeal to the Appellate Tribunal.

Provided that no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties. It shall be filed within a period of sixty days from the date on which the copy of the order of the Tribunal is made available to the person aggrieved, but within a further period of not exceeding sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period so specified.

11 72(2) Jurisdiction of tribunal
and AT

12 2 Preliminary

Throughout the Limited Liability Partnership Act, 2008 (hereinafter referred to as the principal Act), for the words and figures "the Companies Act, 1956" wherever they occur, the words and figures "the Companies Act, 2013" shall be substituted.

13 2(1)(c) Definition

"Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 410 instead of sub-section (1) of section 10FR of the Companies Act, 2013

Section			
Sr. No.	as per LLP Act, 2008	Section Name	Description

14	2(1)(d)	Definition	For the word and figure, Section 3 occurring at both the places, section 2(20) shall be substituted
15	2(1)(e)	Definition	Change in definition of business-Section 2(c) in clause (e), for the words “and occupation”, the words “and occupation except any activity which the Central Government may, by notification, exclude” shall be substituted
16	2(1)(r)	Definition	Insertion- “Regional Director” means a person appointed as such by the Central Government for the purposes of this Act or the Companies Act, 2013.
17	2(1)(s)	Definition	Substitution in definition- (s) “Registrar” means a person appointed by the Central Government as Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, for the purposes of this Act or the Companies Act, 2013.
18	2(1)(u)	Preliminary	Substitution in section- “Tribunal” means the National Company Law Tribunal constituted under section 10FB(1) instead of sub-section (1) of section 10FB of the Companies Act, 1956.

Section

Sr. No.	as per LLP Act, 2008	Section Name	Description
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Change in Explanation-

Every LLP shall have at least 2 designated partners who are individual and at least one of them shall be resident in India.

19 7(1) Designated Partner

In term "Resident in India means a person who has stayed in India for a period of not less than one hundred and twenty-two days instead of one hundred and eighty-two days during the immediately preceding one year will be substituted.

Substitution in section-

Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 instead of sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply mutatis mutandis for the said purpose shall be substituted.

20 7(6) Designated Partner

Section

Sr. No.	as per LLP Act, 2008	Section Name	Description
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21	13(40)	Registered office of limited liability partnership and change therein	<p>Substitution in Penalty-</p> <p>NEW-If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.</p> <p>OLD-If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees</p>
22	15(2)	Name of LLP	<p>Substitution-</p> <p>No LLP shall be registered by a name identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trademark of any other person under the Trademarks Act, 1999.</p> <p>Removed - the reference of "body corporate" and "trademark which is the subject matter of an application for registration of any other person under the Trademarks Act, 1999" from section 15 relating to name approval/registration of a LLP.</p>

Section			
Sr. No.	as per LLP Act, 2008	Section Name	Description

23	17	Change in name of LLP	Substitution is made to empower the CG to allot a name to those Companies which fail to change/ rectify the name in accordance with the given directions.
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24	21(2)	Publication of name of LLP	<p>Substitution-</p> <p>If the limited liability partnership contravenes the provisions of this section, the limited liability partnership shall be liable to a penalty of ten thousand rupees. Old-LLP was punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.</p>
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25	25	Registration of changes in Partners	<p>25(1)-Every partner shall inform the LLP of any change in his name or address within 15 days from such change.</p> <p>25(2)-LLP needs to file a notice with registrar within 30 days of:</p> <p>a)where a person becomes or ceases to be a partner.</p> <p>b)Change in name or address of a partner</p> <p>Substitution - 1.If LLP contravenes 25(2) LLP and its every designated partner shall be liable to penalty of 10,000 rupees,instead of 2000 rupees which may extend to 25000.</p> <p>2.If any partner of LLP contravenes 25(1)such partner shall be liable to a penalty of ten thousand rupees instead of two thousand rupees but which may extend to twenty-five thousand rupees</p>
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Section				
Sr. No.	as per LLP Act, 2008	Section Name		Description

26	34(5)	Maintenance of books of accounts, other records and audit etc.	Substitution- Any limited liability partnership which fails to comply with the provisions of sub-section (3)i.e filing of statement of accounts and solvency within 6 months of end of financial year, such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every designated partner.
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Old-
Fine: LLP-not less than 25000 up to 200,000
each partner-not less than 10,000 up to 100,000

27	34(6)	Maintenance of books of accounts, other records and audit etc.	Substitution- If a LLP fails to prepare, maintain file the books of accounts and financial statement such limited liability partnership shall be punishable with fine which shall not be less than twenty-five thousand rupees, but may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees, but may extend to one lakh rupees.
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Section				
Sr. No.	as per LLP Act, 2008	Section Name	Description	

28	35(2)	Annual Return	<p>Substitution-</p> <p>If any LLP fails to file annual return - penalty-LLP and designated partners 100 Rs for each day during which failure continues ,subject to maximum 100,000 for LLP and 50,000 for designated partners.</p> <p>Old-</p> <p>Fine: LLP-not less than 25000 up to 200,000</p> <p>each partner-not less than 10,000 up to 100,000</p>	
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29	39	Compounding of offence	<p>Section 39 (1) Regional Director or any other officer not below the rank of regional director authorized by CG may compound the offences instead of CG. Section 39(2) Sub section 1 shall not apply to an offence committed by LLP or its partners within a period of 3 years from the date of which similar offence committed was compounded. Section 39(3) Every application shall be made to registrar, which will be forwarded to Regional Director. Section 39(4)/(5)/(6) Where any offence is compounded under this section before or after the institution of any prosecution intimation shall be given to registrar within the period of Seven days from the date of which offence of compounded.</p>	
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Section			
Sr. No.	as per LLP Act, 2008	Section Name	Description

30	60(4)	Compromise, or arrangement of LLP	<p>If default is made in 60(3) for order made by tribunal shall be filed with Registrar within 30 days after making of such order, LLP and every designated partner shall be liable to a penalty of ten thousand rupees, and in case of continuing default, with a further penalty of one hundred rupees for each day after the first during which such default continues, subject to a maximum of one lakh rupees for limited liability partnership and fifty thousand rupees for every designated partner.</p>
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Old-

Fine: LLP and each designated partner up to 100,000

31	62(4)	Provisions for facilitating reconstruction or amalgamation of LLP	<p>If default is made in complying with the provisions of sub-section (3) filing of certified copy to registrar within 30 days after making an order, the limited liability partnership and its every designated partner shall be liable to a penalty of 10,000 rupees In case of the continuing default, with a further penalty of one hundred rupees for each day, after the first during which such default continues, subject to a maximum of one lakh rupees for limited liability partnership and fifty thousand rupees for every designated partner.</p>
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Old fine LLP and every designated partner up to 50,000 rupees

Section		Section Name		Description
Sr. No.	as per LLP Act, 2008			

			Insertion: after Section 68
			68A. (1) For the purpose of exercising powers and discharging such functions the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction.
32	68A	Registration offices	(2) The Central Government may appoint such Registrars, as it considers necessary, for the registration of limited liability partnerships and discharge of various functions under this Act.
			(4)The Central Government may direct the Registrar to prepare a seal or seals for the authentication of documents required for, or connected with the registration of limited liability partnerships
33	69	Payment of additional fees	Substitution- The limit of 300 days is taken down, the fixed amount of additional fees, ₹100 for every day is removed and a proviso is added to provide for different fees structure for different classes of LLPs.
34	72	Jurisdiction of Tribunal and Appellate Tribunal	The said amendment has been brought in line with Section 421 of Companies Act, 2013 so as to provide more clarity in the provision when any person aggrieved by an order of "Tribunal" prefers an appeal to the "Appellate Tribunal".

Section		Section Name	Description
Sr. No.	as per LLP Act, 2008		

35	74	General Penalties
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Substitution-

Where no punishment is provided in act-
 The limited liability partnership or any partner or any designated partner or any other person, who is in the default, shall be liable to a penalty of five thousand rupees and in case of a continuing contravention with a further penalty of one hundred rupees for each day after the first during which such contravention continues, subject to a maximum of one lakh rupees.
 old-fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.

36	76A	
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New Insertion-

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers.
 The Central Government shall, while appointing adjudicating officers, specify their jurisdiction in the order.

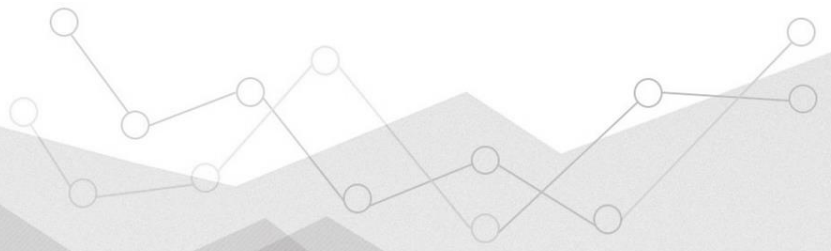
Section

Sr. No.	as per LLP Act, 2008	Section Name	Description
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Substitution-

37	77	Jurisdiction of courts	In the old provisions, the Judicial Magistrate of the first class and the Metropolitan Magistrate had the jurisdiction to try offences under this Act and impose punishment in respect of such offence. However, with the advent of Special Courts, the jurisdiction is shifted to the same.
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38	80(1A)	Power to remove difficulties	If any difficulty arises in giving effect to the provisions of this Act as amended by the Limited Liability Partnership (Amendment) Act, 2021, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty till 3 years from commencement of Act.
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Excellence in Excel



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MATCH Function

- ✓ The MATCH function searches for a specified item in a range of cells, and then returns the relative position of that item in the range.
- ✓ Syntax :MATCH(lookup_value, lookup_array, [match_type])
- ✓ The MATCH function syntax has the following arguments:
 - ❖ lookup_value : The value that you want to match in lookup_array.
 - ❖ lookup_array : Required. The range of cells being searched
 - ❖ Match type : Optional

	A	B	C
1	Sr.No	State Name	
2	1	Gujarat	
3	2	Maharashtra	
4	3	Punjab	
5	4	Madhya Pradesh	
6	5	Aassam	
7			
8	Search	Maharashtra	
9	Position	2	
10			
11	Formula	Description	Result
12	=MATCH(B8,B2:B6,0)	Return the position of search value from the array	2

MOTIVATION?

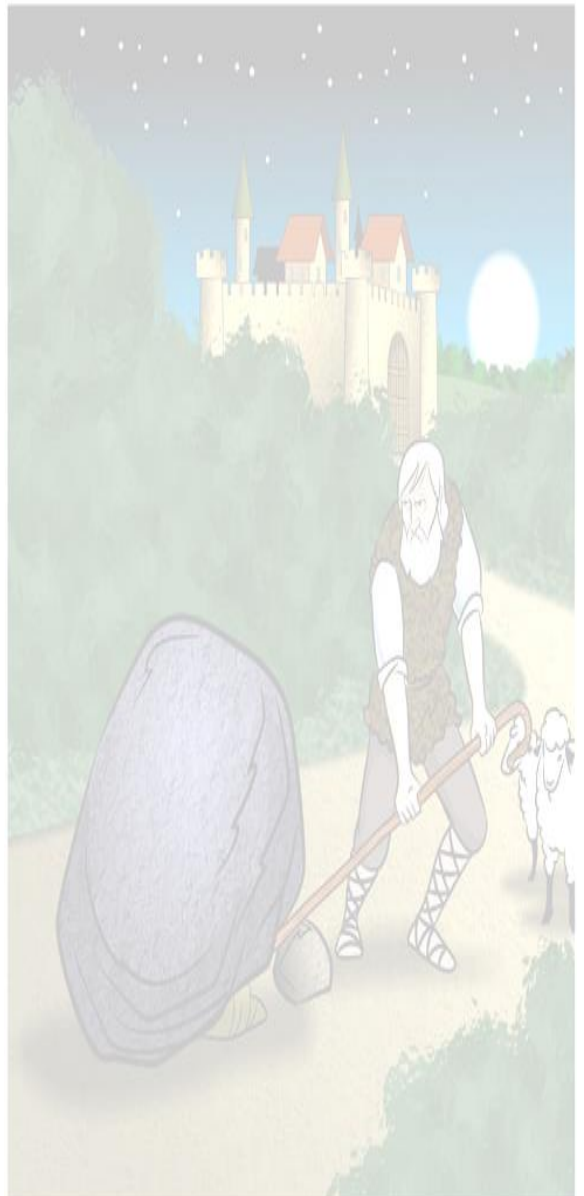
IT'S RIGHT INSIDE YOU!

Motivational Mantra

The Obstacle in your PATH

In ancient times, a King had his men place a huge rock on a road way. He then hid in the bushes and watched to see if anyone would move the rock out of the way . Some of the king's wealthiest merchants and courtiers passed by and simply walked around it. Many people blamed the King for not keeping the roads clear, but non of them did anything about getting the stone removed .

And so it happened that one day , a peasant came along carrying vegetables . Upon approaching the rock the peasant laid down his burden and tried to push the rock out of the way. After much pushing and straining , he finally managed . After the peasant went back to pick up his vegetables ,he noticed a purse lying in the road where the rock had been. The purse contained many gold coins and a note from the King explain that the gold was for the person who removed the rock from the road .



Moral of the story

You see in Life ... Every Obstacle that we come across gives us an opportunity to improve our circumstances , and while the lazy complain others will create opportunity through their kind hearts , generosity and willingness to get things done.

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