

NEWSLETTER

MARCH, 2025



Monthly Bulletin

TOLSTOY HOUSE, 4TH FLOOR, TOLSTOY MARG,
NEW DELHI – 110001, INDIA TEL : +91 11 4213 0000



02

Doing Business in India

03-05

Featured Article

06-09

Legal & Regulatory Updates

10

Recent Events

11

Off Beat Section

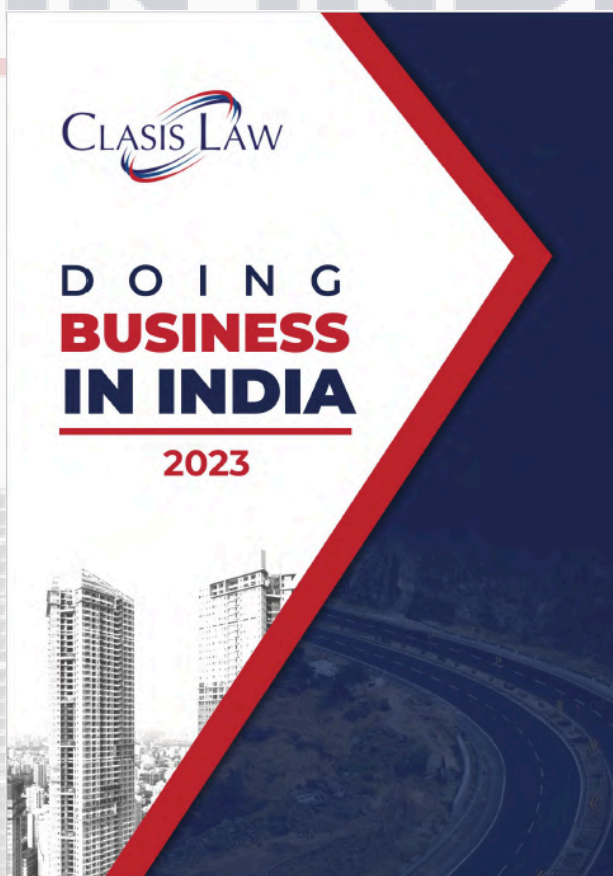
12

Notable Recognitions

DOING BUSINESS IN INDIA

We are pleased to share our e-book titled
"Doing Business in India".

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



Please scan the QR code above or [Click Here](#) to download the e-book. Alternatively, you may write to us at info@clasislaw.com for the copy.

FEATURED ARTICLE

SUPREME COURT CLARIFIES WHEN AN OFFENCE QUALIFIES AS “FIRST OFFENCE” UNDER THE INCOME TAX ACT FOR COMPOUNDING

Written By
Sidhant Pandita, Associate Partner
Sanchita Chamoli, Associate

Facts of the case -

The Appellant as an individual was earning income by way of salary and by way of share of profit in a partnership firm. The Appellant had filed delayed income tax returns for the Assessment Year (AY) 2011-12 and 2013-14. The due dates for these filings were 30.09.2011 and 31.10.2013 respectively, however, the returns were filed by the Appellant on 04.03.2013 and 29.11.2014 respectively.

For AY 2011-12, a show cause notice was issued to the Appellant by the Commissioner of Income Tax, Baroda alleging violation of Section 276CC [*Failure to furnish returns of income*] of the Income Tax Act, 1961 (“the Act”). The notice stated that the Appellant had delayed in filing his return and was thus called upon to show cause as to why proceedings under Section 276CC of the Act should not be instigated against him. The Appellant filed an application for compounding the delay in filing of return of income under the Guidelines for Compounding of Offence, 2008 and it was allowed vide order dated 11.11.2014.

Thereafter, the Appellant received another show cause notice on 12.03.2015 for AY 2013-14, thereby mentioning unpaid payment of self-assessment tax and delayed filing of return of income. The Appellant sought compounding under the Guidelines for Compounding of Offence, 2014 (“the 2014 guidelines”) explaining that delay in filing return of income was due to financial constraints and that the delay was neither deliberate nor wilful. However, the compounding application for AY 2013-14 of the Appellant was rejected and as per the committee, the Respondent No.1 took the view that the offence committed by the Appellant under Section 276CC for the AY 2013-14 would not be covered by the expression “first offence” as defined in the guidelines.

Challenge before the High Court -

The Appellant challenged the order of rejection of his compounding application for AY 2013-14, before the Gujarat High Court, claiming it to be a “first offence” as per the 2014 guidelines. However, the High Court rejected the Appellant's petition, holding that the offence for AY 2013-14 was committed after the show-cause notice for AY 2011-12 was issued. The High Court held that the compounding authority need not examine the circumstances of the delay, as those would be addressed during the trial. In such circumstances, the Appellant preferred the instant appeal.

Submissions on behalf of Appellant -

The Appellant's counsel argued that under Section 276CC of the Act, the offence of failing to file a return occurs immediately after the due date under Section 139(1) [*Return of income*], irrespective of when a belated return is eventually filed. For AY 2013-14, the offence was comm-

FEATURED ARTICLE

-itted on the day after the due date i.e., on 01.11.2013, and this date should be used to determine whether it qualifies as a "first offence" under the 2014 guidelines and whether it is eligible for compounding. Further, it was submitted that the 2014 guidelines are advisory rather than binding. Therefore, the counsel requested that the High Court's decision be set aside and the compounding application be accepted.

Submissions on behalf of the Respondents -

The Respondent's counsel argued that an offence under Section 276CC can only be committed once for a specific assessment year, and the 2014 guidelines were not intended to allow indefinite compounding for repeat offences. The counsel contended that merely because a show cause notice was not issued by the Department due to non-detection of offence under Section 276CC, the same cannot be construed as absolving the assesses from having committed the offence and by disclosure of the same by filing the return of income belatedly, the offence cannot qualify as a "first offence." Highlighting that compounding is discretionary and the guidelines should prevent abuse by habitual offenders, the counsel urged the Court to dismiss the appeal.

Analysis of the Supreme Court -

The issues for consideration before the Supreme Court included: whether an offence under Section 276CC of the Act could be said to have been committed on the actual date of filing of return of income or on the day immediately after the due date for filing of returns as per Section 139(1) of the Act, the meaning of the expression "first offence" under Clause 8 of the 2014 guidelines, and whether the 2014 guidelines are mandatory or directory in nature. The Supreme Court while analysing the issues at hand took view from several other previous judgments of the Court. It was therefore observed:

- The present case concerns failure to file income tax returns within the prescribed time under Section 139(1) of the Act, which constitutes an offence under Section 276CC. The Supreme Court, while referencing the case of *Prakash Nath Khanna v. CIT*[1] clarified that the expression in "due time" refers specifically to the deadline under Section 139(1), not the extended period under Section 139(4). It was held that an offence under Section 276CC is committed immediately after the due date expires, regardless of whether the return is filed later under Section 139(4) or before prosecution is initiated. Therefore, the Court took the view that an offence is determined based on the date immediately following the due date and the actual date of filing of the return of income at a belated stage would not affect in any manner the determination of the date on which the offence under Section 276CC of the Act was committed.
- The Guidelines for Compounding of Offences under Direct Tax Laws, 2014, issued by the Central Board of Direct Taxes (CBDT), replaced the 2008 guidelines and provide principles for exercising the power under Section 279(2) of the Income Tax Act to compound offenses. According to Paragraph 4, compounding is not a right of the taxpayer but may be allowed at the discretion of the competent authority if eligibility conditions are met, taking into account factors such as the taxpayer's conduct, the nature and severity of the offence, and the specific circumstances of the case. The 2014 guidelines define the expression "first offence" for compounding as any offence committed: a) Prior to the date of issuance of any show cause notice for prosecution in relation to the said offence; or b) Prior to any intimation relating to prosecution by the department to the person concerned or prior to the launching of any prosecution, whichever is earlier. The definition applies separately to each section of the Act for which an offence is committed and it would be relevant only if it is committed by the same entity.

FEATURED ARTICLE

- Reliance was placed on a decision of the Delhi High Court in the case of *Sports Infratech P. Ltd. & Anr. v. Deputy Commissioner of Income-tax*[1], wherein the High Court observed that an application for compounding of an offence cannot be rejected without having regard to the specific facts of the case. The Court highlighted that the guidelines do not limit the authorities from exercising their discretion and therefore the authorities while exercising their power under Section 279 are required to consider the objective facts in the application before it.
- In the present case, the show cause notice for AY 2011-12 was issued on 27.10.2014, but the offenses under Section 276CC for AY 2011-12 and AY 2013-14 were committed on 01.10.2011 and 01.11.2013, respectively- before any notice was issued. The Court observed that therefore, it can be said without a cavil of doubt that both the offences under Section 276CC of the Act were committed prior to the date of issue of any show cause notice for prosecution and thus, would qualify as “first offence” under the Act. Further, the Court emphasized that the definition of first offence broadens the scope, encouraging taxpayers to voluntarily disclose offenses. The primary aim of prosecution under Chapter XXII of the Act is to penalize offenders and deter tax evasion, but voluntary disclosure reflects the absence of intent to evade taxes and when an assessee voluntarily discloses the commission of an offence, he cannot be said to have the intention of evading payment of taxes.

Conclusion -

The Supreme Court disposed of the appeal and concluded that the High Court erred in rejecting the Appellant's petition against the Chief Commissioner of Income Tax's decision to deny the compounding application for AY 2013-14. The Court stated that offence as alleged to have been committed by the Appellant is, without a doubt, covered by the expression “first offence” and thus the compounding application preferred by the Appellant could not have been rejected on this ground alone.

Additionally, the Court observed a policy shift in later guidelines (2019 and 2022), wherein compounding of offenses under Section 276CC was allowed up to three occasions. Though the case is governed by the 2014 guidelines, this shift reflects a more flexible and liberal approach to compounding tax offenses, making the compounding regime more flexible and liberal in particular.

Subsequently, the Supreme Court set aside the rejection order(s) and directed the Appellant to file a fresh compounding application to be adjudicated by the competent authority, considering the Appellant's conduct, the nature of the offence, and case-specific circumstances. Further, the trial court proceedings are to remain stayed until the compounding decision is made by the competent authority and in the event the fresh compounding application is accepted, the proceedings pending before the Trial Court shall stand abated and if rejected, the trial will proceed to its logical conclusion.

FOOTNOTES :

[1] VINUBHAI MOHANLAL DOBARIA Vs CHIEF COMMISSIONER OF INCOME TAX (SPECIAL LEAVE PETITION (C) NO. 20519 OF 2024); 2025 INSC 155

[2] 2004 (9) SCC 686

[3] 2017 SCC OnLine Del 6543

LEGAL UPDATES

IN APPROPRIATE CASES PROMOTERS UNDERGOING CIRP MAY BE ALLOWED TO COMPLETE THE PROJECT FOR THE BENEFIT OF HOMEBUYERS

Introduction:

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, New Delhi, comprising Justice Ashok Bhushan (Chairperson), Barun Mitra (Member-Technical), and Arun Baroka (Member-Technical), dismissed the appeal[1] filed by the suspended directors of Supertech Township Projects Ltd (“**Corporate Debtor**”). The appeal challenged the initiation of the Corporate Insolvency Resolution Process (“**CIRP**”) under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) against the Corporate Debtor.

Brief Facts:

Corporate debtor, a real estate company incorporated in 2010, was engaged in the development of a residential project named Golf Country at Yamuna Expressway, Greater Noida. To finance the project, the company secured term loans amounting to Rs. 140 crores from Punjab and Sindh Bank in 2012-13, along with additional financial assistance of Rs. 100 crores each from Bank of Maharashtra and Oriental Bank of Commerce (now Punjab National Bank).

However, due to financial distress and non-repayment of dues, the company’s accounts were classified as Non-Performing Assets (NPA) by the lenders. The financial creditors issued notices under Section 13(4) of the SARFAESI Act, and despite attempts by the Corporate Debtor to offer a One-Time Settlement (OTS), no resolution was reached. Subsequently, in July 2023, Punjab and Sindh Bank filed an application under Section 7 of the IBC before the National Company Law Tribunal

Tribunal (“**NCLT**”), seeking the initiation of CIRP due to default on the outstanding debt. The NCLT admitted the application, appointed an Interim Resolution Professional (IRP), and began the CIRP process.

The corporate debtor challenged the NCLT's order before the NCLAT, claiming that discussions for a settlement were ongoing. While the NCLAT initially granted a stay on the CIRP, but despite the corporate debtor trying three times to introduce a settlement proposal, all of them got rejected. Furthermore, the Yamuna Expressway Industrial Development Authority (YEIDA) filed its claim, asserting a debt of Rs. 741.20 crores. The Homebuyers’ Association also expressed dissatisfaction with the debtor's approach, further complicating the situation.

Analysis of the Court:

The NCLAT rejected the appeal filed by the suspended directors, affirming the NCLT’s order to admit the CIRP application. The tribunal highlighted that there was an existing debt and default, which was admitted by the corporate debtor. Despite securing three different investors, all proposals were rejected by the financial creditors. Yamuna Expressway Industrial Development Authority (YEIDA) further impleaded itself in the proceedings with a debt amounting to Rs 741.20 crores.

To support its arguments, the appellant’s counsel referred to the Supreme Court’s judgment in *Anand Murti v. Soni Infratech Pvt. Ltd.*[2], wherein the court allowed the promoter to complete the project even if CIRP had been initiated. However, the NCLAT

LEGAL UPDATES

distinguished this case, noting that the facts were different, as the lenders and homebuyers in this case were divided, with no consensus on a resolution plan.

The tribunal emphasized that the provisions of the IBC must be adhered to, and the CIRP must proceed in a manner that ensures a fair and transparent resolution of the corporate debtor's financial distress, in compliance with the objectives of the IBC.

Conclusion:

The NCLAT upheld the initiation of CIRP under the Insolvency and Bankruptcy Code, 2016. The tribunal concluded that the resolution process must proceed strictly in accordance with the provisions of the IBC, 2016, noting the ongoing debt default, the failure of the Corporate Debtor to reach a settlement with creditors, and the opposition from various stakeholders, including the homebuyers and YEIDA. The decision reinforced the legal framework set by the IBC for the resolution of corporate insolvencies and the necessity for strict adherence to its procedures.

Footnotes:

[1] *Company Appeal (AT) (Insolvency) No.1441 of 2024*

[2] *Civil Appeal No. 7534 of 2021*

CORPORATE REGULATORY UPDATES

1. SEBI Issues Consultation Paper on Digital Assurance and Auditor's Report for External Data Repositories

On February 3, 2025, the Securities and Exchange Board of India (“SEBI”) released a consultation paper proposing a draft circular outlining requirements for Management Statements and Auditor’s/Independent Practitioner’s Reports concerning digital assurance based on data obtained from external repositories. This initiative follows the release of a Technical Guide on Digital Assurance by the Auditing and Assurance Standards Board and the Digital Accounting and Assurance Board of the Institute of Chartered Accountants of India (ICAI). The guide aims to enhance audit quality by integrating digital data from external sources into audit procedures.

The proposed regulations promote the use of external data repositories to improve audit transparency but do not mandate separate reports for these aspects. Additionally, listed companies’ management is not obligated to grant auditors access to external data sources. Stakeholders are invited to submit feedback on the draft circular by February 24, 2025.

2. Introduction of the Income-tax Act, 2025

The Lok Sabha introduced the Income-tax Act, 2025, on February 13, 2025, to consolidate and amend the existing income-tax laws. The simplification effort is based on three key principles: (a) textual and structural improvements for clarity, (b) maintaining tax policy continuity without major changes, and (c) preserving tax rate stability to ensure predictability. The Act, once passed by Parliament, is expected to take effect from April 1, 2026.

3. Industry Standards on Related Party Transactions Disclosure

SEBI issued a circular outlining Industry Standards for Minimum Information on Related Party Transactions (“RPTs”). As per Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, RPTs require prior approval from the audit committee and, if material, from shareholders. To ensure uniformity and transparency, the Industry Standards Forum, in consultation with SEBI, has established disclosure standards for RPT approvals. Listed entities must comply with these standards, effective April 1, 2025.

4. SEBI Mandates Research Analysts to Disclose Key Terms for Research Services

On February 17, 2025, SEBI issued a circular requiring Research Analysts (RAs) to disclose the Most Important Terms and Conditions (MITC) of their research services. This aligns with Regulation 24(6) of the SEBI (Research Analysts) Regulations, 2014. The standardized MITC includes fee structures, advance payment terms, and client consent requirements. Existing clients must be notified by June 30, 2025, and all future agreements must incorporate these terms.

5. SEBI Directs Investment Advisers to Disclose Key Terms in Advisory Agreements

In a parallel development, on February 17, 2025, SEBI mandated Investment Advisers (IAs) to disclose Most Important Terms and Conditions MITC within advisory agreements, per Regula-

CORPORATE REGULATORY UPDATES

tion 19(1)(d) of the SEBI (Investment Advisers) Regulations, 2013. The MITC covers fee limits, conflict-of-interest management, and trade execution consent. Existing clients must be informed by June 30, 2025, with all future agreements incorporating these provisions. These measures enhance transparency in research and advisory services, safeguarding investor interests.

6. IFSC Notifies IFSCA (Fund Management) Regulations, 2025

On February 19, 2025, the International Financial Services Centres Authority (**"IFSCA"**) introduced the IFSCA (Fund Management) Regulations, 2025, replacing the 2022 regulations. Key changes include:

Reduction of minimum corpus for non-retail and retail schemes from USD 5 million to USD 3 million.

Increased validity of non-retail scheme's Private Placement Memorandum (PPM) to 12 months.

Expanded permissible investment options for non-retail and retail schemes.

Reduction of minimum investment for Portfolio Management Services (PMS) from USD 150,000 to USD 75,000.

Removal of prior approval requirement for the appointment of Key Managerial Personnel (KMPs), now requiring only an intimation to IFSCA.

7. Appointment and Change of Key Managerial Personnel ("KMP") by a Fund Management Entities ("FME")

On February 20, 2025, the IFSCA issues a circular regarding appointment and change of KMP by FME. Under Regulation 7 of the IFSCA (Fund Management) Regulations, 2025, FMEs must appoint KMPs based in IFSC and meeting prescribed qualification criteria. In this regard, the IFSCA issued this circular requiring FMEs to submit an intimation along with an applicable fee when appointing or changing KMPs.

8. IBBI amends the IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Process Regulations") and IBBI (Voluntary Liquidation Process) Regulations, 2017 ("Voluntary Liquidation Process Regulations")

The Insolvency and Bankruptcy Board of India (**"IBBI"**) has introduced amendments to the Liquidation Process Regulations, and Voluntary Liquidation Process Regulations. These changes, notified through the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, and the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2025, came into effect on January 28, 2025.

Key changes include extending the auction participation period, stricter bidder eligibility verification, and mandatory online submission of liquidation details with penalties for delays. Liquidators must now file the final report upon approval of a scheme under Section 230 of the Companies Act, 2013. IBBI will continue managing liquidation accounts separately, and voluntary liquidation can proceed even if uncalled capital exists. Additionally, liquidators must disclose tax deductions before depositing unclaimed funds.

RECENT EVENTS



Our Partner, **Dinesh Gupta**, attended the Airline Economics Growth Frontiers India 2025 conference, a premier global aviation industry event, held at the Taj Mahal Hotel in New Delhi on 25 and 26 February 2025.

The two-day conference brought together aviation professionals from around the world to discuss key trends in leasing, finance, and market strategies shaping the aviation sector.



Our Partner, **Dinesh Gupta**, attended the Luxembourg Fund Industry seminar in Mumbai on 4th March 2025. The event was attended by various stakeholders based in Luxembourg and India. The stakeholders discussed the opportunities for fund management industry both the countries and also various regulatory and tax benefits for the fund managers.

OFF BEAT SECTION

INTERNATIONAL WOMEN'S DAY 2025: FOR ALL WOMEN AND GIRLS – RIGHTS, EQUALITY, EMPOWERMENT.

On March 8, 2025, International Women's Day arrives as a bold call to action: Equal rights. Equal opportunities. Equal power. This year marks the 30th anniversary of the Beijing Declaration and Platform for Action, reminding us that despite significant strides, the world remains deeply unequal. The official UN Commemoration event was held on March 7 from 10:00 to 11:30 a.m. at the UN General Assembly Hall in New York—an invitation to join a global movement to demand change.

A Call for Action

This year's theme, "For ALL Women and Girls: Rights. Equality. Empowerment," was not just a slogan—it's a rallying cry. It challenges governments, corporate leaders, community champions, and youth to work together for a feminist future where no one is left behind. With 89% of governments now prioritizing the end of violence against women and 193 countries having legal measures in place, progress is evident. Yet, gaps remain. Countries with domestic violence laws report fewer cases, and while education parity is largely achieved, the gender gap in science and technology still persists. Moreover, 112 countries now have national plans to engage women in peace and security processes—a significant leap from just 19 in 2010.

Empowering Change

At its core, International Women's Day 2025 calls on us to unlock equal rights, power, and opportunities for all women and girls. Central to this vision is empowering the next generation—youth, particularly young women and adolescent girls—so they can become catalysts for lasting change. Social media campaigns using the hashtag #ForAllWomenAndGirls are set to spark conversations and inspire action globally.

Inspiring Initiatives from India

In India, the government is shifting from women's development to women-led development. Women are breaking barriers in education, health, digital inclusion, and leadership. On March 3, 2025, Prime Minister Narendra Modi encouraged women to share their inspiring life journeys on the NaMo App Open Forum. Praising the remarkable stories received, he announced that selected women would take over his social media on March 8 to amplify their voices celebrating resilience and inspiring others through their powerful experiences.

Let's rise together, demand action, and work towards a world where every woman and girl can truly thrive.

Notable Recognitions & Accolades

