

IBA INTERNATIONAL
BUSINESS ADVISORS

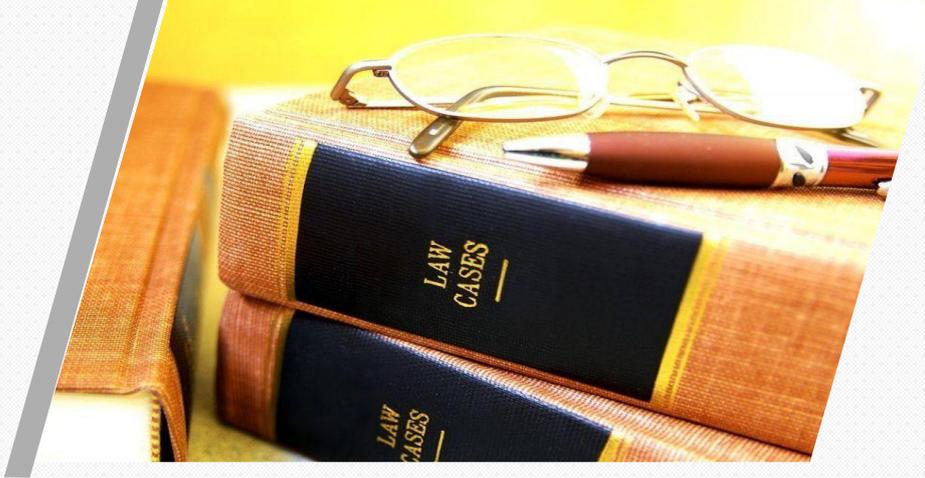
CONNEKT

September - 2021

Content

<u>Direct Tax – Case Laws</u>	3
<u>Direct Tax – Notifications</u>	5
<u>Indirect Tax – Case Laws</u>	6
<u>Indirect Tax Notifications & Circulars</u>	8
<u>Legal & Regulatory Notifications</u>	9
<u>Column</u>	13
<u>IBA News</u>	15
<u>Compliance Calendar</u>	16
<u>About us</u>	17

Direct Tax Case Laws



Case Law 1:

Assessee, claimed deduction under section 43B based on issue of debentures in lieu of interest accrued and payable to financial institutions which was disallowed by Assessing Officer but allowed by Commissioner (Appeals) and said order was confirmed by Tribunal. High Court based on Explanation 3C to section 43B disallowed deduction under section 43B and held that to claim deduction under section 43B, actual payment is essential and any interest which had been converted into loan or borrowing could not be deemed to have been actually paid

However, it was found that issue of debentures by assessee was, under a rehabilitation plan, to extinguish liability of interest altogether. No misuse of provision of section 43B was found as a matter of fact by either Commissioner or Tribunal.

Explanation 3C, which was meant to plug a loophole, could not therefore be brought to aid of revenue on facts of instant case. Indeed, if there be any ambiguity in retrospectively added Explanation 3C, at least three well established canons of interpretation come to rescue of assessee in this case. First, since Explanation 3C was added in 2006 with object of plugging a loophole – i.e. misusing section 43B by not actually paying interest but converting interest into a fresh loan, bona fide transactions of actual payments are not meant to be affected. Second, a

retrospective provision in a tax act which is 'for removal of doubts' cannot be presumed to be retrospective, even where such language is used, if it alters or changes law as it earlier stood. This being case, Explanation 3C is clarificatory – it explains section 43B(d) as it originally stood and does not purport to add a new condition retrospectively, as has wrongly been held by High Court. Third, any ambiguity in language of Explanation 3C shall be resolved in favour of assessee.

Thus, High Court was clearly in error in concluding that 'interest', on facts of instant case had been converted into a loan. There was no basis for this finding - as a matter of fact, it was directly contrary to finding on facts of authorities below.

Commissioner of Income-tax, Delhi v M.M. Aqua Technologies Ltd.

Case Law 2:

Money brought in India by non-resident for investment or for other purpose is not liable to tax under provisions of Act and question of assessment to income-tax arises only when there is no evidence to show that amount in question in fact represents remittance from abroad

Whether money brought in India by non-resident for investment or for other purpose is not liable to tax under provisions of Act

Direct Tax : Case Laws

and question of assessment to income-tax arises only when there is no evidence to show that amount in question in fact represents remittance from abroad. During assessment year under consideration, assessee-NRI had acquired two residential properties in India. Assessing Officer formed an opinion that assessee had failed to discharge onus cast upon him in terms of provisions of section 68 and he made addition under section 68 disbelieving explanation rendered by assessee in support of sources of money for acquisition of properties. It was found that purchase consideration was discharged by assessee partly by way of direct remittance from abroad to vendor and partly through banking channel and assessee also explained sources of credits appearing in NRE account as sale proceeds of gold bars and maturity proceeds of FDs. Assessee also adduced evidence in form of copies of invoices in support of sale of gold, copies of cheques issued by buyer of gold bar and had also filed confirmation letter from bank that credit appearing in account represented maturity proceeds of FDs. Whether, on facts, assessee had discharged primary onus lying upon it and addition made by Assessing Officer could not be sustained. Held, yes and in the result, the appeal of the assessee stands allowed.

Iqbal Ismail Virani v Income Tax Officer (International Taxation)

Case Law 3:

Where assessee received RBI bond instead of cash as a consideration for project undertaken in Iraq as sub-contractor and incurred loss on sale of bond, since assessee is recording notional loss or profit on revaluation of earlier years as well and

considering nature of business assessee has been doing, bonds are rightly treated as current assets in facts and circumstances of case and assessee was entitled to claim loss on sale of RBI bond

Assessee had undertaken a few projects in Iraq as sub-contractor of a company and claims to have completed a portion of the construction work but has not received the full consideration for the certified work and towards receivables in works executed in Iraq in previous year in terms of deferred payment mechanism, assessee had received RBI and ECGC bonds. The assessee treated RBI/ECGC bonds as deferred realization and treated them as current asset, claimed loss on actual sale of bonds and loss on revaluation of bonds, but Assessing Officer made disallowance of said loss.

High Court observed that assessee had not made a conscious decision in investing in bonds, but was forced to accept the bonds in place of receivables and the assessee gets cash only upon sale of bonds and till such time bonds cannot be treated as capital asset, not even stock-in-trade and since assessee is recording notional loss or profit on revaluation of the earlier years as well and considering the nature of business the assessee has been doing, the bonds are rightly treated as current assets in the facts and circumstances of the case and assessee is entitled to claim said loss.

Commissioner of Income-tax v Bhageeratha Engineering Ltd

Direct Tax Notifications

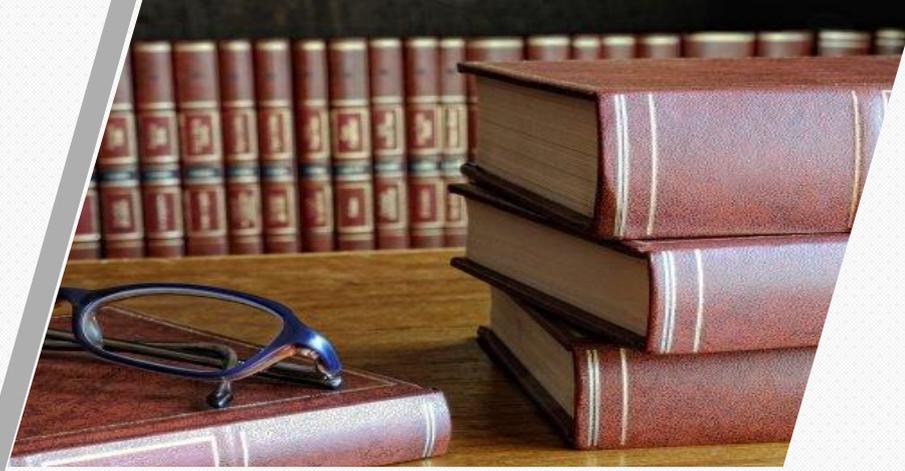


1. Extension of timelines for electronic filing of various Forms under the Income-tax Act, 1961

On consideration of difficulties reported by the taxpayers and other stakeholders in electronic filing of certain Forms under the provisions of Income-tax Act, 1961 read with Income-tax Rules, 1962, the Central Board of Direct Taxes (CBDT), extends the due dates for electronic filing of various Forms.

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

Indirect Tax : Case Laws



Case Law 1:

AAR: Inadmissibility of Input Tax Credit on Canteen facility to employees and Interpreting significance of “Semi-Colon” under Sec 17(5)

Applicant, primarily in motor vehicle manufacturing, is maintaining canteen run by third party Canteen service provider for its employees at its factory premises to comply with the requirement of Factories Act, 1948, recovers nominal amount on monthly basis to ensure use of canteen facility by authorized person only and remaining cost is borne by company as salary cost. Applicant believes that since they are not in canteen service hence recovery of nominal amount will not fall in definition of supply. Applicant sought advance ruling on

- Whether input tax credit (ITC) available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory?
- Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility?
- If ITC is available, whether it will be restricted to the extent of cost borne by the Applicant?

Gujarat AAR finds that Section 17(5)(b)(i) restricts ITC on supply of Food and

beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, and exception of extending ITC on goods/services where it is obligatory for an employer to provide the same to its employees under any law for the time being in force is not available. Laying down the principle that “Colons and semicolons” are two types of punctuation whereby “semi-colons are used to join two independent clauses/sub-clauses, or two complete thoughts that could alone form sentence”.

Gujarat AAR, thus remarks that sub-clause 17(5)(b)(i) ending with a colon (:;) and followed by proviso which ends with semi-colon (;) is to be read as independent clause, viz. Independent of sub-clause 17(5)(b)(iii) and its proviso which extends ITC where it is obligatory for employer to provide same to its employees under any law for time being in force. AAR opines that the legislature intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionalities. Gujarat AAR concluded that GST Paid on canteen facility is blocked u/s 17(5)(b)(i) of CGST Act and hence inadmissible.

[Tata Motors Ltd. Vs Gujarat AAR UJ/GAAR/R/39/2021]

Indirect Tax : Case Laws

Case Law 2:

Stay on recovery order of ITC due to mismatch in form GSTR-3B & GSTR-2A

The Applicant (Bharat Aluminium Company Ltd.) filed a petition against the notice dated 1st July 2020 and recovery order dated 22nd January 2021 passed by revenue department (the Respondent) denying ITC to the petitioner based on mismatch of ITC availed in form GSTR-3B and with the details furnished by supplier in Form GSTR-2A for the period 2018-19. ITC claimed by the petitioner in GST Returns was Rs.95,464.59 lakh while as per GSTR 2A, it was Rs. 86,606.67 lakh. The respondent claimed the difference of tax amounting to Rs.8,857.91 Lakhs along with interest. The petitioner contended that, there shall not be any automatic reversal of ITC of buyer on non-payment of tax by the seller. Where, the seller has not paid the tax, a recovery must be made by the seller. The petitioner has come out with purchase made which did not match with ITC (in GSTR 2A) shown by the seller, meaning thereby the seller may not have filed the return. When physical verification was offered to be made by the petitioner, it was not accepted.

It is stated that for the recovery of like nature from the buyer, the action can only be available in the exceptional circumstances. Reference of the propositions laid down by Madras High court in M/S D.Y Beathel Enterprises v. State tax officer [W.P (MD) NO.2127 OF 2021].

The Hon'ble Chhattisgarh High court observed that, a perusal of the notice and recovery order need consideration, thereby admit the petition application. Also, the petitioner was directed to deposit 5% of

demand amount to get grant stay against recovery of disputed amount by the respondent and further directed the respondent to file a reply in 4 weeks against the petition filed.

BHARAT ALUMINIUM COMPANY LIMITED V. UNION OF INDIA, GOUTAM BHADURI, JUNE 24, 2021

Indirect Tax

Notifications & Circulars



S. No Notifications

- 1. Seeks to extend timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been canceled under clause (b) or clause (c) of section 29(2) of the CGST Act**

CBIC vide Notification No. 34/2021 – Central Tax has notified that the time limit, for making an application of revocation of cancellation of registration, which falls during the period 1st March 2020 to 31st August 2021 shall be extended up to 30th September 2021.

<https://cbic-gst.gov.in/pdf/central-tax/notfctn-34-central-tax-english-2021.pdf>

- 2. Seeks to extend FORM GSTR-3B late fee Amnesty Scheme from 31.08.2021 up to 30.11.2021**

CBIC vide Notification No. 33/2021 – Central Tax has notified waiver of: -

- The total amount of late fee under section 47 of the CGST Act 2017, in excess of five hundred rupees for the registered taxpayers who failed to furnish Form GSTR-3B for the months/ quarter of July 2017 to April 2021 by the due date but furnish the said return between the period from 1st June 2021 to the 30th November 2021.
- The total amount of late fee under section 47 of the CGST Act 2017, in excess of two hundred and fifty rupees for the registered taxpayers who failed to furnish Form GSTR-3B for the months/ quarter of July 2017 to April 2021 by the due date, where the total amount of central tax payable in the said return is nil, but furnish the said return between the period from 1st June 2021 to the 30th November 2021.

<https://cbic-gst.gov.in/pdf/central-tax/notfctn-33-central-tax-english-2021.pdf>

- 3. Seeks to make seventh amendment (2021) to CGST Rules, 2017**

CBIC vide Notification No. 32/2021 – Central Tax has extended the timeline to file GSTR-1 and GSTR-3B through EVC by a person registered under the provisions of Companies Act, 2013 till 31st October 2021.

<https://cbic-gst.gov.in/pdf/central-tax/notfctn-32-central-tax-english-2021.pdf>

Legal & Regulatory Notifications



S. No Notifications

1. EXEMPTION OF PROVISIONS OF SECTION 387 TO SECTION 392

(MCA circular dated August 05, 2021)

MCA vide its circular dated August 05, 2021, has exempted certain companies from the provisions of section 387 to 392 insofar as they relate to the offering for subscription in the securities, requirements 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 (28 of 2005)

The Companies which are exempted from the above said provisions are as follows:

- (a) Foreign companies
- (b) Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ls22cx67XZW0vh1aS%252Fy72A%253D%253D&type=open>

2. COMPANIES (SPECIFICATION OF DEFINITIONS DETAILS) THIRD AMENDMENT RULES, 2021

(MCA circular dated August 5, 2021)

MCA vide its circular dated August 05, 2021 has amended the Companies (Specification of definitions details) Rules, 2014 through the Companies (Specification of definitions details) Third Amendment Rules, 2021. Through this amendment, MCA has inserted explanation to the definition of “electronic mode” as mentioned below:

Explanation- 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 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of definition of foreign company as given in clause (42) of section 2 of the Act.

Legal & Regulatory

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=KuyIkX4pP1I6%252FheyBbOzXg%253D%253D&type=open>

3. COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2021

(MCA circular dated August 5, 2021)

MCA vide its circular dated August 05, 2021 has amended the Companies (Registration of Foreign Companies) Amendment Rules, 2014 through the Companies (Registration of Foreign Companies) Amendment Rules, 2021.

Through this amendment, MCA has inserted an explanation with respect to definition of “electronic mode” as mentioned below:

Explanation- 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 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of definition of foreign company as given in clause (42) of section 2 of the Act.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ZoalBoQ7NHphbfqoW3TDjw%253D%253D&type=open>

4. THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2021

(MCA circular dated August 19,2021)

MCA vide its circular dated August 19, 2021 has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 through the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021.

Key highlights:

An individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank in the pay scale of Director or equivalent or above in any Ministry or

Legal & Regulatory

Department, of the Central Government or any State Government, and having experience in handling:

- ❖ The matters relating to commerce, corporate affairs, finance, industry, or public enterprises; or
- ❖ The affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.

The following shall not be required to pass the online proficiency self-assessment test:

- an advocate of a court; or
- in practice as a chartered accountant; or
- in practice as a cost accountant; or
- in practice as a company secretary

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=7JWENMwRaaXQ9eHFdmcYxg%253D%253D&type=open>

5. COMPANIES (CREATION AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTORS) SECOND AMENDMENT RULES 2021

(MCA circular dated August 19, 2021)

MCA vide its circular dated August 19, 2021 has amended the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 through the Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021.

Through this amendment, MCA has inserted rule 6 and schedule with respect to annual report on the capacity building of independent directors which says that the institute of Company Secretaries of India 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 format provided as under.

Legal & Regulatory

SCHEDULE

Annual Report on Capacity Building of Independent Director

(To be submitted by the institute)

Director's Name:

DIN Number:

DDB Registration Number:

Subscription (1 yr/5 yr/Lifetime):

Membership Validity:

Online Self-Assessment Proficiency Test Status (N.A if exempted):

A. Participation during the Financial Year _____

E-Learning Modules		Other Training Programs/ Courses		Colloquium / Workshops / Events of IDDB	
No. of modules released by the institute during the FY	No. of modules completed by the reportee	No. of courses organized by the institute during the FY	No. of courses attended by the reportee	No. of events organized by the institute during the FY	No. of events attended by the reportee

B. Total Participation

E-Learning Modules		Other Training Programs/ Courses		Colloquium / Workshops / Events of IDDB	
No. of modules released by the institute till date	No. of modules completed by the reportee	No. of courses organized by the institute till date	No. of courses attended by the reportee	No. of events organized by the institute till date	No. of events attended by the reportee

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=FQkrQysTnQxLA3y%252BNiOcdQ%253D%253D&type=open>



Notice Pay Recovery : Taxable or Non-Taxable under GST

By – Pallavi Jain

IBA

A contract with employee contains a clause for earlier termination of contract if terms and conditions mentioned in the contract are not adhered to. It provides that the contract is terminable subject to specified notice period (typically ranging from one to three months) and such notice can be revoked by either party by way of recovering or paying the salary for the specified period. The phenomenon of recovery by the employer for not serving the prescribed notice period by the employee shall be termed as “Notice Pay Recovery”. Though, schedule III to the CGST Act, 2017 clearly states that supply of service by an employee to the employer in the course of or in relation to employment is “neither supply of goods nor supply of services”, the question of levy of tax on amount recovered by the employer for ‘non-compliance’ of service of notice period as agreed in the employment contract, is still debatable.

As mentioned above, services rendered by employee in the course of employment are not covered under the ambit of supply and hence no GST is levied. However, we can analyse the issue in two ways:

- Recovery for non-serving of notice period is an inherent activity of any employment contract, therefore the same is in course of employment and cannot be treated separately.
- Notice pay recovery may be treated as a case wherein employer is receiving consideration from employee for “tolerate of an act”. Such toleration of an act is defined as ‘supply of service’ in schedule II to the CGST Act, 2017

Considering the aforesaid ambiguity in the industry, there is no such clarity in GST law about taxability of such recoveries from the employee. However, in the recent ruling by the hon’ble Gujarat Advance Ruling Authority (AAR) in **M/s Amneal Pharmaceuticals Pvt. Ltd. [Advance Ruling No. GUJ/GAAR/R/51/2020, dated July 30, 2020]** held that Notice Pay is nothing but the amount stipulated in the employment contract for breach in serving (not serving) the stipulated

notice period. In other words, notice pay is a sum mutually agreed between the employer and the employee for breach of contract. It can be regarded as a consideration to the employer for “tolerating the act” of the employee to not serve the notice period, which was the employee’s agreed contractual obligation.

Further, clause 5(e) to Schedule II to the CGST Act 2017, declares that ‘agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act’ shall be treated as supply of service. Section 7(1) of the CGST Act, 2017, includes activities referred to in Schedule II in the scope of supply.

Further, the ruling authority also perused the facts of the case law of M/s. Gujarat State Fertilizers and Chemical Limited (2016) wherein it was held that the cessation of employment should also be treated as employment service not liable for service tax. The decision of Allahabad CESTAT in the case of M/s. HCL Learning Systems Vs CCE, Noida (service tax appeal no. 70580 of 2018) also state that when amounts are recovered out of salary already paid, such amounts would not be subject to service tax as salaries are not subject to tax. Since the given disputes relate to the service tax regime, the ruling authority in the instant case also held that the same were not made applicable in respect of rulings under GST Regime. Thus, it was held that the GST is applicable on supply of taxable goods or services.

In view of the above, it can be stated that the supply element exists in case of notice pay recovery as the employer is getting compensation on account of breach by the employee, which shall be considered as “Tolerating an Act”. Thus, there shall be levied GST liability on the above recoveries as per the definition of supply under GST Law. The above view could be challenged by the taxpayer giving emphasis on the pre-GST accepted principles.

Celebrated Freedom With Happy Hours



Organized “Happy Hours” to celebrate Independence Day. We gave tribute to our freedom fighters. Everyone was energized, ebullient and motivated. Everyone sang “Teri Mitti Mein Mil Jawa”, and was filled with emotions..

Inhouse Training



Organized an in-house training. Thanks to Nirmal & Nitin who delivered an interactive and informative session on nitti-gritties involved in statutory audit to article trainees and employees.

Upcoming Compliances

Date	Compliance
September 11, 2021	Due Date for filing of FORM GSTR-1 for the month of August 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
September 13, 2021	Due Date for filing of IFF (Invoice Furnishing Facility) for the month of August 2021 for the registered taxpayers who have opted QRMP scheme
	Due Date for filing of FORM GSTR-6 for the month of August 2021 for the registered taxpayers who have opted for Input Service Distributor (ISD) registration
September 15, 2021	Second instalment of advance tax for the assessment year 2022-23
September 20, 2021	Due Date for filing of FORM GSTR-3B for the month of August 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
September 25, 2021	Due Date for making Challan Payment for the month of August 2021 for the registered taxpayers who have opted QRMP scheme
September 30, 2021	Return of income for the assessment year 2021-22 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or (d) an assessee who is required to furnish a report under section 92E.
	Due date for linking of Aadhaar number with PAN

Editorial Team



About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

Contact Us



S-217, Panchsheel Park,
New Delhi -110017



Mail Us
info@ibadvisors.co



Call Us
+91-11-40946000



Visit Us
www.ibadvisors.co

We have our offices in Gurgaon, Mumbai and Bengaluru and associate arrangements in Chennai, Hyderabad, Ahmedabad and Kolkata

www.ibadvisors.co



Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayar Maniar Sharma & Associates LLP (NMSA). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

For more information and past issues of ConneKt, kindly visit our website www.ibadvisors.co

You can also follow us at:



Disclaimer: The materials contained in this newsletter have been compiled from various sources. This information is for guidance only and should not be regarded as a substitute for appropriate professional advice. IBA accepts no liability with regard to the information herein or any action that may be taken by readers of this newsletter without any professional advice.