Devadhaantu Insights – July 2021

Dear Reader,

Greetings!

We are happy to present the Devadhaantu Insights highlighting important legislative updates in direct taxes and regulatory updates in SEBI, IBC, FEMA and Corporate laws.

We hope that we are able to provide an insight into various updates that you would find to be informative as well as useful. For any deeper discussion as to how the updates covered in this document could affect your transactions, please do not hesitate to contact Devadhaantu.

Happy Reading!
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DIRECT TAX UPDATES

JULY 2021

Direct tax updates (1/6)

Owing to non-fulfilment of 75% shareholding u/s 2(1B)(iii) as on Appointed date for tax neutral amalgamation, set-off of accumulated losses of Amalgamating Company denied[1]

Roca Bathroom Products Pvt Ltd ('Assessee-Company') held 26% shares of Espiern Plastics Limited (EPL) as on April 1, 2013, balance 74% were bought on February 14, 2014. Subsequently, Assessee Company moved a petition for amalgamation with Madras High Court, which was sanctioned on April 28, 2014, with the appointed date of April 1, 2013. For the Assessment Year 2014-15, Assessee-Company claimed set off of accumulated losses of EPL to the extent of INR 7.04Crs u/s 72A of the Income Tax Act, 1961 ('the ITA').

During Scrutiny assessment proceedings, set off of accumulated losses of EPL was not allowed on the basis of facts that Assessee-Company only held 26% of shareholding in EPL as on the appointed date i.e. April 1, 2013. One of the requirement under section 2(1B) of the ITA for the tax neutral amalgamation is that, that shareholders of the amalgamating company i.e. EPL hold ¾ th in value of shares in Amalgamated Company post amalgamation. This condition could not be satisfied as Assessee-Company absorbed EPL and no consideration was issued as Assessee-Company held entire shareholding of EPL on the effective date. Therefore, revenue denied the claim of Assessee-Company for the carry forward and set off of loss u/s 72A. Assessee contended that the shareholders of amalgamating company would be vested with the right/ interest arising from the scheme of amalgamation only upon scheme becoming effective and pleaded effective date has to be regarded for compliance of conditions specified u/s 2(1B)(iii).

It further noted that it's a settled law that once amalgamation is approved, the amalgamating company ceasing to exist, it can't be regarded as a person u/s 2(31) of the ITA against whom assessment proceedings can be initiated or an order of assessment passed. Therefore, appointed date, April 1, 2013, is crucial in this case. ITAT finds that it was not in dispute that Assessee was holding only 26% of equity shares in EPL as on March 31, 2013. Thus, ITAT held that since the Assessee-Company did not have 3/4th of the shares of the transferor company as on March 31, 2013, the appointed date being April 1, 2013, assessee shall not be eligible to claim carry forward and set off of losses of the transferor company as on March 31, 2013.

1 Roca Bathroom Products Pvt. Ltd [TS-508-ITAT-2021(CHNY)]

Direct tax updates (2/6)

Allowance of set-off of brought-forward business-loss against capital gain[1]

Nandi Steels Ltd ('Assessee') for AY 2003-04 had set-off brought forward business loss against capital gains arising from sale of land along with building and borewell which was disallowed by the Special Bench. Karnataka HC overturned ITAT Special Bench order that had decided against set-off of brought forward business loss against capital gains. HC noted the following while ruling in favour of the Assessee:

i. It observed that Sec. 72(1) employs the expression "under the head Profits and gains of business or profession" whereas clause (i) of Sec. 72(1) does not use the words "under the head", thus, the "legislature has consciously left it open that any income from business though classified under any other head can still be entitled to the benefit of set off" - SC ruling in GVK Industries9 where SC dealt with legal maxim expressio unius est exclusio alterius and held that expressed mention of one thing implies the exclusion of another;

ii. In Express Newspapers2 (followed by ITAT Special Bench), the question whether income from capital gains had character of business income was not even considered;

iii. SC ruling in Cocanada Radhaswami Bank3 (distinguished by ITAT Special Bench) dealt with the set off of brought forward business loss against the entire income including income from interest on securities - SC in Cocoanada Radhaswami Bank dealt with the applicability of Express Newspapers and held that the ruling was on the character of capital gains and not about their non-inclusion under the head "business".

HC, thus, follows the exposition of law in Cocoanada Radhaswami Bank to answer the questions of law in favour of the Assessee and held that Assessee was entitled to set-off brought forward business loss against income which has the attributes of business income even though the same is assessable to tax under a head other than profits and gains from business.

1 TS-483-HC-2021(KAR) 2 332 ITR 130 (SC) 3 53 ITR 250 (SC)

Direct tax updates (3/6)

Temporary funding from sister concern not deemed dividend considering the business nexus and lending being part of the sister concern's business[1]

M/s. Krishna Coil Cutters Pvt. Ltd. ('assessee') has availed an unsecured loan of INR 19.65 Crores from its sister concern, viz. Krishna Sheets Processors Pvt. Ltd. The assessee and the sister concern are engaged in a similar line of business. The assessee has 21.45% shareholding in the lender sister company. Thus, the AO observed that the loan received shall fall under the ambit of provisions of section 2(22) (e) of the Act and is susceptible to tax as deemed dividend. On further appeal, the ld. CIT(A) held that the case was covered under the exceptions to section 2(22)(e) and reversed the order.

The ITAT upheld the order of CIT(A) and ruled in favor of the assessee by observing as under:

- The funds were advanced to secure a price advantage from a common supplier, which is beneficial to both companies. Thus, the funds advanced were for business exigencies and in the ordinary course of business;
- The sister concern has been advancing funds to assessee since the time it was not even a shareholder;
- Money lending has been a substantial part of sister concern's business, and interest is charged on this advance at the same rate as charged on advances to other unrelated parties. Thus, the advance given is in the course of business of the lender company, and this reason on a standalone basis is sufficient to exclude the applicability of deemed dividend provisions;
- Act requires money so lent to be only a 'substantial part' of business, in contrast to the 'principal business' as wrongly assumed by the AO.

1 Krishna Coil Cutters Pvt. Ltd. [TS-534-ITAT-2021(Ahd)]

Direct tax updates (4/6)

Mumbai ITAT "Doubting" Delhi Bench ruling in Giesecke & Devrient, refers question of beneficial treaty-rate over DDT to Special Bench [1]

Total Oil India Pvt Ltd ('Assessee'), incorporated in India, paid dividend to its shareholders in France and sought to pay DDT at the lower rate prescribed under India-France DTAA for AY 2016-17 by relying upon Delhi and Kolkata Bench rulings in Giesecke & Devrient and Indian Oil Petronas. Mumbai ITAT, in the Assessee's case, has expressed 'doubts' over the correctness of certain decisions rendered by co-ordinate benches of the Tribunal on the issue of tax treaty applicability to dividend distribution tax (DDT). ITAT gave the following key reasons/ perspectives –

i. DDT should be considered as a tax on the company and not shareholders, hence treaty protection for resident company not available in the absence of a specific provision (Supreme Court ruling in Godrej & Boyce Manufacturing Company Limited[2]);

ii. Where intended, tax treaty provisions specifically provide for treaty application to taxes like DDT (like India-Hungary Tax Treaty);

iii. Tax treaties do not envisage any tax credits in the hands of the shareholders in respect of DDT paid by the company in which shares are held. The Tribunal reasoned that in such a case, DDT cannot be equated with a tax paid by or on behalf of a shareholder;

iv. Foreign jurisprudence [ruling of the South African High Court in Volkswagen of South Africa (Pty) Ltd v Commissioner of South African Revenue Service (Case no. 24201/2007)] on taxes like DDT support the above view;

v. No extension in the scope of treaty benefits w.r.t taxes paid by Indian tax-resident is envisaged by non-discrimination clause under India-France DTAA;

vi. Taxation is sovereign's power and DTAA is a self-imposed limitation on states' inherent right to tax and "Inherent in the self-imposed restrictions imposed by the DTAA is the fact that outside of the limitations imposed by the DTAA, the State is free to levy taxes as per its own policy choices;

1 Total Oil India Pvt. Ltd. [TS-473-ITAT-2021(Mum)]

2 Godrej & Boyce Manufacturing Company Limited v. DCIT (2017) 394 ITR 449 (SC)

Direct tax updates (5/6)

Revenue expenditure is deferrable only when specified, allows one-time lease rent on crystallisation [1]

During AY 2007-08, Coforge Limited (formerly, NIIT Ltd) ('Assessee Company') executed a lease deed with Greater Noida Industrial Development Authority (GNIDA) for 90 years. The Assessee Company, under the lease deed, had an option either to pay annual rent of INR 7.08 lacs during the lease tenure, or pay a commuted and discounted one time lease rent of INR 77.98 lacs, which was 11 times the annual lease rent. Assessee-Company opted to pay the commuted lease rent and claimed it as business expenditure. AO disallowed the lease rent on the basis that it resulted in enduring benefit and thus was classifiable as capital expenditure. However, CIT(A) deleted the disallowance and held that the expenditure was incurred wholly and exclusively for the business purpose. ITAT accepted the classification of the commuted lease rent as revenue expenditure, but directed the Assessee Company to be spread the expense over the tenure of the lease, i.e., 90 years, applying the matching principle of accounting.

Delhi HC allows Assessee Company's appeal, holding that ITAT erred in applying the matching principle. HC noted that matching principle is an accounting concept, which requires entities to report expenses at the same time as the revenue, and considering the facts of instant case, it would have no applicability. HC accepted Assessee Company's argument that there is no concept of deferred revenue expenditure under the Act and observes that an expenditure can be spread over a time span only if it is so provided in the Act. HC refers to SC ruling in Taparia Tools Ltd wherein it was held that it has been explained in various judgments that there is no concept of deferred revenue expenditure in the Act except under specified sections, i.e., where amortization is specifically provided, such as Section 35-D of the Act.

1 TS-527-HC-2021(DEL)

Direct tax updates (6/6)

Funds in overseas bank account cannot be taxed in the hands of Indian resident, if he is not a beneficial owner [1] (1/2)

The Assessee had settled a revocable trust in April 2005, with Merrill Lynch Bank and Trust Company (Cayman) Ltd as the Trustee and his sons and grandson as beneficiaries. The Memorandum of Family Arrangement provided that the son of the Assessee, an NRI, was to form a Trust in any tax free jurisdiction and the Assessee would be made the nominal settler for the said Trust out of love and respect. No settling amount or any other sum was to be contributed by the Assessee in the said Trust; the purpose of the Trust would be the furtherance of education/vocation/technical skills and for the furtherance of research on Hindu scriptures. Total Corpus of the Trust would be USD 250,000, out of which USD 50,000 was to be contributed by the son of the Assessee and the balance USD 200,000 was to be raised from friends, associates, and affiliates. The trust deed was revoked in Nov 2011, and the funds were transferred to the overseas bank account held by a BVI incorporated company. Also, based on information received under Exchange of Information article of India-Singapore DTAA, the AO found that the Assessee was the beneficial owner of the overseas bank account, showing a credit of USD 834,025 and issued a notice to the assessee u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('BMA'). The AO treated it as undisclosed foreign income and assets under the BMA, and passed an order u/s 10(3) of the BMA, determining assessee's total income including such bank balance.

Assessee submitted that the overseas bank account is in the name of the company where his son is the sole shareholder and director, and Assessee has neither contributed nor invested any amount to the account. Assessee further submitted that his name was mentioned as beneficial owner out of gratitude and respect shown by his son.

The Delhi Income Tax Appellate Tribunal ("ITAT")3 referred to the provisions relating to taxability of undisclosed assets located outside India under BMA, and notes following conditions to be fulfilled:

(i) There has to be an asset located outside India;

(ii) The asset must be in the name of the Assessee which can also be held by the Assessee as beneficial owner; and

1 TS-527-HC-2021(DEL)

Direct tax updates (6/6)

Funds in overseas bank account cannot be taxed in the hands of Indian resident, if he is not a beneficial owner [1] (2/2)

(iii) No explanation is offered by the Assessee about the source of such investment, or in the opinion of the AO, the information offered is not satisfactory.

ITAT examined the term "beneficial ownership" on a touchstone of various statues including Income-tax Act, Prevention of Money Laundering Act, The Benami Property (Prohibition) Act and Black's Law and Webster's dictionaries to conclude that in the instant case, the Assessee fails the test of beneficial ownership. The ITAT observes that the mere account opening form (where the assessee is mentioned as the beneficial owner of the account, mentioning details of his passport as an identification document) does not necessarily, in absence of any other corroborative evidence of the beneficial ownership of the assessee, over that for an asset cannot lead to taxability in the hands of the assessee under BMA. ITAT relies on the Mumbai bench ruling in case of Kamal Galani4 , wherein under similar facts, additions of money lying in foreign bank account was deleted under Income-tax Act, 1961.

1 TS-527-HC-2021(DEL)

CORPORATE LAW UPDATES

JULY 2021

Corporate Law - Regulatory updates (1/3)

NCLT approves reduction of Equity and Preference Share Capital without reference to the RBI in respect for foreign shareholders

Druva Software Private Limited ('the Petitioner Company'), files this Petition13 u/s 66 of the Companies Act for reduction of Share Capital.

Learned Counsel for the Petitioner Company submitted that, the Company has passed a special resolution on July 19, 2018, for the reduction of its paid-up equity share capital, by extinguishing and cancelling equity shares held by the shareholders, other than 6,229 equity shares held by Durva Technologies Pte. Ltd and 1 equity share held by its promoter, without any payment. Further, the special resolution also authorised the extinguishment and cancellation of the Compulsory Convertible Participant Preference shares, without any payment.

During the scheme procedures, the Regional Director (RD) filed his Report and observed, inter-alia, that, the applicant has to undertake to serve notice to RBI as some of the shareholders were foreign entities.

The Petitioner Company responded the following to the RD's observations:

i. The transaction complied with the pricing guidelines as applicable for an Indian Company to undertake Reduction of Capital as per the provisions of the Foreign Exchange Management Act, 1999 along with rules and regulations issued thereunder from time to time (FEMA);
ii. There is no requirement to serve notice to the RBI to give effect to the petition;
iii. The Company undertook to comply with all the post-facto reporting/ filings to be done with RBI under FEMA.

In view of the above, the petition for reduction of share capital was allowed.

1 In the matter of Druva Software Private Limited, CP 3268/MB-I/ 2018, NCLT, Mumbai, dt. February 2, 2021

Corporate Law - Regulatory updates (2/3)

NCLAT allows dispensation of equity shareholders and creditors meeting for amalgamation of WOS into Parent

Scheme of Amalgamation was filed with Ahmedabad Bench of National Company Law Tribunal ('NCLT') for amalgamation by absorption of Mohit Agro Commodities Processing Pvt Ltd ('the Transferor Company') with and into Gujarat Ambuja Exports Limited ('the Transferee Company'). During its application hearing, management of the Transferor Company and the Transferee Company were seeking for dispensation from holding meeting of equity shareholders, secured and unsecured creditors as the Transferee Company held 100% share capital of the Transferor Company. However, NCLT, Ahmedabad bench directed both the companies to hold aforesaid meetings. Aggrieved by the order of NCLT, an appeal was filed to NCLAT against the order of NCLT.

NCLAT allowed application filed by the Transferor and the Transferee Companies u/s 230 and 232 of the Companies Act, 2013, seeking dispensation of Equity Shareholders', Secured Creditors' and Unsecured Creditors' meeting in respect of the scheme of Amalgamation of both the entities, holding that:

i. NCLT ought to have exercised discretion to save time and resources;
ii. Transferor Company is a wholly owned subsidiary of the Transferee Company and was acquired as a business supportive mechanism for ease of operations;
iii. Amalgamation of the business of both the Companies would result in simplification of the corporate structure and elimination of duplicate corporate procedure;
iv. Amalgamation was approved by the Board of Directors of both Companies;
v. The rights and liabilities of secured and unsecured creditors were not getting affected in any manner by way of the proposed scheme as no new shares were being issued by the Transferor company, and no compromise was offered to any creditor of the Transferee company.

Therefore, NCLAT sets aside the directions issued by NCLT in respect of Transferee company, to convene the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors.

Corporate Law - Regulatory updates (3/3)

NCLT approves post-delisting exit opportunity to the minority shareholders through a Scheme of Arrangement (1/2)

Novopan Industries Limited, the Petitioner Company, filed scheme of arrangement u/s 230 read with Section 66 of the Act. As mentioned in the petition, as on December 31, 2018, total shares held by its promoters aggregated 98.11%, the remaining shares i.e., 1.89% were held by the Minority Shareholders.

As part of the Scheme of Arrangement, the Applicant Company intended to cancel and extinguish 7,34,688 equity shares (i.e., 1.89%) held by the Minority Shareholders, by paying cash in lieu of the equity shares held by them for the following reasons:

i. As there were no operations and company was incurring continuous losses, the promoters had provided delisting exit offer in the year 2014;

ii. Considering the declining performance of the company over the past several years, which had also adversely impacted the liquidity status of the Company's Equity Shares, the promoters of the Company, as a good gesture and considering long standing relationship with the shareholders, had now offered another exit opportunity to the public shareholders;

iii. The promoters had made an offer to the public shareholders for the acquisition, upon voluntary delisting, of equity shares of INR 10 each of the Company, at an exit price of INR 40 per share, calculated by the reverse book building process (as against the floor price of INR 30);

iv. The Company had been receiving numerous requests from the Minority Shareholders to provide an exit option by way of buying their shares, as they could not participate in Delisting offer. The Scheme of Arrangement provided an opportunity to Minority Shareholders to liquidate their entire shareholding in respect of the equity shares held by them. According to the valuation report, the Fair Value of each share worked out to Rs. 32/-. However, the promoters decided to offer INR 40/- per share, which was the price arrived at by reverse book building mechanism during the Delisting process.

Corporate Law - Regulatory updates (3/3)

NCLT approves post-delisting exit opportunity to the minority shareholders through a Scheme of Arrangement (2/2)

The NCLT observed/ held that:

i. There were applications filed by ex-employees of the Petitioner Company to settle their outstanding dues. In this regard, it was contended that the Company was not going to get dissolved post sanctioning of the present Scheme and the said employees would always have a window to settle their unpaid dues, if any. Further, the Scheme involved arrangement between the shareholders and the Petitioner Company. In view of the above, such applications were closed.

ii. The RD was of the opinion that, the Company ought to have gone for voluntary liquidation due to its continuous losses and no operations, whereas the Company had come out with a Scheme of Arrangement and intended to wipe out Minority Shareholders by making payment from Reserves. Hence, the Company may be directed to place full facts about the rationale of the Scheme. In response, the Company submitted that, it was only to provide an exit route to the Minority Shareholders. It had no intention to go for liquidation and hence the company preferred to have a Scheme of Arrangement.

In view of the above, the aforesaid Scheme appeared to be fair and reasonable, not contrary to public policy and no violative of any provisions of law. Accordingly, the same was approved.

INTERNATIONAL FOREIGN SERVICES CENTRE ('IFSC') UPDATES

JULY 2021

IFSC Regulatory updates

IFSCA issues International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021

These listing regulations are applicable to Initial Public Offer ("IPO") issued of specified securities by an unlisted issuer, listing of specified securities by a start-up or a Small and Medium Enterprises ("SME") company and an IPO of specified securities by a Special Purpose Acquisition Company ("SPAC"), among others. The entire regulation has been broken down into various chapters covering different areas. Some of the important chapters of this regulations are:

- Chapter III – IPO : This chapter covers eligibility criteria for issuance of IPO which are:
  a. Issuer shall have operating revenue of at least USD 20 million in the preceding financial year;
  b. Issuer shall have average pretax profit of at least 1 million in the preceding 3 financial years and such other conditions has maybe mentioned;
  c. This chapter also includes regulation on offer size, underwriting pricing and issue size etc.
- Chapter IV – Listing norms for Startup and SME: Start- up can also list its securities on the recognized stock exchange with or without making a public offer however it should:
  a. Offer document shall be filed within 10 years from the date of incorporation and shall have annual turnover not exceeding USD 20 million in any of the financial years since incorporation;
  b. This chapter also includes regulation on offer size, underwriting pricing and issue size etc.
- Chapter VI – Listing norms for Special Purpose Acquisition Companies ("SPAC"): SPAC shall be eligible to raise capital through an IPO if
  a. the target business combination has not been identified prior to the IPO;
  b. The SPAC has the provisions for redemption and liquidation in line with these Regulations
- Keeping in mind Environment, Social and Governance ("ESG") issues, these regulations also have issued regulatory compliances for issuers issuing ESG Debt Securities

IFSC Regulatory updates

Government of India increases Foreign Direct Investment ("FDI") limit in Insurance Companies from 49% to 74% vide Press Note dated June 14, 2021 (2/2)

- The foreign equity investment cap of 100 percent shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants, Corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. The composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries shall be as specified by the concerned regulator from time to time

SEBI REGULATORY UPDATES

JULY 2021

SEBI Regulatory updates (1/2)

SEBI approves key amendments in meeting dated June 29, 2021 vide SEBI Press Release PR No. 22/2021, June 29, 2021 (1/3)

SEBI has, inter-alia, approved following key amendments in its press release dated June 29, 2021:

i. Revamped framework of issue and listing of debt securities:

- Merger of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 into a new regulation called "SEBI (Issue and Listing NonConvertible Securities) Regulations, 2021 ("SEBI NCS Regulations");
- New Issuers with less than 3 years of existence permitted to tap bond market through private placement of bonds on Electronic Book Provider (EBP) platform;
- Requirement of minimum issue size of ₹100 Cr for NCD Public Issue has been removed;
- Restriction of maximum 4 tranches through single shelf prospectus has been done away with;
- EBP Platform mandatory for private placement of NCDs changed to ₹100 Cr in a FY (as against existing limit of ₹200 Cr);
- Format of abridged prospectus is streamlined to around 10 pages from over 50 pages.

The aforesaid amendments shall come into force from the dt. of notification of SEBI NCS Regulations.

Cntd…

SEBI Regulatory updates (1/2)

SEBI approves key amendments in meeting dated June 29, 2021 vide SEBI Press Release PR No. 22/2021, June 29, 2021 (2/3)

ii. Amendment in provisions of the SEBI (LODR) Regulations, 2015 pertaining to regulatory provisions of Independent Directors (IDs) which, inter-alia, include:

- Passing of special resolution for appointment/ reappointment/removal of IDs;
- Composition of Nomination and Remuneration Committee (NRC) changed to have at least 2/3rd IDs (as against 50% of the directors being IDs);
- Cooling off period of 3 years has been introduced for KMPs (their relatives) or employees of promoter group companies, for appointment as an ID;
- At least 2/3rd of the members of the audit committee shall be independent directors and all related party transactions to be approved by only IDs on the Audit Committee;
- Requirement of undertaking Directors & Officers insurance has been extended to top 1,000 companies based on market capitalization (previously top 500 companies by market capitalization);
- Reference to MCA for giving greater flexibility to companies while deciding the remuneration for all directors (including IDs) which may include profit inked commissions, sitting fees, ESOPs, etc., within the overall prescribed limit specified under Companies Act, 2013.

The aforesaid amendment shall be applicable with effect from January 1, 2022.

Cntd…

SEBI Regulatory updates (1/2)

SEBI approves key amendments in meeting dated June 29, 2021 vide SEBI Press Release PR No. 22/2021, June 29, 2021 (3/3)

iii. Other Amendments:

- Amendment in SEBI (Prohibition of Insider Trading) Regulations, 2016 to increase the reward to informant from INR 1 Cr to INR 10 Cr.
- Amendments in SEBI (Bankers to an Issue) Regulations, 1994 to permit banks other than scheduled bank to register as Banker to an Issue.
- Amendments in SEBI (Mutual Funds) Regulations, 1996 to provide for investment of a minimum amount as skin in the game in the Mutual Fund (MF) schemes by Asset Management Companies (AMCs) based on the risk associated with the scheme, instead of the current requirement of one percent of the amount raised in New Fund Offer or an amount of INR fifty lacs, whichever is less.

The aforesaid amendments shall come into force from the dt. of notification of relevant amendment Regulations.

SEBI Regulatory updates (2/2)

SEBI issues Circular on Standard Operating Procedures ("SOP") for listed subsidiary companies desirous of getting delisted through a Scheme of Arrangement vide Circular dated July 06, 2021

SEBI vide notification dated June 10, 2021, has notified the amendments made to the SEBI (Delisting of Equity Shares) Regulations, 2021 wherein special provisions for a listed subsidiary company getting delisted through a scheme of arrangement had been inter-alia inserted with respect to a listed holding company and the listed subsidiary company who are in the 'same line of business'.

For the purpose of defining 'same line of business' the following criteria needs to be followed by the listed holding company and the listed subsidiary company:

- The principal economic activities of both Holding company and Subsidiary Company should be under the same group under the National Industrial Classification code, 2008;
- At least 50% of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business;
- Not less than 50% of the net tangible assets of the listed holding and listed subsidiary must have been invested in the same line of business;
- In case of change of name of the listed entities, within the last one year, at least fifty percent of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name;
- The listed holding company and the listed subsidiary have to provide a self-certification with respect to both the companies being in the same line of business

All the above provisions have to also be certified by the Statutory Auditor and SEBI registered Merchant Banker.