Katalyst Kaleidoscope

July 2020: Tax and Regulatory Insights

A. Income-tax Highlights

1. Mumbai Tribunal rejects the claim of capital loss on capital reduction[1] without consideration

The assessee had a subsidiary by the name Mahindra Shubh Labh Services Limited in which it held around 83% stake. Pursuant to an order of the Bombay High Court, the capital of Mahindra Shubh Labh Services Ltd was reduced and the assessee received no consideration for the cancelled shares held by it. The assessee claimed a long term capital loss arising from the cancellation of shares held by it. The assessee, after placing reliance on various judicial precedents, contended that, reduction of capital tantamounts to transfer u/s 2(47) of the Income Tax Act ("ITA"). This was rejected by the tax authority on the basis of the Special Bench decision in the case of Bennett Coleman & Co. Ltd[2].

The Tribunal observed that the facts in the case of Bennett Coleman & Co. Ltd. and that of the taxpayer are similar as in both the cases there was an absence of consideration against the cancellation of shares. Further, the Tribunal distinguished the decision of Bangalore Co-ordinate Bench in the case of Jupiter Capital[3], on which the assessee had placed reliance, on the basis that cash consideration was paid to the shareholder pursuant to capital reduction in the said case. In view of the above, the Tribunal held that the Special Bench decision should squarely apply to the facts of the instant case and thus, upheld the order of the tax authority and rejected the claim of long-term capital loss on reduction of capital.

Katalyst Comment: *In the Bennett Coleman case, there was no change in the shareholding since the capital reduction was undertaken in the form of reduction in face value of shares (instead of cancellation of shares) and therefore, such capital reduction was not construed to be "transfer" and the loss was not allowed. In the present case, however, there was actual cancellation of shares pursuant to capital reduction.*

Further, while the Tribunal has distinguished the case of Kartikeya Sarabhai[4], it has not made any observation regarding the claim of the assessee that the cancellation of shares results in a "transfer" and does not seem to have considered the principle laid down by the Apex Court (which was also applied by Mumbai Tribunal in a recent case of Carestream Health INC[5], elaborated in our February 2020 Kaleidoscope).

[1] Mahindra and Mahindra Limited [TS-296-ITAT-2020(Mum)]
[2] Bennett Coleman & Co. Ltd. [2011] 12 ITR(T) 97 (Mumbai)
[3] Jupiter Capital Pvt. Ltd., in ITA No.445/Bang/2018 dt. November 29, 2018
[4] Kartikeya v. Sarabhai v/s CIT (228 ITR 163)
[5] Carestream Health INC vs DCIT [TS-75-ITAT-2020(Mum)]

2. Bangalore Tribunal holds that the Assessing Officer cannot change the method of share valuation adopted by the assessee[6]

The assessee company had issued shares at a premium based on the value determined by a valuer using DCF method. However, the Assessing Officer ("AO"), invoking section 56(2)(viib) of the ITA, determined the value of the shares by adopting Net Asset Value method and made an addition on the ground that the value of the shares as per the DCF method, exceeded the fair market value per share as determined by the AO.

The order of the AO was appealed against wherein the assessee contended that the AO cannot challenge the method adopted by the valuer for determining the fair value for the purposes of section 56(2)(viib) of the ITA.

The Tribunal placed reliance on the decision of the co-ordinate bench in the case of Innoviti Payment and the judgement of the Bombay High Court in the case of Vodafone M-Pesa Ltd[7], which held that the AO can scrutinize the valuation report and determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method (i.e. method adopted by the assessee) but he cannot change the method of valuation. In view thereof, the Tribunal referred the case back to the file of AO for a fresh decision. Also, despite a contrary judgment rendered by Kerala High Court, the Tribunal placed reliance on the Bombay High Court decision stating that where two views for an issue are possible, the view favorable for the assessee shall be adopted.

***Katalyst Comments**: DCF method of valuation is not only an internationally accepted methodology but also becomes the primary method of valuation for several unconventional businesses. This decision reiterates the position that the choice of method to be adopted for share valuation is a prerogative of the assessee and so far as the assessee can justify the projections and other factors leading to the valuation, the same should be acceptable by the tax authorities.*

3. Kolkata Tribunal rejects retrospective invocation of General Anti Avoidance Rules ('GAAR') provisions[8]

The assessee's wholly owned subsidiary amalgamated with the assessee company pursuant to a scheme of amalgamation approved by the regional High Courts. Prior to the merger approval by the High Court (but post the appointed date of the scheme), the subsidiary had sold a piece of land and made a long-term capital gain. Post amalgamation, the said long term capital gain was set off against the unabsorbed depreciation of the amalgamated company i.e. the assessee company.

[6] VBHC Value Homes Pvt. Ltd [TS-281-ITAT-2020(Bang)]
[7] Vodafone M Pesa Lrd. 2018] 92 taxmann.com 73 (Bombay)
[8] JCT Limited [TS-323-ITAT-2020(Kol)]

The Commissioner of Income-tax ('CIT(A)') was of the view that the entire amalgamation was a colourable device to avoid payment of tax and after piercing the corporate veil, the entire transaction should be looked through, solely on the substance, rather than the form. While acknowledging the fact that GAAR provisions were not yet applicable, it was held that the merger was done to avoid capital gains tax on sale of land by setting off the gains with brought forward losses of the assessee.

The Tribunal held that the income of the amalgamating company would be transferred to the amalgamated company pursuant to the Court approval of the scheme and therefore, by virtue of section 72 and section 74 of the ITA, the loss of the amalgamated company should be eligible for set off of against the income of the amalgamating company. The Tribunal also held that the conclusion of the CIT(A) that the merger in question, approved by the High Court is a mere sham without any factual or legal base.

Further, the Tribunal opined that invoking GAAR provisions, when they were not applicable, was bad in law. Thus, the Tribunal directed the AO to grant benefit of set off of carry forward losses in respect of the said capital gains.

Katalyst Comment: *GAAR provisions, although introduced vide Finance Act, 2012 and applicable from 1st April, 2012, were deferred and are applicable from AY 2018-19. This is a welcome decision bringing clarity to non-applicability of the said provisions retrospectively, and should hopefully temper the tendency of the tax authorities to take an aggressive view.*

4. Karnataka High Court[9] treats income arising on sale of shares held as capital asset (converted from stock) as STCG and not business income

The assessee was an NBFC company engaged in the business of investing in shares and securities. However, owing to a decision of the Board of Directors, the assessee company stopped its trading activities and the investments in shares and securities, classified as stock in trade, under the portfolio management scheme were converted to investments/ capital asset. On assessment, the AO held that mere interchange of heads in books of accounts did not alter the nature of transaction and the transactions of the assessee fall within the ambit of business income and not short-term capital gain.

The High Court observed that the conversion of stock into capital asset could not have attracted any tax liability since there was no provision to tax the same at the time of such conversion. Further, the High Court held that income arising from sale of shares held as capital asset after their conversion from stock-in-trade should be treated as capital gains (relying on several High Court decisions).

[9] Kemfin Services Pvt. Ltd(TS-284-HC-2020(KAR))

Katalyst Comment: *While the conversion of stock-in-trade into a capital asset post 1 April 2019 will be taxable in view of the insertion of section 28(via) of the ITA, the principle laid down by the High Court that the income from sale of capital asset (albeit converted from stock) should be characterised as capital gains will continue to hold good.*

5. **Vishakhapatnam Tribunal: waiver of principal amount of loan on one-time settlement, cannot be taxed u/s 41(1)[10]**

In the given case, the assessee had an outstanding loan and an Open Cash Credit ("OCC") for a sum of INR 4.3 crores which included the interest subsidy as well as the working capital loan. The interest of INR 0.43 crores was added back to income and taxed under the ITA. However, the sum of INR 1.7 crores which represent the waiver of working capital loan was added as income u/s 41(1). This decision was appealed against by the assessee and the CIT(A), relying on various decisions, one on them being the decision of the Apex Court in the case of Mahindra and Mahindra[11] upheld the views of the assessee.

An appeal was filed before the Tribunal regarding the same. The assessee contended that the amount waived by the bank was relating to working capital loan which is not covered u/s 41(1) of the ITA. The interest debited to Profit and loss a/c had already been disallowed and therefore, there was no trading liability claimed by the assessee. Hence, there was no case for taxing the waiver of working capital u/s 41(1) of the ITA

The Tribunal upheld the view of the CIT(A) and held that the what the assessee had received was remission of liability which was in the form of cash or money and the difference amount of principal which was settled by onetime payment was never debited to Profit & Loss account. Therefore, the decision of Apex Court is squarely applicable in the instant case.

Katalyst Comments*: Section 41(1) specifically talks of cessation of trading liability, whereas in the instant case, waiver of loan amounted to cessation of liability other than trading liability. As such, there was no force in the Revenue's argument and therefore, section 41(1) is not applicable in this case.*

[10]Sri Vasavi Polymers (P.) Ltd [2020] 117 taxmann.com 236 (Visakhapatnam - Trib.)
[11] Mahindra & Mahindra (93 taxmann.com 32 (SC))

6. CBDT extends various compliance due dates[12]

The CBDT has further extended certain compliance timelines in view of the ongoing pandemic. The table below captures certain key compliances:

Sr. No.	Nature of Compliance	Earlier Due Date	Revised Due Date
1.	Income Tax Return for FY 2019-20 • Corporate Assessee; • Non-Corporate Assessee	 October 31, 2020 July 31, 2020	 November 30, 2020 November 30, 2020
2.	Date of furnishing Tax Audit Report	September 30, 2020	October 31, 2020
3.	Date of furnishing declaration, passing of order, payment etc. under the Vivad se Vishwas Act (without any payment of additional tax)	June 30,2020	December 31,2020
4.	Due date for investment for claiming roll-over benefit in respect of capital gains under sections 54 to 54GB		September 30,2020
5.	Passing order or issuance of notice by authorities/ assessment/ re-assessment/ appeals and compliances under the Direct Tax Laws	December 31,2020	March 31, 2021

7. CBDT amends Rule 11UAC[13] and Rule 11UAD[14] of the Income Tax Rules, 1962 ("IT Rules") relating to valuation of certain assets, one of them being shares of specified companies.

Section 56(2)(x) of the ITA provides that where any person receives any property (including shares of a company) for a consideration less than its fair market value (computed as per the prescribed method), the fair value as exceeding the consideration would be taxable in the hands of the person receiving such property. Clause (XI) of proviso to Section 56(2)(x) of the ITA read with Rule 11UAC of the IT Rules, provides for prescribed class of persons to whom the provisions of Section 56(2)(x) of the ITA would not apply.

[12] CBDT Notification S.O. 2033(E) dt. June 24, 2020
[13] CBDT Notification No. G.S.R. 421(E) dt. June 29, 2020
[14] CBDT Notification No. G.S.R. 423(E) dt. June 29, 2020

The Central Board of Direct Taxes (CBDT) vide a notification has replaced the Rule 11UAC of the IT Rules. As per the revised Rule 11UAC, effective from fiscal year 2019-20, the provisions of Section 56(2)(x) of the ITA would not apply to receipt of unquoted shares by shareholders, received pursuant to resolution plan approved by NCLT u/s 241/242 of Companies Act 2013 (dealing with oppression and mismanagement).

Further, as per Section 50CA of the ITA, where the consideration received on transfer of unquoted shares, is less than its fair market value (computed as per the prescribed method), such fair value shall be deemed to be the full value of consideration received for the purpose of computing capital gains. The CBDT, vide its notification has inserted Rule 11UAD to the IT Rules pursuant to which the provisions of Section 50CA of the ITA would not apply in case of transfer of unquoted shares of a company, its subsidiary and the subsidiary of such subsidiary received pursuant to resolution plan approved by NCLT u/s 241/242 of Companies Act 2013 (dealing with oppression and mismanagement).

8. CBDT imposes due date for disposition of lower withholding tax applications u/s 197[15]

It was observed that a number of applications u/s 197 and section206C(9) pertaining to obtaining nil tax deduction and lower rates of deduction in respect of withholding tax have been pending before the CBDT. In order to grant relief to the taxpayers in view of the ongoing pandemic, the CBDT has decided to dispose all pending applications as on June 30, 2020 up to August 31, 2020. Also, all the fresh applications made to be disposed off by the CBDT within one month of the receipt of the application.

9. Memorandum of Understanding ("MoU") for data exchange signed between CBDT and SEBI[16]

A formal Memorandum of Understanding ("MOU") was signed between the Central Board of Direct Taxes (CBDT) and the Securities and Exchange Board of India (SEBI) for data exchange between the two organizations.

The MoU will facilitate the sharing of data and information between SEBI and CBDT on an automatic and regular basis. In addition to regular exchange of data, SEBI and CBDT will also exchange with each other, on request and suo moto basis, any information available in their respective databases, for the purpose of carrying out their functions under various laws.

The MoU comes into force from the date it was signed and is an ongoing initiative of CBDT and SEBI, who are already collaborating through various existing mechanisms. A Data Exchange Steering Group has also been constituted for the initiative, which will meet periodically to review

[15] Internal communication by the CBDT dt. July 9, 2020
[16] CBDT Press Release dt. July 8, 2020

the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism.

Katalyst Comment: *Whilst it is, in principle, a good initiative, one only hopes that this will be used selectively and more for understanding and reconciling where needed.*

B. Corporate Law Highlights

1 Mumbai NCLT[17] rejects the objections of minority shareholder regarding scheme of selective capital reduction not falling under the purview of the term "arrangement".

The Petitioner Company, a listed entity, had entered into a Scheme of Arrangement with its shareholders u/s 230-232 of the Companies Act, pursuant to the advice of the Bombay Stock Exchange for selective reduction of its share capital. The Scheme had been unanimously approved by the shareholders and creditors of the Petitioner Company.

The Petitioner Company had decided on converting its partly paid up shares into fully paid up ones, on account of it being an investor friendly measure, rather than forfeiting those shares. This process was undertaken by merely passing a board resolution, as the petitioner, basis a legal opinion sought, believed the same would not tantamount to reduction of capital under the provisions of the Companies Act.

The request of the Petitioner to list these reduced shares was rejected by the Bombay Stock Exchange ("BSE") and this wasn't communicated to the Petitioner owing to a change of address. The Petitioner stated that being unaware of the decision of BSE of non-listing, the petitioner recognized share capital in its audited financial statement, annual returns and other documents, giving effect to the shareholding structure as effectuated by the abovementioned board resolution. It was only at a subsequent stage, when a change in the capital structure of the company was being contemplated, the refusal to list the aforesaid shares came to the knowledge of the Petitioner. Following this, and upon the advice of BSE Limited, the Petitioner approached the Hon'ble Bombay High Court for sanction of the present Scheme, which would subsequently result in the ratification of the above corporate action, subsequently transferred to this Bench.

The Company then filed for a composite scheme of arrangement for ratifying the earlier capital reduction, reconstitution of the share capital and reconciliation with the share capital numbers. The Regional Director raised certain objections. However, the same were averred on the basis of being too technical and procedural in nature.

Further, one of the minority shareholders holding 15 shares objected that the given scheme did not qualify as an "arrangement" envisaged under section 230-232 of the Companies Act, 2013. In

[17] CP (CAA)/190/MB.I/2017 in the case of Kumaka Industries Limited dt. July 6,2020

response to the said objection, the Petitioner's Counsel cited various judicial precedents that have observed that mergers and demergers are not the only components of a "scheme of arrangement" and that the term "arrangement" is of wide amplitude, although not defined in the Companies Act. The Counsel also stated that there was no impact on the shareholding of the existing public shareholders. Further, the objecting minority shareholder had very less number of shares, insufficient to raise any objection before the Tribunal.

The Tribunal held that in order to find solutions to corporate problems, a scheme can take multiple hues and confirming it to set parameters would cause injustice to the petitioners and shareholders alike which was certainly not the intent of the lawmakers. Even if the Scheme purports to rectify and regularise the allotments already made by the Petitioner, there is no reason why the Scheme should not be treated as an "arrangement" between the company and its shareholders.

Katalyst Comment: *The NCLT has sanctioned the said scheme of arrangement in view of the fact that this was a mere ratification on part of the company, thereby upholding the principle that restricting the scope of the term "arrangement" by defining it would place an unwarranted fetter upon the activities of a company and restrict the choice of its members, creditors, debentures holders and other stakeholders.*

2 MCA further extends timelines for creation of a deposit repayment reserve[18]

The requirement under the Companies Act, to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before April 30,2020 was permitted to be complied with till June 30, 2020. In view of the ongoing situation, this has been extended to September 30, 2020.

3 MCA relaxes rules for the meetings of the boards of companies[19]

The MCA had earlier notified all companies and limited liability partnerships regarding the relaxation of requirements with respect to meetings of boards of directors of companies and had dispensed with the necessity of holding physical meetings on matters relating to approval of financial statements, board report, restructuring etc. upto June 30,2020. Subsequently, these were permitted to be conducted by audio visual means. These relaxations have further been extended to September 30, 2020.

[18] General Circular No. 24l2O2O dt. June 19,2020
[19] MCA notification no G.S.R. 395(E).dt. June 23, 2020

C. Securities and Exchange Board of India ("SEBI")

1. SEBI extends certain timelines due to the continuing impact of CoVID – 19

The table below captures certain extended timelines in view of the ongoing situation.

Sr. No.	Nature of Compliance	Existing Date	Revised Date
1.	Timelines for submission of financial results for quarter/half year/financial year ending March 31, 2020[20]	June 30, 2020	July 31, 2020
2.	Relaxation of time gap between two board / Audit Committee meetings of listed entities[21] (See Note 1)	June 30, 2020	July 31, 2020
3.	Year end Compliance/Reporting by REITs and InvITS[22]	June 30, 2020	July 31, 2020

The board of directors and audit committees of listed entities have to ensure that they meet at least four times a year, as stipulated by the Regulations 17(2) and 18(2)(a) of the LODR Regulations.

2. SEBI revises pricing guidelines for preferential issues[23]

The minimum price at which a listed company can undertake a preferential issue is determined by a formula set out in the ICDR Regulations factoring historical share prices prior to a relevant date. In case of listed companies whose shares are frequently traded, the formula specifies the minimum price per share to be the higher of: average of the weekly high and low of the volume weighted average price (VWAP), during preceding 26 weeks and 2 weeks. As a result, although the securities market has seen a significant downtrend during the last few months, the price at which a preferential issue could be undertaken would invariably be at a premium over the prevailing market price.

Basis numerous representations, SEBI has decided to relax this requirement by providing an alternate formula for determining the pricing of preferential issues proposed to be undertaken between July 1, 2020 or the date when the amendment is notified, whichever is later, and December 31, 2020. As per this relaxation, the look back period of 26 weeks has been reduced to

[20] SEBI/HO/CFD/CMD1/CIR/P/2020/106 dt. June 24,2020
[21] SEBI/HO/CFD/CMD1/CIR/P/2020/110 dt. June 26,2020
[22] SEBI/HO/DDHS/DDHS/CIR/P/2020/114 dt. July 1, 2020
[23] Notification No. SEBI/LAD-NRO/GN/2020/21 dt. July 1, 2020

12 weeks, thereby reducing the impact of the higher market prices preceding the downturn. In lieu of the pricing relaxations and in an effort to discourage short term investments, the applicable lock-in period has been set to 3 years.

Katalyst Comment: *CoVID-19 has led to significant change in regulations, but many of them have been procedural (eg. extension of dates), rather than substantive. However, some substantive changes have been made and one of them is in relation to pricing of preferential issues.*

The change of 26-week timeline being changed to has been changed to 12-week timeline, since the average price of 26 weeks past may be simply too long, under the current circumstances. In fact, even 12 weeks looks to be high, since the situation 12 weeks back was very different. Anyway, all in all, it will help cash strapped companies, and even otherwise, to bolster their funds. It may be noted that such preferential allotment shall be locked in for 3 years; this seems to be very high and 12-18 months would have been better.

D. Stamp Duty Laws

1 Department of Economic Affairs ("DEA"): FAQs on Stamp Duty pertaining to securities released[24]

With the objective of bringing uniformity in the stamp duty levied on securities transactions across states, the DEA amended the Indian Stamp Act, 1899 (revised Act), through Finance Act, 2019, and the relevant Stamp Rules, 2019, were notified on December 10, 2019. The amendments have come into effect from July 1, 2020.

The DEA has released a set of Frequently Asked Questions on the revised Act, providing clarifications on various issues ranging from the rationale for the amendments and the benefits arising therefrom to the procedure and manner of collection of the duty to applicability of stamp duty on mutual fund units and related issues. A few noteworthy clarifications are summarised below:

- It is clarified that off-market transfers not involving consideration, for example transfer pursuant to gift or legacy transfer should not attract stamp duty since the amended provisions clearly indicate that stamp duty is to be collected on market value which is based on price or consideration involved.

- By the same logic, it has been clarified that since no consideration is involved in bonus issue, bonus shares will not attract stamp duty.

[24]Department of Economic Affairs – recent updates dt. June 30, 2020

A brief snapshot of the applicable Stamp Duty Rates w.e.f. July 1, 2020 has been given in the table below:

Sr. No.	Instrument	Rate of Duty
1.	Issue of Debenture	0.005%
2.	Transfer and Re-issue of Debenture	0.0001%
3.	Issue of security other than debenture	0.005%
4.	Transfer of security other than debenture on delivery basis	0.015%
5.	Transfer of security other than debenture on non-delivery basis	0.003%

E. Goods and Services Tax (GST)

1. Sale of developed plots are covered under the clause 'construction of complex intended for sale to buyer' and liable to GST

The applicant had a vacant land and as per the Plan Passing Authority, the seller of the land was required to develop primary amenities like Sewerage and drainage line, Water line, Electricity line, Land levelling for road, Pipe line facilities for drinking water, Street lights, etc. The Gujarat AAR[25] held that sale of plot of land post plot development (which involve levelling the land, construction of boundary wall, construction of roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatments plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure worksof land) and also along with amenities like garden, community hall, etc. are liable to GST in view of schedule II of the CGST Act.

Katalyst Comment: *Vide the said ruling, the Gujarat AAR has not considered the aspect of 'composite supply'. If any developed plots are sold, it is the composite supply of 'sale of land' and there should not be any GST liability on sale of developed land.*

2. ITC denial on construction of commercial immovable property for one's own use, which was subsequently 'let out'

The Maharashtra Authority of Advance Ruling ('AAR')[26] denied the ITC of inputs and input services used for construction of commercial immovable property by the applicant on his own account and subsequently used for renting. The AAR held that provisions of section 17(5) (d) of the CGST Act restrict ITC on construction of immovable property on one's own account, even when such goods

[25] In the matter of Shree Dipesh Anil Kumar Naik [2020-TIOL-134-AAR-GST]
[26] In the matter of Ashish Arvind Hansoti [TS-455-AAR-2020-NT]

or services are used for the purpose of business. Further, the AAR rejected applicant's reliance on the Odisha High Court decision in the case of 'Safari Retreats Pvt. Ltd.' as the revenue had filed appeal against the order of the High Court and the judgement has not attained finality.

Katalyst Comment: *The ruling of the Odisha High Court in case of 'Safari Retreats Pvt. Ltd' is squarely applicable in this case and benefit of ITC is available. However, the ambiguity regarding availment of ITC will prevail till any amendments in Section 17(5) (c) and (d) of the CGST Act, 2017 are made.*

3. GST is not applicable on accounting entry of salary of 'Expat employees' by Project Office ("PO") of Foreign entity in India

The Maharashtra AAR[27] held that GST is not applicable on accounting entry of salary of 'Expat employees' made in the books of Project office in India of Foreign entity in view of schedule III of the CGST Act. The AAR also affirmed the view of applicant that the project office is an extension of the Foreign head office thus, both are same under the GST legislation and there exists employer-employee relationship between project office and the expat employees. Also, PAN and TAN of has been allotted to PO in the name of Head office situated abroad by the Income tax authorities. Therefore, GST is not applicable as both project office in India and head office outside India is the only one establishment and project office is the only extension.

Katalyst comment: *Welcome ruling by the Maharashtra AAR. The foreign entity and its project office in India should considered as one establishment only.*

4. Activities carried out by 'co-operative society' for its members are liable to GST

The applicant is a co-operative society under the Maharashtra State Co-operative Societies Act, 1960 formed by its members who are also shareholders. The applicant raises funds from the members of society which include water charges, contribution to repairs and maintenance funds, expenses on repairs and maintenance of lifts of the society, car parking charges etc. The said funds are used for achieving the objects of the society. Also, the applicant does not carry out any activity other than those mentioned in by laws of the society. In this regard, the Maharashtra AAR[28] held that the activities of the society for its member qualify within the definition of 'supply'. The AAR also held that the contention of applicant regarding 'principle of mutuality' establish their claim that the applicant society and its members are not a distinct entity is not tenable under GST regime.

[27] In the matter of Hitachi Power Europe Gmbh [TS-454-AAR-2020-NT]
[28] In the matter of Apsara Co-operative Housing Society Ltd. [2020-TIOL-166-AAR-GST]

5. **Sale of assets of the corporate debtor by the NCLT appointed 'liquidator' constitutes supply of goods and 'liquidator' is liable to GST**

   The West Bengal AAR[29] held that the sale of assets of the applicant (corporate debtor) by the NCLT appointed liquidator is a supply of goods by the liquidator, who is required to take registration under section 24 of the GST Act. It is also clarified that if the liquidator is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated March 21, 2020, he/she should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act.

Do feel free to reach out to us for a detailed discussion on ketan.dalal@katalystadvisors.in

Our Offices:
Mumbai
71/75, Mittal Tower 'C'
Nariman Point,
Mumbai – 400021
Tel: +91 22 4917 1616

Pune
#402, Lunkad Sky Vista
New Airport Road,
Viman Nagar,
Pune- 411014
Tel: +91 20 6749 7700

[29] In the matter of Mansi Oils and Grains Pvt. Ltd. [TS-449-AAR-2020-NT]