KATALYST ADVISORS

Katalyst Kaleidoscope

May 2023: Tax and Regulatory Insights

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A. Income tax highlights

1. Hyderabad Tribunal[1]: Deemed gift provision under section 56(2)(viia) held applicable to shares received on amalgamation

In the context of mergers of several group companies into another group company, one share of the merged company was allotted for one share held by the shareholders of the amalgamating company and the assessing company received shares of 11 companies that were merged with the assessee. The provisions of section 56(2)(viia) [pre-decessor to section 56(2)(x)], the provisions of section 56(2)(viia) deals with a firm or a closely held company receiving any property being shares of a closely held company for lower than fair market value; the exclusionary clause refers to various sub-clauses of section 47 which deals with transactions not regarded as "transfer".

In the above context, the Tribunal held the amalgamating company to be liable to tax on the difference between the fair market value (computed in the prescribed manner) and the value of the consideration which is discharged in the form of its own shares as being taxable in the hands of the amalgamated company.

Katalyst comments:

The provisions of section 56(2)(viia) (which is now replaced by a "broader" section 56(2)(x)) are a back door gift tax and have travelled far beyond the scope of what was originally intended. To make these provisions applicable to restructuring, such as mergers and demergers, is a major dampener to restructuring activity and totally contrary to "Ease of Doing Business." The unfortunate reality is that many of our legislations are replete with outlier provisions which is making it extremely difficult to function with any degree of certainty.

However, it is important to note that the successor provision which is much broader in many ways is section 56(2)(x), but the latter provision also has a larger number of exemptions i.e. carve out and these include section 47(vi) and section 47(vib), which refers to mergers and demergers as being out of the scope of section 56(2)(xb). Hence, the Hyderabad decision should not apply if the provision being considered is section 56(2)(x).

2. ITAT Mumbai[2]: NR's capital gains liability on sale of unlisted shares to be computed in rupees, and not in forex terms

[1] Vertex Projects LLP [TS-224-ITAT-2023(HYD)], dated April 28, 2023.
[2] Legatum Ventures Ltd vs ACIT [TS 210 ITAT 2023 (Mumbai)], dated April 26, 2023.

The facts of the case were that the assessee company was incorporated in the UAE. The assessee had sold shares of an Indian Private Limited and declared a long-term capital loss of around Rs. 3 crores after applying the first proviso to section 48 (i.e., the reconversion of the Indian rupee into the foreign currency used to buy the shares). The Assessing Officer (AO) held that the capital gains should be computed by applying section 112(1)(c)(iii), which resulted in long-term capital gains of more than Rs. 17 crores in rupee terms.

The Mumbai ITAT, by invoking the principle that a special provision will prevail over a general provision and held that not only the determination of tax on long-term capital gains but also the computation of income under the head "Capital gains" will be as per section 112(1)(c), rather than based on the provisions of the first and second provisos to section 48. Accordingly, the ITAT upheld the AO's action of computing capital gains at Rs. 17.14 crore under section 112(1)(c)(iii), even though there was a loss in forex terms.

Katalyst comments:

The key issue is that non-residents compute their gain in their own currency, and not in rupee terms. Regardless of the technicalities, it is important that the Government considers a clarification or amendment to law to address this issue, in the absence of which it will be one more dampener for cross-border investments.

3. SC:[3] Educational institutes carrying activities for profit cannot claim section 10(23C) exemption

The assessee trust had claimed exemption under section 10(23C)(vi), which deals with "income derived solely for education purposes and not for purpose of profit"; the assessing officer came to the finding that the assessee trust was earning substantial profits consistently and denied the exemption, and the matter travelled to the Supreme Court.

The Supreme Court overruled the High Court judgment, wherein the assessee trust was allowed exemption despite making a profit from educational activities; the Supreme Court observed that the judgments relied upon by the High Court had been considered by a three-judge bench in the case of New Noble Education Society, wherein it was held that, for claiming the benefit/exemption under section 10(23C)(iii)(ab) (which is para materia to section 10(23C)(vi)), the activity of the assessee must be solely for educational purposes and if the finding is that the activity is for profits, then the assessee is not entitled to the exemption under section 10(23C)(vi) of the Act.

[3] Union of India & Ors vs Baba Banda Singh Bahadur Education Trust [TS-223-SC-2023], dated May 02, 2023.

Katalyst comments:

The trigger and jurisdictional trend in granting exemption to charitable organisations is unfortunately getting extremely constraining; It appears that a few outlier cases are leading to the trend. The unfortunate fallout of this is likely to become a significant dampener on charitable activities. For instance, its focus is on 'solely' interpreted strictly in the above judgment invites.

4. ITAT Mumbai[4]: Forfeiture of share warrants not taxable

The facts of the case were that the assessee was a listed NBFC and had issued share warrants to 10 persons who had paid 25% of the value and the balance amount to be paid by a particular date, failing which the 25% would be forfeited. Some of the parties did not pay the 75% balance and the 25% paid earlier was forfeited and the issue was whether this was taxable in the hands of the company.

The assessee contended that the amount is a capital receipt, but the Assessing Officer took the stand that the amount was taxable under the deemed gift provision under section 56(2)(ix), which talks about an amount received as advance "in the course of negotiations for transfer of a capital asset"; the Mumbai ITAT held that this amount is not covered by the italised words and is therefore, not taxable.

B. Corporate Law Highlights

1. Delhi High Court[5]: Company will have to consider preference shares while calculating net worth

The facts of the case were that the Railway Energy Management Company Limited ('Respondent Company'), which was a Joint Venture that invited participants to engage in a tender process for the selection of project developers for the supply of Power Projects. TEQ Green Power XIII Private Limited ('Petitioner Company') submitted the relevant documents, along with the technical bid and financial bid, which included the net worth including the quantum of the redeemable preference shares. However, the respondent took the view that the computation of net worth was erroneous and thus argued that the value of redeemable preference shares should be excluded, and that these preference shares should be treated as a liability. Consequently, the main issue to be decided in this case was whether the quantum of preference shares can be included when computing net worth.

[4] Mangal Credit vs DCIT, Mumbai Tribunal, dated April 24, 2023.
[5] TEQ Green Power XIII Private Limited vs REMC Limited, W.P.(C) 17599/2022 dated, March 21, 2023.

The Delhi High Court observed that the redeemable preference shares in question were redeemable at the option of the issuer, without any specified tenure attached to redemption. Therefore, the court concluded that these shares should not be classified as a liability. Furthermore, for the definition of net worth, the expression 'paid-up share capital' includes both equity and preference share capital. Consequently, the court ruled that the preference shares should be included in the computation of net worth.

2. NCLAT Chennai[6]: Resolution by circulation held void in the absence of due process

In a matter before the NCLAT Chennai (and which was factually very involved), the said NCLAT was dealing with the situation of the validity of certain circular resolutions, wherein the appellants contended that the resolution passed by circulations were void as no due process as per Companies Act/Articles of Association/Secretarial Standard-1 were followed and the impugned circular resolution gave unfettered powers to the respondents in terms of business operations, operation of bank accounts and other related matters. The NCLAT agreed with the contention of the appellant and held the circular resolution as void.

Katalyst comments:

The complexity and prescriptive details/procedures is/are becoming more and more difficult, but the reality of the situation is that technical lapses can derail substantive matters and therefore, companies need to have a very strong compliance and regulatory ecosystem to deal with the maze of regulations.

3. NCLT Bangalore[7]: Appointed date and Share Swap Ratio justification

In this case, the Company Application was filed on August 27, 2021, and the Appointed Date of January 22, 2021, was not ante-dated more than a year prior to the application. The rationale for selecting the Appointed Date was that the Holding Company of the transferee Company had acquired a majority stake in one of the Transferor Companies on that date, which held significance for group consolidation purposes. Hence, the group management decided to consider January 22, 2021 as the Appointed Date.

The Regional Director raised an objection to the appointed date of January 22, 2021, deeming it an “unusual date”. The Regional Director directed that the appointed date should be changed to either April 01, 2021 or April 01, 2022. However, according to the MCA circular on the Appointed Date, it should not be dated more than one year prior to the filing of the application, unless justified in the scheme. In this case, the appointed date fell within one year, and NCLT Bangalore approved it.

[6] M.S. Muralidharan v. Tech. Frontiers (I) Private Limited, NCLAT, dated March 03, 2023.
[7] Medlife Wellness Retail Private Limited. v. Metarain Distributors Private Limited, CP (CAA) No. 08/BB/2022, NCLT-Bangalore, dated March 17, 2023.

There was an additional issue in the scheme regarding swap ratio, wherein the transferee company was to allot shares of the face value of Rs. 30.31 lakhs in the transferee company for shares of the face value of Rs. 2.42 lakhs in the transferor company; the objection of the Regional Director was that the transferor company was a loss-making company and there was no rationale in issuing share of the face value of Rs. 30.31 lakhs in the transferee company. However, the petitioner company argued that the consideration in the scheme was determined using a valuation report from a registered valuer and the swap ratio was determined accordingly; the negative net worth of the transferor company was irrelevant, in the context of the fact that the valuation was based on further cash flow projections.

Katalyst Comments

On the point regarding the appointed date, the logic was quite clear and one wishes that such needless objections are not raised by regulatory authorities. On the point regarding valuation, it is an obvious commercial reality that face value and book value have no relevance, in most cases, in the context of valuation, and accordingly, would have no relevance in determining a swap ratio. Again, the importance of commercial understanding is too obvious to be highlighted, in the absence whereof, enormous time and needless processes are initiated, with consequential impact on ease of doing business.

4. MCA notification:[8] certain time limits in relation to fast-track mergers prescribed

Fast track mergers would require NCLT approval, but under section 233 of the Companies Act, 2013, the Regional Director of the Department of Company Affairs is the approving authority; the scheme, as approved by the shareholders has to be filed with the Regional Director, Registrar and Official Liquidator by the company. Under section 233(3), if the Registrar and Official Liquidator have no objection to the scheme, the Regional Director shall register the same and issue a confirmation thereof.

The MCA notification now provides as follows:

- Where no objection or suggestion is received within a period of 30 days of receipt of the scheme from the Registrar of Companies (ROC), or Official Liquidator (OL) by the Regional Director, then the Regional Director should issue a confirmation within 15 days thereof, and if he does not do so within 60 days of the date of receipt of the scheme, it shall be deemed that he has no objection to the scheme and a confirmation shall be issued.

[8] MCA notification No: G.S.R. 367(E), dated May 15, 2023.

- Where objections or suggestions are received, then a period of 30 days from the ROC or OL or both, by the Regional Director, then, if such suggestions are not sustainable, then the Regional Director may issue a confirmation order within 30 days of the date of receipt of such objection or suggestion; if the Regional Director is of the opinion that the scheme is not in the public interest or in the interest of creditors, the Regional Director may, within 60 days of the receipt of the scheme, file an application before the NCLT stating his objections or opinion, and request the Tribunal to consider the scheme; Further, if the confirmation to the scheme is not issued, or the application to NCLT is not filed, as the case may be, within 60 days of the receipt of the scheme, it shall be deemed that the Regional Director has no objection to the scheme and a confirmation order shall be passed.

Katalyst comments:

The issue of time frame is a significant issue in the context of Ease of Doing business; such small steps (as legislated by the notification), to address the issue of time frames, are helpful, but a lot more needs to be done to underscore the criticality of time limits.

C. SEBI/ FEMA/PMLA/OTHER

1. BSE and NSE[9]: Corporate Governance Report – Stock Exchange Guidance

The Stock Exchange(s) have issued clarifications regarding the submission of quarterly Corporate Governance Reports; the clarifications cover two main areas and are summarized as under:

I. Directors Information disclosure:

a. If the name of the director(s) is not correctly disclosed as per PAN (Permanent Account Number), the Exchanges will seek clarification or issue an advisory letter to the listed company.

b. The tenure of directors is required to be provided only for Independent Directors (IDs), calculated until the end of the quarter.

II. Directors' substantive matters:

a. Non-Executive Directors (NED) who are 75 years old or nearing that age cannot be appointed or continue as directors, unless a special resolution is passed on or before the date of attaining age of 75 years by the said director.

[9] NSE Circular (NSE/CML/2023/31), dated April 10, 2023, and BSE Circular (20230410-45), dated April 10, 2023.

b. A director cannot be a member of more than 10 committees, including both listed and unlisted public companies (excluding private companies, foreign companies, high-value debt listed entities, and section 8 Companies);
c. A director is restricted from serving as the chairperson of more than five committees across all listed entities where they hold a director position. However, when determining this limit, only the chairpersonship and membership of the Audit Committee and the Stakeholders' Relationship Committee are taken into consideration. It is important to note that the count of chairperson positions in the Audit/Stakeholder Committee includes public limited companies, regardless of whether they are listed or not;
d. Vacancies for NED and Executive Directors (ED), resulting from reasons beyond the company's control such as death or disqualification/removal, must be filled within 3 months; otherwise, action will be initiated against the company.

2. SAT[10]: Appellant should not be penalized on non-compliance of the SEBI LODR Regulations by Company

In this particular case, the appellant made an unsuccessful attempt to acquire shares and gain control of the company through an open offer. Subsequently, the existing board declined to grant control to the appellant, and with the board decision leading to his appointment as an additional director without involvement in the company's affairs. Eventually, the appellant resigned later on. Although, it was acknowledged that the appellant did not possess control over the company, the appellant was incorrectly classified as a promoter in the company's shareholding pattern filed with the Bombay Stock Exchange Ltd.

Upon discovering this error, the appellant promptly informed the stock exchange about the wrong classification and requested its rectification. Despite the appellant's protest and the company's letter clarifying the clerical error and categorizing the appellant as a public shareholder, the stock exchange continued to classify him as a promoter. Consequently, the stock exchange froze the appellant's demat account due to non-payment of listing fees.

The Court held that freezing the account could only be done under Regulation 31A (the reclassification criteria for a person as a promoter/public are specified), but the appellant should not be penalized for the company's failure to follow the correct procedure. The court ruled in favour of the appellant, quashing the freezing of the demat account. Furthermore, the court directed the stock exchange and depository to unfreeze the account and ordered the correction of the shareholding pattern to reflect the appellant's status as a public shareholder.

[10] Kashyap K. Mehta v. BSE, SAT Appeal No. 187 of 2022, dated February 06, 2023.

3. SC[11]: No obligations for open offer if the parties are not persons acting in concert ("PAC")

According to Regulation 11(1) in conjunction with Regulation 14(1) of the SAST Regulation 2011, acquisitions exceeding 5% of shares/voting rights by 'persons acting in concert' (PACs) require an open offer. However, transfers of shares among promoters are exempted from this Regulation under Regulation 3(1)(e) of the SAST Regulation.

In this case, the appellants were alleged to be PACs based on their acquisitions in 2009 and 2011, which exceeded the 5% threshold and failed to comply with the open offer requirement. A show cause notice was issued, and penalties were imposed by the Adjudicating Officer (AO), a decision upheld by the Whole-time member (WTM) in SEBI. The case reached the Supreme Court.

The Supreme Court ruled that Regulation 11 does not apply to transfers of shares among promoters when determining shareholding or voting rights increase under the SAST Regulations. Therefore, the order against the appellants cannot be upheld. The Court criticized the finding of the appellants as 'persons acting in concert,' stating that mere interconnection is meaningless without evidence of a shared common objective for substantial acquisition. Consequently, the impugned order of the AO, insofar as it relates to the appellant, cannot be sustained and is quashed.

4. PMLA[12]: significant expansion of scope to certain professionals

PMLA is a very sweeping legislation and has serious repercussions; Section 11A of PMLA provides that every reporting entity shall have certain significant obligations in relation to certain activities. A "reporting entity" has been defined as a banking company, financial institution, intermediary or "a person carrying on a designated business or profession," the latter term having been defined extensively in PMLA.

Section 2(1)(sa), one of the clauses of that definition, empowers the Central Government to issue a notification to expand the scope to "persons carry on (notified) activities…."

In the above context, 2 notifications have been issued by the Central Government, the first one notifying the financial transactions carried on by a Chartered Accountant or a Company Secretary or a Cost Accountant in practice, in relation to certain activities on behalf of his client, which activities include creation, operation or management of companies, LLPs or Trusts, and buying and selling of business entities.

The second notification lists out activities carried out in the course of a business on behalf of another person, and this does not ring fence it only to specified persons, but extends to all

[11] Veerendra Kumar Singh / Alka Singh v. SEBI, Appeal No.524 of 2022, dated January 19, 2023.
[12] Notification No. S.O. 2036(E), [F. No. P-12011/12/2022-ES Cell-DOR], dated May 03, 2023, and Notification No. S.O 2135(E), F. No. P-12011/10/2023-ES Cell-DOR], dated May 09, 2023.

persons. While there are certain carve outs in relation to the latter, these are very limited carve outs. Such list of activities mentioned in the notification are as follows:

- acting as a formation agent of companies and limited liability partnerships;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Katalyst comments:

The implications of these notifications are very serious; for example, when looked at from the perspective of a person or entity acting as a "formation agent" of Companies or LLPs, he may have no other role of what that company or LLP is doing later. Similarly, "acting as a director or secretary" of a company is very broad and seems to refer to a situation where one is acting in a fiduciary capacity, but that is not what the section is expressly providing.

This is another example of outlier legislation, which seems to have been triggered, possibly due to certain malafide transactions, but the unfortunate fallout is that it will curb genuine business activities and unfortunately, can cause serious harassment in genuine cases.

5. FEMA[13]: Current account transaction vis-à-vis international credit cards – tightening of regulations

Regulation 7 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, hitherto provided that use of international credit cards for making payments by a person towards meeting expenses while on visit outside India was outside the purview of current account transactions, which includes expenses on private visits, maintenance of close relatives abroad, medical, foreign education and any other current account transactions. A key implication of this change is that the use of international credit cards will now be within the USD 250,000 LRS limit, which means that the LRS limit has been tightened. An unconnected amendment, but which will impact international credit card expenses, is the tax collection at source amendment with effect from July 1, 2023, such TCS being at the rate of 20%.

[13] Ministry of Finance G.S.R. 369(E), [F. No. 1/5/2023-EM], dated May 16, 2023.

Katalyst comments:

As would be obvious, a set of complex regulations is now shadowing foreign exchange and making the Ease of Living/Ease of Doing Business extremely difficult. It seems that the general trend is outlier legislation i.e. making amendments to lighten regulations to address outlier regulations which unfortunately encompasses a wide spectrum of people with attendant consequences on life/doing business.

The amendment regarding international credit cards should not be applicable to business visits, but more details are awaited.

6. SEBI:[14] Consultation paper on Unpublished Price Sensitive Information

SEBI has issued a consultation paper soliciting public comments/views in relation to UPSI; the gist of the consultation paper is that, in SEBI's view (and some analysis has been given in the consultation paper), companies are not disclosing Unpublished Price Sensitive Information ('UPSI') appropriately; SEBI's view is that press releases released by listed entities sometimes results in a material price movement, but were often not disclosed as UPSI. The consultation paper accordingly mentions that the definition of UPSI needs to be linked to the disclosures under LODR regulation 30 and the absence of which linkage is impacting SEBI's efforts at curbing insider trading.

In this context, whilst SEBI in its board meeting held on March 29, 2023 had already approved the proposal for review and rationalisation of disclosure of material information by listed entities, additionally, it is now proposed that the definition of UPSI should be amended to add the following clause in the UPSI definition "(vi) material event in accordance with Regulation 30 of SEBI (listing obligations and disclosure requirement) Regulations 2015".

7. CBDT[15]: Changes in valuation under Rule 11UA in respect of 'Angel Tax'.

In the context of what is inappropriately referred to as "Angel Tax", but is actually a provision, which requires all closely held companies to justify share premium on issue of shares, an unfortunate amendment has been made in the Finance Act, 2023 to extend the remit of the relevant provision of Section 56(2)(viib) to non resident investors also, which was not hitherto the case. This amendment has caused significant concern, since valuation is a very subjective matter and can derail a transaction timeline, and indeed, the transaction itself.

[14] Consultation paper on the proposed review of the definition of UPSI issued by SEBI, dated May 18, 2023.
[15] Press note, dated May 19, 2023, issued by Press Information Bureau.

In the above context, based on stakeholder interaction and inputs, Rule 11UA (which is the rule that deals with valuation in this context) is proposed to be modified in terms of the following:

- In addition to Discounted Cash Flow and Net Asset valuation methods, five more valuation methods are proposed to be introduced for non resident investors;
- for shares issued to a notified non resident entity, a carve out is proposed to be provided, subject to certain conditions, including that the "consideration from such fair market value, does not exceed the aggregate consideration that is received….", and subject to certain time limits to bring in the consideration; and
- a valuation report from a merchant banker should suffice for justification of consideration.

It is also proposed to notify investors to whom the provision for justification of share premium will not apply; these include sovereign wealth funds, multilateral organisations including entities registered with SEBI as Category I FPIs, Foreign pension funds and broad-based pooled investment funds. Additionally, it is proposed to exempt notified start-ups, from the provisions relating to the need to justify share premium.

Katalyst comments:

As often mentioned in earlier issues of this newsletter, Section 56(2)(viib) is a classic case of outlier legislation, a provision which should not have been there in the first place, and clearly has been introduced to address the mischief that has happened in some cases. However, the complexity and litigation is now enormous, and whilst the proposed amendment to Rule 11UA is a welcome step, it underlines the fact that bringing in such outlier and complex provisions, leads to them developing a life of their own, with consequential adverse impact on FDI and Ease of Doing Business.

D. Goods and Service Tax highlights

1. SC[16]: Pre-import condition for Advance Authorization ('AA') is held legal and non-arbitrary

On introduction of the GST with effect from July 1, 2017, no exemption was provided on the IGST and compensation cess on the inputs imported under the AA Scheme, even though rest of the duties continued to be exempted as earlier. Later, exemption of IGST and compensation cess was provided subject to pre-import condition vide Notification No.79/2017-Cus dated October 13, 2017. Further, provisions of Foreign Trade Policy provided that the exports made prior to the import are also permissible under the AA Scheme to provide flexibility to exporters

[16] Union of India Vs Cosmos Films & Ors in Civil Appeal No.290/2023 - 2023-TIOL-45-SC-CUS, dated May 05, 2023.

so that they can fulfil their export commitment in time without waiting for the import of inputs. Due to introduction of pre-import condition, Customs authorities and DRI had been investigating exporters who had exported goods first and then imported inputs related thereto. With respect to such pre-import condition for AA, various writs were filed before the Gujarat High court and the Gujarat High had held that such pre-import condition is illegal and arbitrary. Later, vide Notification No.01/2019-Cus dated January 10, 2019, such pre-import condition was removed/deleted.

The Hon'ble Supreme Court has set aside the verdict of the Hon'ble Gujarat High Court and has held that the pre-import condition for AA scheme is legal and cannot be said to be arbitrary; the SC has held that for the purpose of AA scheme, the goods should have been imported first and then used for the purpose of export during the period from October 13, 2017 to January 9, 2019.

Katalyst comments:

There was no pre-import condition in respect of the goods imported and exported prior to October 13, 2017 (before the introduction of Notification No.79/2017) and after January 10, 2019 (after deletion of pre-import condition) and hence, there remains a legal issue is relevant for the 'intervening period' of about 15 months involving enormous litigation/ correspondence/ investigations.

In such a scenario, if the concerned entity chooses to pay IGST along with interest, the possibility of re-assessment of the Bills of Entry can be explored (in terms of Section 149 of the Customs Act, 1962), so that ITC of IGST can be availed, and cost is restricted to the extent of interest component.

2. **Karnataka AAR[17]: No GST is applicable on sale of land and basic infrastructure development charges but applicable on common amenities and facility charges collected by the builder**

The Karnataka AAR has held that no GST is applicable on consideration towards sale of land; further, the AAR has also held that consideration towards basic infrastructure facilities such as electricity, access, water, sewage also form part of land because said facilities are mandatorily required to sell the plots. Also, these facilities created by the builder are to be handed over to the local authorities and no longer remain part of the Applicant's/builder's property and hence, the consideration collected towards basic infrastructure development is part of consideration of plot and is not a consideration for a separate supply.

[17] In the matter of Godrej Properties Ltd [TS-189-AAR(KAR)-2023-GST], dated May 17, 2023

The AAR held, however, that GST is payable on consideration towards common amenities and facilities like club house etc. Further, if consideration for sale of land, basic infrastructure facilities and common amenities and facilities provided is the consolidated price, proportionate GST is applicable on common amenities and facilities, as it is purely in nature of services and does not form part of sale of land.

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