

Katalyst Kaleidoscope

November 2025: Tax and Regulatory Insights

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A. Income Tax Highlights

1. Telangana HC: Consideration for transfer of entire undertaking as a going concern resulting in extinguishing source of income taxable as a capital receipt¹

The assessee transferred its entire business undertaking as a going concern for a consideration, the effect of which, inter alia, was termination of all existing contracts, a non-compete agreement to restrict future business, and even changed name, resulting in it being unable to carry on the erstwhile business independently. The Assessing Officer allocated the consideration among assets, sought to tax parts as short-term capital gains and long-term capital gains, based on the holding period, while examining taxability of part of the consideration attributable to termination / modification of agency as revenue receipts.

The Telangana High Court found that the transfer resulted in complete loss of the assessee's business resulting in extinguishment of its source of income. The High Court held that where by the cancellation of an agency, the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt. Accordingly, the entire consideration was to be taxed as a capital receipt for the sale of the undertaking as a going concern, and would be subject to capital gains tax.

2. Delhi ITAT: Deemed income provisions not attracted in case of acquisition of leasehold rights²

The assessee had acquired leasehold rights in a flat for a value lower than the stamp duty valuation. As per the deemed income implications of Section 56 of the Income Tax Act, 1961, the excess of the stamp duty value over the consideration amount for an immovable property is chargeable to tax as 'Income from Other Sources'. In light of this, the Assessing Officer charged the difference to tax in the hands of the assessee.

The Delhi ITAT observed that the contents of the purchase deed clearly showed that the transaction related to lease rights and not ownership of land or building. Section 56 defines 'property' to include 'immovable property being land or building', and does not cover other rights such as leasehold interests. In view of prior conflicting of High Courts on the matter, it held that where two interpretations are possible, the one favourable to the assessee should be adopted.

Accordingly, the Delhi ITAT held that the difference between stamp duty value and consideration in transfer of leasehold rights shall not be chargeable to tax under Section 56.

¹ CIT v Spectra Shares and Scrips Ltd., Telangana High Court [IT Tribunal Appeal No. 412 OF 2010], dated October 31, 2025

² Rajesh Kumar Sharma v CIT, Delhi ITAT [ITA No. 1785/Del/2025], dated September 29, 2025

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3. Mumbai ITAT: Distribution to beneficiaries not taxable on income already offered by private discretionary trust³

A private discretionary trust earned dividend income and offered such income to tax. Subsequently, the trust distributed such income to its beneficiary. The Assessing Officer treated this distribution as taxable in the hands of the beneficiary.

The beneficiary-assessee, however, placing reliance on a CBDT Circular⁴, contended that the general principle is to tax an income only once, and the Income Tax Officer cannot assess the same income in the hands of another person (i.e., the trustee or the beneficiary).

The Mumbai ITAT, observing that there was no dispute about the tax-paid status of the trust, held that the beneficiary cannot be taxed on the distribution made by the trust, since taxing the same income twice was unjustified.

4. Mumbai ITAT: Payment for withdrawal of case claiming inheritance right over asset not taxable⁵

The assessee received payment in consideration for withdrawing of a civil suit filed by her with the Bombay High Court claiming a share and right of inheritance in the immovable property of her deceased grandmother. Such income was not offered to tax by the assessee, but brought to tax by the Assessing Officer as 'Capital Gains', treating it as consideration for relinquishment of rights in the capital asset.

The Mumbai ITAT, on appeal, observed that there is no transfer of capital asset. Further, for there to be an 'extinguishment of rights', there must exist, in the first place, a legally enforceable right over a capital asset. The assessee could have only acquired such right on succeeding in the civil suit.

The ITAT held that the payment is a capital receipt merely for withdrawing the suit, and did not involve any capital asset or existing right over such asset, and hence cannot be taxed as capital gains.

³ Ajay Balvantray Parekh v DCIT, Mumbai ITAT [ITA No. 4186/Mum/2025] dated October 28, 2025

⁴ Circular No. 157 of 1974, dated December 26, 1974

⁵ Shireen J. Dastur vs. ITO (International Taxation), Mumbai ITAT [IT Appeal No. 2204/MUM/2022]

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5. GAAR Panel: Hinduja demerger characterised as ‘impermissible avoidance arrangement’⁶

Hinduja Global Solutions Limited (“HGSL”) had made significant capital gains from divestment of its healthcare services business in August 2021; subsequently, HGSL entered into a scheme of arrangement with a loss-making group entity, NXTDigital Ltd, involving demerger of the latter’s digital, media and communications business into HGSL, with effect from the appointed date of February 1, 2022. The scheme was approved by the NCLT, Mumbai Bench, without any challenge from the Income Tax Department.

The transaction later came under scrutiny of the Income Tax Department, and the demerger was referred to the GAAR Panel. The Panel concluded that the primary purpose of the arrangement was to obtain a tax benefit and that it lacked commercial substance or business synergy. It characterised the demerger as an ‘impermissible avoidance arrangement’, resulting in a tax reduction of approx. INR 280 Crores. This allows the Assessing Officer to recharacterize or disregard the arrangement for tax purposes and take consequential action.

Katalyst comment:

The demerger involved an intra-group reorganisation, and any tax benefits arising from such schemes are usually incidental. Hinduja has claimed to have initiated appropriate legal steps, and, as such, this decision is likely to lead to be contested; the broader issue is that demonstrating commercial justification for any restructuring initiative is crucial, especially if there is also some tax benefit arising as a result of such restructuring.

B. Corporate Law Highlights

1. SC: NCLT has wide jurisdiction to decide on matters of oppression and mismanagement⁷

The appellant held about 98% shares in an Indian company she co-founded with her husband. Amid marital strain, she purportedly resigned and transferred her shares to her mother-in-law via a disputed gift deed. She alleged that the resignation and share transfer were obtained through fraud, and she was coerced into signing blank documents. The National Company Law Tribunal (NCLT), Allahabad Bench, ruled in her favour, and reinstated her as the executive director and shareholder. However, the National Company Law Appellate Tribunal (NCLAT), on appeal, held that the NCLT lacked jurisdiction to decide on the issue of fraud.

The Supreme Court on further appeal found that the circumstances surrounding the gift deed and the subsequent transfer of shares are questionable and must be declared invalid; furthermore,

⁶ Stock Exchange Intimation by Hinduja Global Solutions Limited dated October 30, 2025

⁷ Mrs. Shailja Krishna v Satori Global Ltd & Ors, Supreme Court [CIVIL APPEAL NOS. 6377-6378 O], dated September 2, 2025

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the board meetings of the company have been conducted in a mala fide manner. Both these instances show that the affairs of the company were being conducted in a manner prejudicially affecting the appellant.

The Supreme Court held that the NCLT has wide jurisdiction to adjudicate oppression, mismanagement and incidental fraud, and denying this jurisdiction would erode its ability to provide diverse reliefs; the order of the NCLAT was reversed accordingly.

2. Ahmedabad NCLT: Capital reduction to set-off accumulated losses sanctioned⁸

A listed company filed a petition for reduction of its share capital with the National Company Law Tribunal, Ahmedabad Bench (NCLT), to reduce the paid-up value of each share from INR 10 to INR 5 each; the reduction was proposed to be set-off against its accumulated losses.

The capital reduction was approved by way of a board resolution and by the shareholders through a special resolution. The reduction did not involve any cash outflow or change in shareholding or capital structure; further, the interests of the creditors were protected as there is no reduction in the amount payable to any creditor. The net-worth of the company post reduction also remained the same, as it is an internal adjustment to set-off losses against the share capital reduced.

The capital reduction had been intimated to the stock exchanges; however, no prior approval of the stock exchanges is required for a capital reduction solely for writing off accumulated losses, such as in the present case. There were no adverse observations made by the Regional Director or Registrar of Companies. The NCLT noted that all the requirements of the Companies Act, 2013, have been satisfied by the company, and approved the reduction of capital.

3. Mumbai NCLT: Merger of a loss-making wholly-owned subsidiary with its profitable holding company does not signify tax avoidance⁹

Sanction of the NCLT, Mumbai Bench, was sought for a scheme of amalgamation of a wholly-owned subsidiary with the holding company; the Income Tax Department objected to the scheme, contending that it was structured primarily for the transferee company to take the benefit of brought forward tax losses of the transferor company. In its report filed with the NCLT, the department further alleged that since the transferor is a wholly-owned subsidiary of the transferee, there is neither any serious implication on the corporate structure nor any benefit from an economies of scale and cost perspective on account of the amalgamation. It thereby

⁸ Goldcoin Health Foods Ltd, Ahmedabad NCLT [CP/27(AHM)2025], dated October 31, 2025

⁹ Scheme of Amalgamation (Merger by Absorption) between The Kolhapur Steel Ltd and Karad Projects and Motors Ltd, C.P.(CAA)/76(MB)2025 in C.A.(CAA)/221(MB)2024, National Company Law Tribunal, Mumbai Bench, Court IV

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concluded that the sole purpose of the scheme is to 'evade' tax liability, resulting in a substantial loss of revenue to the public exchequer.

The NCLT observed that strategic business and financial planning through mergers among the group companies and reviving businesses should not be assumed as a device to avoid tax just because the transaction yields a tax benefit to the transferee company in accordance with the provisions of law. Sufficient safeguards are built into the Income Tax Act, 1961, to test genuine business revival to qualify for tax benefits.

The NCLT, accordingly, dismissed the objections of the Income Tax Department and approved the Scheme.

Katalyst comment:

Incidentally, the use of the words 'tax evasion', both by the tax department and often by the media, for what, at best, could be a contentious tax matter, is highly unfortunate, since 'evasion' carries the connotation of illegality.

C. SEBI Highlights

1. SEBI: Amendment to Related Party Transactions¹⁰

Katalyst Kaleidoscope for the month of September 2025 discussed the amendments proposed in the 211st Board Meeting of SEBI; the amendments in relation to related party transactions have now been notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and are as follows:

- i. 'Related party' definition expanded to include retail purchases from a listed entity or its subsidiaries by its directors and key managerial personnel, as well as their relatives;
- ii. Scale-based thresholds for material related party transactions dependent upon the annual consolidated turnover of the listed entity, in the following manner:

Consolidated Turnover	Threshold
Up to INR 20,000 Crs	10% of annual consolidated turnover
More than INR 20,000 Crs up to INR 40,000 Crs	INR 2,000 Crs + 5% of annual consolidated turnover above INR 20,000 Crs
More than INR 40,000 Crs	INR 3,000 Crs + 2.5% of annual consolidated turnover above INR 40,000 Crs or INR 5,000 Crs, whichever is lower

This replaced the erstwhile threshold of INR 1,000 Crs of 10% of turnover, whichever is lower, irrespective of entity's consolidated turnover.

¹⁰ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2015, vide notification dated November 18, 2025

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- iii. Approval of the audit committee of the listed entity required where the subsidiary of the listed entity enters into a related party transaction of more than INR 1 Crore, but the listed entity is not a party such transaction, if the value of the transaction exceeds the lower of 10% of the annual standalone turnover of the subsidiary, or the thresholds of the listed entity as per point (ii) above. If the subsidiary does not have audited financials for at least one year, aggregate of paid-up share capital and securities premium of the subsidiary shall be considered instead of the annual standalone turnover for the purposes of calculating the threshold.
- iv. Omnibus approval of the shareholders for material related party transactions in an annual general meeting shall be valid till the next annual general meeting. Approvals obtained in other general meetings will be valid for 1 year.

2. SEBI: Transfer of PMS business¹¹

SEBI has now permitted transfer of portfolio management services (PMS) between registered Portfolio Managers with prior approval. Transfers between registered Portfolio Managers within the same group can be of select Investment Approach(es) or the entire PMS business, whereas transfer to a non-group Portfolio Manager can only be of the complete PMS business. Until the transfer process is complete, the transferor shall continue to act as Portfolio Manager but shall not onboard any new client(s).

In cases where the entire PMS business is transferred, the transferor shall surrender its registration.

3. SEBI: Consultation paper to ease lock-in requirements, dispense with abridged prospectus¹²

SEBI has issued a consultation paper seeking comments on the following proposed amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, ('ICDR Regulations'), with the objective of enhancing ease of doing business and increasing participation of retail investors:

- i. Lock-in of pledged shares of non-promoters pre-issue: Presently, pre-issue capital held by non-promoter shareholders is subject to lock-in for six months from an initial public offering (IPO). It is now clarified and proposed that pledged shares shall also be covered by such lock-

¹¹ SEBI Circular No. SEBI/HO/IMD/RAC/CIR/P/2025/ 0000000138 on Transfer of portfolios of clients (PMS business) by Portfolio Managers dated October 24, 2025

¹² SEBI Consultation Paper on amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, with the objective of enhancing ease of doing business and increasing the participation of retail investors in public dated November 13, 2025

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in. If the pledge is invoked / released within such lock-in period, it shall remain locked in the account of the pledgee / pledgor for the balance period.

- ii. Dispense with abridged prospectus requirement: With a view to provide retail investors with reliable, focused and summarised disclosures, it is proposed to mandate submission of Offer Document Summary with the draft offer document in an IPO, and accordingly dispense with the need of an abridged prospectus. The Offer Document Summary is envisaged to be the central retail-facing disclosure, to provide a concise and standardised snapshot of all key information.

4. SEBI: Informal guidance on applicability of insider trading regulations to pledge of shares¹³

Welspun Corp Limited sought guidance from SEBI regarding applicability of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (the “Regulations”), on pledge of its shares against loan borrowed by their managing director from an NBFC. SEBI provided with the following clarifications as a part of its informal guidance:

- The term ‘trading’ is widely defined to include dealing in securities and intended to curb activities based on unpublished price sensitive information which are not strictly buying, selling or subscribing. Trading would include creation, invocation or revocation of pledge, subject to pre-clearance of the compliance officer during the trading windows, if the value of the proposed trades is above thresholds stipulated by board of directors.
- Beneficial ownership of pledged shares does not change until the pledge is invoked.
- The Regulations prohibit insiders from making opposite trades or ‘contra trades’ within six months. While creation and revocation of pledge are ‘opposite trades’, since there is no change in beneficial ownership, there is no restriction in revocation of a pledge within six months of its creation.
- Sale of shares immediately after revocation would not be considered as a contra trade, and hence is permissible, subject to compliance with other provisions of the Regulations.

SEBI accordingly guided that creation, invocation and revocation of a pledge over listed securities are considered as ‘trading’ activities subject to the Regulations. However, revocation of pledge soon after its creation is permissible, and not subject to contra trade restrictions.

¹³ SEBI Informal Guidance No. SEBI/HO/ISD/OW/2025/20748/1 to Welspun Corp Limited dated August 4, 2025

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D. Other Highlights

1. New Labour Codes made effective¹⁴

The Government of India has rationalised and consolidated 29 existing labour laws into 4 labour codes effective from November 21, 2025 - Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020. The key highlights are as follows:

- Definition of various workforces: Classification of workforce through the definitions of 'worker', 'employee', 'platform worker', 'gig worker', and 'inter-state migrant worker', which will be used to determine the eligibility of various entitlements such as overtime and leave encashment.
- Uniform definition of wages: A uniform definition of 'wages' has been introduced, instrumental for the calculation of various entitlements such as gratuity and minimum wages across all the labour codes. Basic pay shall be at least 50% of an employee's CTC, while the rest can be through various allowances. Benefits, such as gratuity and provident fund, are calculated on the basic pay.
- Regularisation of employment models: Contract labour cannot be engaged for core activities of an organisation. Fixed-term employment has been recognised, and such employees would be eligible for gratuity after one year of service. States have been empowered to implement rules for flexible work arrangements.
- Social security for unorganised sector: Gig workers, platform workers, fixed-term workers, and others in the unorganised sector have been covered by the codes. For gig workers, the aggregators will be required to contribute 1% to 2% of their annual turnover, subject to 5% of amount paid or payable by an aggregator to gig workers, to a social security fund.

A comparison of some key provisions of the erstwhile and new laws is as follows:

Particulars	Pre Labour Reforms	Post Labour Reforms
Formalisation of employment	No mandatory appointment letters	Mandatory appointment letters to all workers
Provident fund coverage	Limited to certain sectors	Provident fund obligations extended to all establishments with 20 or more employees, regardless of industry
ESIC coverage	Limited to notified areas and specific industries	ESIC applicable pan-India, and covers plantation workers, unorganised

¹⁴ Press Release titled 'Government Makes the Four Labour Codes effective to Simplify and Streamline Labour Laws' by PIB Delhi, Ministry of Labour and Employment, dated November 21, 2025

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		sector workers, gig and platform workers. Establishments with less than 10 employees can also voluntarily adopt the scheme.
Minimum wages	Applicable to only scheduled industries / employments	Statutory right of minimum wages to all workers
Preventive healthcare	No legal requirement	Employers to provide a free annual health check-up to all workers above the age of 40 years
Compliance	Multiple registrations, licenses and returns across various labour laws	Single registration, PAN-India single license and single return

Katalyst comment:

With the reformed labour codes coming into immediate effect (subject to pending notifications of corresponding central and state rules), employers will have to evaluate the impact, review relevant contracts and revamp systems to deal with these significant changes.

2. SC: Unregistered partition deed proves severance of joint family status¹⁵

Descendants of a common ancestor (the “Respondents”), sought partition and separate possession of properties, asserting them to be joint family properties. However, the appellant family member (the “Appellant”) contested that two of the Respondents had executed registered release deeds, relinquishing their coparcenary rights, and a family settlement deed had already been invoked in 1972 for the severance of the joint family.

The Supreme Court made the following observations:

- Execution of registered release deeds with consideration and admissions was sufficient to effect relinquishment, and cannot be said to not have been ‘acted upon’; law leans strongly in favour of upholding such settlements among close relations where consideration has passed and possession has followed.
- Declining to give effect of the release deeds on the footing that proper valuation and stamp duty were not demonstrated was unsustainable, as no timely specific objection was pressed to a logical conclusion, and also since they had been admitted as evidence by the High Court.
- The severance of joint status can be brought about by any unequivocal declaration reduced to writing, whether or not registered. The reality of disruption is tested by a cumulative assessment of conduct that includes separate possession, separate cultivation,

¹⁵ P. Anjanappa v A.P. Nanjundappa & Ors, Supreme Court [CIVIL APPEAL NO. 3934 of 2006], dated November 6, 2025

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separate residence, independent dealings with the lands allotted, and revenue records that consistently reflect such separation.

The Supreme Court held that the unregistered partition deed entered into in 1972 may be relied upon for limited collateral purposes of proving severance of joint family status; the release deeds were also held to be valid.

3. SC: Mutation of property in land records is not a proof of title¹⁶

The Registration Act governs the registration of documents and empowers the Inspector General of Registration to make procedural rules, without making substantive rules affecting ownership or the right to transfer property.

The above was also observed by the Supreme Court recently, while deciding on recent amendments made to the Bihar Registration Rules, that required sellers / donors to furnish proof of mutation, an administrative act to update land records, before registering a sale deed / gift deed. As per the abovementioned rules, registering officer could decline registration if the seller's name was not updated in the revenue or municipal records, even if the sale deed otherwise met all legal requirements.

The Supreme Court observed that the Registration Act governs the registration of documents, not proof of title. Therefore, requiring proof of mutation before registering a sale deed effectively converted the revenue record into a title document, which the law does not recognise. The Court also noted the practical impossibility of complying with such a rule in Bihar as land records in the state are outdated.

The Supreme Court held that making proof of mutation a prerequisite for registration would unreasonably restrict citizen's ability to buy and sell property, effectively depriving them of their right to hold and dispose of property; thus, any rule or law that impedes the free and effective transfer of property is arbitrary and illegal.

4. SC: Parameters to determine employer-employee relationship¹⁷

A co-operative society was formed by the employees of a bank to run the canteen facility for its employees. The bank provided funding and infrastructure to such society, which appointed employees to run the canteen facility. The society subsequently requested the bank to enhance the subsidies for expansion of canteen facilities but the request was rejected and the canteen was

¹⁶ Samiullah v The State of Bihar & Ors, Supreme Court [DIARY NO. 12674/2024], dated November 7, 2025

¹⁷ General Manager, U.P. Co-operative Bank Ltd. v Achchey Lal & Anr [Civil Appeal No. 2974 of 2016], dated September 11, 2025

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shut down. Due to closure of the canteen, the employment of four employees was terminated, leading to an industrial dispute against the bank regarding their termination.

Labour laws require an employer to fulfil certain obligations towards their employees. In this regard, the Supreme Court laid down four principles to determine employer-employee relationship:

- i. Control test: Who has the control over work assigned and manner in which the work is to be carried out.
- ii. Organisation / integration test: Whether the worker's role is integrated into the core operations of the employer's business.
- iii. Multiple factor test: Considering a combination of indicators such as power to hire or dismiss, payment of wages, and possibility of profit and risk of loss.
- iv. Refinement of multiple factor test: Reiterating the multiple factor test with priority to factors of control and mode of remuneration.

The Supreme Court held that, on the basis of the above principles, the society, not the bank, was the employer of the canteen workers, as there was no material to establish any direct control of the bank over the employees. Accordingly, the bank was not obligated to reinstate the employees or pay back wages.

Katalyst comment:

The guidelines laid down by the Supreme Court to determine an employer-employee relationship would be needed to be tested in several contexts, such as professionals hired on retainer basis or through an employer on record; this could have, inter alia, various implications, such as:

- *Payment by an employer to an employee by way of salary is not taxable under GST. However, in cases such as secondment or engagement of employees on a contract, where the employer-employee relationship may not be satisfied between the hiring entity and the employee basis the above, GST could be chargeable on the salary payments.*
- *Similarly, if the employer-employee test is not met with, employer would need to deduct tax at source at the time of making the salary payments.*
- *While the present case deals with the erstwhile labour laws' regime, the new labour codes (as discussed in paragraph D.1 above) extend some benefits to certain types of employees, such as gig and contract workers; hence, even though the employer-employee relationship might not be established as per the guidelines of the Supreme Court, the benefits and remedies available may need to be decided on a case-to-case basis.*

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5. Gujarat HC: Upholds 'clean-slate' principle under IBC¹⁸

The NCLT approved a resolution plan of a company that underwent corporate insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). Subsequently, GST authorities issued demand orders and show-cause notices pertaining to the period prior to the effectiveness of the resolution plan. The company approached the Gujarat High Court, challenging these actions.

The Gujarat High Court observed that the approved resolution plan extinguished all liabilities, including statutory dues, arising prior to its approval. It also emphasized that the primary objective of IBC is to ensure the revival of a corporate debtor, which is only possible if the successful resolution applicant is not burdened by unexpected past liabilities.

Reinforcing the clean slate principle – that a corporate debtor starts afresh on approval of resolution of plan and cannot be saddled with any pre-resolution claims not forming part of such plan – the High Court held that the actions of the GST authorities were legally untenable and quashed all the impugned GST orders and show-cause notices.

6. FEMA: Extension of timelines for export payments and advances¹⁹

The Reserve Bank of India has revised the following timelines governing export-related payments and shipments, effective immediately:

- The period for realisation and repatriation of the export value of goods, services or software has been extended from 9 months to 15 months
- On receipt of advance by an exporter, whether with or without interest, from a buyer or third party abroad, the timeline to ship the goods has been extended from 1 year to 3 years from the date of receipt of advance.

7. IBBI: Sale of corporate debtor as a going concern during liquidation prohibited²⁰

The Insolvency and Bankruptcy Board, vide a notification, has amended rules governing the liquidation process to prohibit the sale of a corporate debtor or its business as a going concern

¹⁸ Sintex - BAPL Ltd v State of Gujarat & Ors, Gujarat High Court [R/Special Civil Application No. 9855 of 2025 with R/Special Civil Application No. 9864 of 2025 and 10988 of 2025] dated August 28, 2025

¹⁹ Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2025, notified vide Notification F. No. FEMA 23(R) / (7) / 2025-RB, dated November 13, 2025

²⁰ Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2025 vide IBBI Notification dated October 14, 2025

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during liquidation. Liquidators may now only sell assets individually or as a group of assets, collectively or in parcels.

Katalyst comment:

Prior to this amendment, liquidators could sell corporate debtors as a going concern, often involving an unreasonably low price.

E. Goods and Service Tax Highlights

1. Gujarat AAR: Slump sale on a going concern basis exempt from GST²¹

The applicant, a developer, undertook redevelopment of a project awarded by the Surat Municipal Corporation. As a part of the project, the applicant received the leasehold rights of 'free sale land' and later decided to transfer the same through a slump sale. In this regard, the Gujarat AAR held that the transfer of right or sale of specific unit of construction site by a developer as a going concern on slump sale basis (along with all assets and liabilities) is exempt from GST. However, the AAR refrained from deciding whether the transaction constitutes a 'slump sale' under the GST Law, as the said term is defined under the Income Tax Act.

Katalyst comment:

As per a notification of the CBIC²², read with Rule 41 of the CGST Rules, an important criterion for claiming such exemption is 'transfer of business as a going concern', including all assets and liabilities or part thereof, and 'slump sale' has not been defined in GST law.

2. Andhra Pradesh AAR: Assignment of leasehold rights is a 'taxable supply'²³

The applicant, a manufacturer and supplier of excavators, had taken several acres of land on a 99-year lease from the developer-lessor, and as part of a business restructuring, assigned the remaining lease period to the transferee, for which consideration on leasehold rights and development of infrastructure facilities were separately charged. The applicant has also paid the transfer fees for such transfer. In this regard, the AAR has held that such transfer of leasehold rights is liable to GST as 'supply of service' and rejected the contention of the applicant that such transaction constitutes 'benefit arising out of land', thereby claiming exemption from GST by considering the assignment of leasehold land as 'sale of land'.

²¹ RDB Realty & Infrastructure Ltd. [TS-902-AAR(GUJ)-2025-GST], dated November 4, 2025

²² Notification 12/2017-CT (Rate) dated June 28, 2017

²³ Kobelco Construction Equipment India Pvt Ltd [TS-897-AAR(AP)-2025-GST], dated November 1, 2025

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Katalyst comment:

It is unfortunate that the AAR, although acknowledging the view of the Gujarat HC in the case of Gujarat Chamber of Commerce and Industry (GCCI) ²⁴, which is in favour of the taxpayer, has nonetheless ruled against the taxpayer citing the pending of case before the Supreme Court. Further, it is pertinent to note that the Bombay High Court, in case of Panacea Biotec Ltd²⁵ referred to the GCCI case and held that the transfer of leasehold rights by the lessee to a third party is not liable to GST.

²⁴ Gujarat Chamber of Commerce and Industry & Ors. v UOI & ors [TS-03-HC(GUJ)-2025-GST] dated January 7, 2025

²⁵ Panacea Biotec Ltd vs. Union of India & Ors [TS-22-HC(BOM)-2025-GST] dated January 22, 2025