



# All India Federation of Tax Practitioners

215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.

Tel.: 22006342/43/49706343 | E-mail: aiftpho@gmail.com | Website: www.aiftponline.org

# AIFTP NEWSLETTER - ALLIED LAWS

Volume 1 | No. 1 | June 2023

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
2nd to 10th June, 2023	International Study Tour to Vietnam	Vietnam
14th June, 2023	Webinar on Settlement Commission - Alternate Dispute Resolution Mechanism under Service Tax (Southern Zone)	Virtual
17th June, 2023	One Day Conference (Western, Northern & Eastern Zone)	Thane
23rd June, 2023	National Executive Committee Meeting	Tirupathi
23rd & 24th June, 2023	National Tax Conference (Southern Zone)	Tirupathi
24th June, 2023	Full Day Conference (Central Zone)	Kota
30th June, 2023	National Tax Conference (Central Zone)	Raipur
7th & 8th July, 2023	National Tax Conference (Southern Zone)	Chennai
15th & 16th July, 2023	National Tax Conference (Northern Zone)	Amritsar
22nd July, 2023	One Day Conference (Eastern Zone)	Siliguri
4th August, 2023	National Executive Committee Meeting	Bengaluru
4th, 5th & 6th August, 2023	National Tax Conference (Southern Zone)	Bengaluru
12th, 13th & 14th August, 2023	Residential Refresher Course (Southern & Central Zone)	Rameswaram
15th August, 2023	Independence Day Celebrations	All Zones
20th August, 2023	National Tax Conference (Central Zone)	Alwar
21st & 22nd August, 2023	National Tax Conference (Western Zone)	Shirdi
26th & 27th August, 2023	National Tax Conference (Eastern Zone)	Rourkela
2nd & 3rd September, 2023	National Tax Conference (Northern Zone)	Vrindavan
7th & 8th October, 2023	AIFTP's Interzone Sports Meet, Chandigarh (Northern Zone)	Chandigarh
18th, 19th & 20th November, 2023	RRC with spiritual experience of Chatt in Bodh Gaya & tour to Rahgir-Nalanda - Pawapuri (Eastern Zone)	Bodh Gaya
26th & 27th November, 2023	Dev Deepawali (Northern Zone)	Varanasi
2nd & 3rd December, 2023	Residential Refresher Course (Central Zone)	Khajuraho
22nd December, 2023	EOGM (Eastern Zone)	Kolkata
23rd & 24th December, 2023	National Convention (Eastern Zone)	Kolkata

*NOTE: Detailed programmes will be uploaded on our website and will be circulated on WhatsApp and mail, as and when the same are announced.*

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS			
Name	Designation	Mobile	E-mail
PANKAJ GHIYA, ADV.	National President	9829013626	pankajghiyajapur@gmail.com
NARAYAN P. JAIN, ADV.	Deputy President	9830951252	npjainadv@gmail.com
RAJESH MEHTA, CA.	Secretary General	9827036956	rajeshmehta_indore@yahoo.com
VINAY KUMAR JOLLY, ADV.	Treasurer	9414043300	jolly0450@yahoo.com

Dear Fellow Readers,

It's a matter of great pleasure for me to present our new flyer on the topic of allied laws. They are often overlooked or misunderstood, but are an essential part of our legal system. Allied laws help to ensure that justice is served and that the rights of individuals are protected. By understanding these laws, we can all be better informed citizens and make a positive difference in our communities.

Allied laws play a critical role in maintaining a fair and just society, and we want to share this knowledge with everyone.

Our flyer contains valuable information on the recent developments in these laws. We hope that by distributing this flyer, we can raise awareness and encourage people to learn more about this important topic.

I invite you to take a moment to read our flyer and learn more about these laws. Together, we can work towards a society where justice is truly served for all.

Sincerely,

**CA Sanjay Ghiya**

Chairman, Committee of Allied Laws



## Companies Act, 2013

### Notifications and Circulars

#### 1. **CG-DL-E-27012023-243215/No. 37 Dated :- 20th January 2023**

##### Gist:

- An individual can now apply to Regional Director to remove disqualification (under Section 164(1) and 164(2)(b) through DIR-10 (application for removal of disqualification of directors) web form.
- Regarding Form DIR-3 (Application for allotment of Director Identification Number)- STP (Straight through process) SRN (Service Request Number) status will be displayed as 'Approved – Pending verification' instead of 'Approved' till the time work-item is picked up for verification. However, DIN status will still be in 'Approved'.
- Regarding Form DIR-12 (Appointment of directors and the key managerial personnel and the changes among them)-Two new purposes added in case where all the directors of the company become disqualified under the Companies Act, 2013, in the section 'Purpose of filing the form' with the nomenclature as 'Appointment due to disqualifications of all the existing directors' and in such case Promoter Shareholder shall have the signing rights and 'Appointment by liquidator/IRP/RP' in case of liquidation and in such case, liquidator shall have the signing rights.

#### 2. **CG-DL-E-25012023-243221/No.41 Dated:- 21st January 2023**

##### Gist:

- Applicant of new company may select 3 business activity code.

- Mandatory attachment of photograph of director started in forms INC-22 (Notice of situation or change of address of the registered office of the company) and INC-20A (Declaration of commencement of business). These forms must be signed by the same person whose photograph being attached.

#### 3. **CG-DL-E-23012023-242170/No.44 Dated :- 23rd January 2023**

**Gist :** Forms shall be signed by Insolvency resolution professional or resolution professional or liquidator of companies under insolvency or liquidation, as the case may be.

### Important Updates

- 56 E-form of companies was launch on the v3 portal of MCA.
- NIC code (National Industrial Classification Code) 2008 was implemented on companies.
- All signatories have to register their DSC (Digital Signature) as business user on V3 Portal.
- In most of the cases, concept of E-MOA and E-AOA is introduced.
- Started professional certification in few forms of small company.



## FEMA

### Case Laws

#### HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

1. **MUSHTAQ AHMAD DAR & ORS V/s ENFORCEMENT DIRECTORATE & ORS. Dated 13.04.2023**

##### Gist of case:

Held that a notice issued by the adjudicating authority to initiate proceedings against a party under Section 13 FEMA is not an 'order' and is not appealable and thus, a writ petition assailing the same is maintainable.

##### Notifications and Circulars

1. **RBI/2022-23/160 A.P. (DIR Series) Circular No. 22 Dated: 4th January 2023**

##### Gist:

Few changes are being implemented with respect to the reporting of foreign investment in SMF on FIRMS portal.

2. **RBI/2023-24/16 A.P. (DIR Series) Circular No. 02 Dated: 12th April 2023**

##### Gist:

AD Category-II entities allowed online submission of Form A2. AD Category-II entities shall frame appropriate guidelines with the approval of their Board within the ambit of extant statutory and regulatory framework.

3. **RBI/2023-24/21 A.P. (DIR Series) Circular No.03 Dated: 26th April 2023**

##### Gist:

Resident Individuals may also open a Foreign Currency Account (FCA) in International Financial Service Center (IFSCs), for making the above permissible investments under LRS. Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

##### FAQs

1. **FAQ for Legal Entity Identifier Number in pursuant to its guidelines issued by RBI vide A.P. (DIR Series) Circular No. 20 dated 10th December 2021**

FAQs are as under:

1. **Should an AD bank obtain a valid LEI for transactions less than INR 50 crore even if the customer has not done any transaction of INR 50 crore or above on or after October 1, 2022?**

**Ans.** An AD bank must record valid LEI for cross border transactions of INR 50 crore and more undertaken

through it on or after October 01, 2022. Post this, the AD bank must report the valid LEI for all cross border transactions, irrespective of the value of the transactions. However, if the AD bank already has a valid LEI of the entity, it must report it for all transactions irrespective of whether the entity has undertaken a transaction of INR 50 crore or above through it.

2. **Is it mandatory to obtain and validate the LEI of the non-resident counterparty as well? Does the stipulation of reporting LEI for all transactions of an entity, irrespective of transaction size, once the entity has obtained an LEI number apply for non-residents as well?**

**Ans.** As regards the non-resident counterparty/ overseas entities, AD bank may be guided by the instructions contained in paragraph 2 of the circular.

3. **Is it mandatory to obtain LEI in case of transactions to and from a non-resident's account with an AD bank in India?**

**Ans.** Any debit from or credit to a non-resident's account in India as a result of a transaction with a resident will attract the provisions of Foreign Exchange Management Act, 1999 (FEMA) and hence, the provisions contained in the circular shall apply.

4. **Does the responsibility to obtain LEI lie with an AD bank acting in the capacity of a correspondent bank?**

**Ans.** The correspondent bank shall be responsible for the LEI of the non-resident counterpart. However, in this regard it may be guided by the instructions contained in paragraph 2 of the circular.

5. **Is there any specific field in the SWIFT message where LEI needs to be captured?**

**Ans.** The circular does not prescribe any instructions with respect to SWIFT message formats.

6. **For transactions involving three parties (e.g., merchanting trade transactions), the AD bank has to obtain LEI for which party/ parties?**

**Ans.** Each leg of remittance would have only two parties and hence, the AD bank should obtain the LEI accordingly as per the circular.

7. **In case of non-fund facilities such as Letter of Credit, guarantee, etc., should the LEI validation be done at the issuance stage itself?**

**Ans.** In case of non-fund facilities, the AD banks need to ensure compliance with LEI requirements at the

## Case Laws on Insolvency and Bankruptcy Code

1. **Hindalco Industries Ltd. v. Hirkud Industrial Works Ltd. & Ors. [CA AT (Ins) No. 42, 43, 52 and 53 of 2022] Dated: 11th January, 2023**

**Gist:** The Corporate Debtor failed to pay outstanding dues of workmen amounting Rs 45, 66, 67,133/-. Therefore Corporate Debtor and Financial Creditor entered into fraudulent collusion with Committee of Creditors who were related parties falling under clause (f) of section 5(24A) of the code and initiated

CIRP process .NCLAT quashed the resolution plan and imposed penalty of Rs 50 Lakhs on Financial Creditor and Corporate Debtor under section 65 of code. Case to be investigated by IBBI of possible collusion between parties.

2. **M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj) v. Union of India & Ors. [Civil Appeal NO.8957 of 2022] Dated: 16th January 2023**

**Gist :** The Hon'ble SC quashed and set aside the order of HC and held that Corporate Debtor cannot be punished for not doing something which was impossible for it to do because of legal impediment of moratorium under the Code. The CD cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.

**3. Noble Marine Metals Co WLL v. Kotak Mahindra Bank Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 653 of 2022 Dated: 18th February 2023**

**Gist:** The resolution plan is required to be in accordance with the provisions of the Code. In case the resolution plan contains clauses that impedes the provisions of other laws, the same may be reconsidered in the specific facts of the case.

**4. Sabarmati Gas Ltd. v. Shah Alloys Ltd. [Civil Appeal No. 1669 of 2020] Dated: 16th January 2023**

Shah Alloy Ltd. (CD) approached Board for Industrial and Financial Re-construction ('BIFR') to be declared as a 'sick unit' and for recommendation of a plan for its rehabilitation, in terms of the provisions under Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).

Operational Creditor filed an application under section 22 of SICA before BIFR to approach a civil court, for recovery of

dues along with interest. The application was allowed, and the civil court directed Operational Creditor to incorporate the dues of the CD in the Draft Rehabilitation Scheme. Thereafter, SICA got repealed and Insolvency Bankruptcy Code, 2016 (IBC/Code) was enacted. OC issued a demand notice under section 8 of the Code, demanding payment of 'operational debt'. Adjudicating Authority dismissed the application on the grounds of being barred by limitation and existence of a 'pre-existing dispute' between the parties. Further, in appeal NCLAT also upheld the order passed by Adjudicating Authority. Aggrieved by the order of NCLAT, OC preferred an appeal before Hon'ble SC.

Hon'ble SC held that there existed a 'pre-existing dispute' between the parties therefore, matter cannot be remanded to the AA for reconsideration. It also observed that there was a legal bar for initiating proceedings against CD by virtue of section 22(1) of SICA and explained that party was legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on application, permission was not given, the period of suspension of legal proceedings is excludable in computing the period of limitation for the enforcement of such right in terms of section 22(5) of SICA.



## Prevention of Money-laundering Act

### Notifications

**1. Notification No. S.O. 1072(E) Dated 7th March, 2023**

**Gist:** The amendment aims to expand the scope of the Act to cover a wide range of crypto currency or virtual digital assets (VDA) transactions under the purview of PMLA, 2002 Under the new amendment, activities by a person carrying on designated business or profession under section 2(1)(sa) of the PMLA, 2002, shall also include Virtual digital assets.

**2. Notification No. S.O. 1074(E) Dated 7th March, 2023**

**Gist:** The Central Government in this notification makes the following rules further to amend the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 which would now be called the Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2023

**3. Notification No. S.O. 446(E) Dated 30th January, 2023**

**Gist:** The Central Government notifies that banking companies other than those exempted shall comply with the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) (hereinafter referred to as the Aadhaar Act)

### Case Laws

**1. In High Court of Delhi**

**M/S Prakash Industries Limited v Union of India and Anr Dated: 26th January 2023**

**Gist of Case:** The PMLA empowers the ED to investigate Section 3 offences only. Its power to investigate and enquire stands confined to the offence of money laundering as defined in that section. The primary function to investigate and try such offences remains and vests in authorities constituted under those independent statute. In any case, it (ED) cannot and on its own motion proceed on the surmise that a particular set of facts evidence the commission of a scheduled offence and based on that opinion initiate action under the PMLA

**2. In High Court of Allahabad**

**Govind Prakash Pandey v Directorate of Enforcement Govt. India Dated 20th February 2023**

**Gist of Case:** Allahabad High Court Grants Bail to accused in Money Laundering Case saying that sec.45 of PMLA is not applicable as arrest was not made in Sec 19. Trial Court took custody of the accused without following the settled proposition of law by the Supreme Court as there was no requirement to take the accused into custody when he appeared before the Trial Court pursuant to the summons being issued, as he has never flouted the process of law, he cooperated in the investigation throughout, the Investigating Agency has never thought to arrest him under Section 19 of the PMLA despite he appeared before the E.D. to record his statement twice, pursuant to the summons being issued under Section 50 of the PMLA.



## Real Estate Regulatory Authority

### NOTIFICATION & CIRCULARS

#### MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

1. **MahaRERA / Secy / File No.27/ 239 /2023 Dated: 20.02.2023**

**Gist:** MAHA RERA has specified the documents to be uploaded by the promoter in correction module on their respective login at time of the proposed change / transfer of the separate designated bank account from one schedule bank / branch to another.

2. **No. MahaRERA/Secy /File No.27/ 74/ 2023 Dated: 10.01.2023**

**Gist:** MahaRERA proposes to introduce basic real estate agent training and certification course for real estate agents across the State of Maharashtra.

3. **No. MahaRERA/Secy /File No.27/ 200/ 2023 Dated: 10.02.2023**

**Gist:** Where the Real estate projects are unable to commence and complete the construction of the same or having commenced the construction are not in a position to complete the construction of the real estate project due to various reasons then it will not be fruitful keeping these projects registered under MahaRERA and hence, on receiving an application from promoters and on evaluating / scrutiny of the same, MahaRERA may allow for de-registration of such real estate projects.

4. **No. MahaRERA/Secy/File No. 27/202/2023 Dated: 13.02.2023**

**Gist:** MahaRERA registered real estate agent shall upload on their respective web page the half yearly progress report for the financial calendar half year period "April to September" on or before 20th October and for the financial calendar half year period "October to March" on or before 20th of April.

#### RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

1. **F4 (1)RJ/RERA/2017/Part/467 Dated: 14.03.2023**

**Gist:** The authority has issued direction to all the local body to restrain from issuing lease deeds in respect of plotting projects. If the local body issues lease deeds without registration it shall be liable for penalty.

### REPORTING OF CASE LAWS

#### RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

1. **Suo Moto v. Trimurty Colonizers & Builders & ORS Dated: 09.01.2023**

**Gist of Case:** Once the project is completed, certain provisions relating to pre- completion requirements shall not apply.

2. **Amit Kumar and Ors. v. Shramik Awas Vikasak LLP Dated: 20.02.2023**

**Gist of case:** Authority can modify its order if mistake is apparent & it is not related to substantive part.

3. **Aditya Kumar Upadhaya v. Sankalp Developers Dated: 22.03.2023**

**Gist of case:** An order passed by the authority cannot be reviewed unless it is a matter of rectification of any mistake apparent from the record.

4. **Suo Moto v. DCB Town Planners Pvt. Ltd. Dated: 31.03.2023**

**Gist of case:** Failure to upload Quarterly Progress Report will engage penalties.

#### TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

1. **R. Radhakrishnan v. Malathi Badri and P.N. Badri Dated: 24.02.2023**

**Gist of Case:** Promoter obtained CMDA approval for constructing 6 flats along with 6 covered car parking and 6 two wheeler parking. But violating the approved building plan he had constructed 8 flats with separate kitchen facilities resulting in considerable reduction in parking space. Opportunity costs awarded in favour of the allottee by the Adjudicating Officer under Section 14 is upheld. Appeal dismissed at the admission stage.

#### MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

1. **Mr. Aditya Sachdeva and Mrs. Vrishali Sachdeva v. Acme Housing India Private Ltd. & 6 Ors. Dated 01.03.2023**

**Gist of Case:** The court should consider the reasons for the condonation of delay and not assume it was deliberate, and if the explanation is genuine, the court should give the applicant's plea utmost consideration.

2. **Mrs. Nehal Nikhilkumar Thakkar & Mr. Nikhilkumar Thakkar v. Viva Winner Venture Realtors LLP Dated 01.03.2023**

**Gist of Case:** The appellants did not challenge the interest awarded by A.O., the relief they sought in the complaint and in this application cannot be considered.

#### HARYANA REAL ESTATE APPELLATE TRIBUNAL

1. **M/s GLS Infratech Private Limited. v. Sunita Upadhayay w/o Abhilash Shukla Dated: 03.03.2023**

**Gist of Case:** Even on suo moto cancellation of unit by allottee, Promoter could not charge heavy amount as cancellation charges.

## HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY

### 1. Sunil Malhotra v. R.V. Nirmala Pvt. Ltd. Dated: 23.03.2023

**Gist of case:** Held that it is the duty of the promoter under section 11(4) (d) of the RERA act 2016 to maintain the project till the resident welfare association takes over the possession. It was further held that under section 19 (6)

of the RERD Act 2016 it is the duty of the allottee to pay maintenance and various other charges at the appropriate rate as per the terms of agreement for sale from the date of taking over of possession by him. It was further held that all the allottee(s) who have taken possession and are enjoying the facilities of the project must pay the maintenance charges till time association of the allottees takes over and determine the common expenses.

☐

## PUBLICATIONS FOR SALE

Sr. No.	Name of Publication	Edition	Rate (₹)		
			Members	Non-Members	Courier Charges per copy
1.	Search Seizure, Survey, Prosecution and Arrest under Tax and Allied laws - Frequently asked questions	Dec., 2022	1600.00	1750.00	–
2.	75 Landmark Judgements of Honorable Supreme Court and High Courts under GST Laws	Aug., 2022	175.00	315.00	100.00
3.	Handbook on Taxation of Partnership Firms & Limited Liability Partnerships: Frequently Asked Questions	Dec., 2021	725.00	945.00	–
4.	Reassessment Law, Procedure & Practice (Practical Guide)	Dec., 2020	Free	Available on website	100.00
5.	151 Landmark Judgment of the Honorable Supreme Court	Oct., 2020	Available on website	Available on website	–

- Notes:
1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
  2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
  3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.

### Advertisement Tariff for AIFTP Times

	Particulars	Per Insertion
1.	Quarter page	₹ 1,500/-
2.	Ordinary half page	₹ 2,500/-
3.	Ordinary full page	₹ 5,000/-

There shall be Discounts on bulk advertisements.

### Membership of AIFTP as on 30th May, 2023 Life Members

Zone Name	Associate	Individual	Association	Corporate	Total
Central	0	1450	25	0	1475
Eastern	6	2099	37	0	2142
Northern	0	1512	21	1	1534
Southern	1	2348	23	2	2374
Western	5	2921	38	3	2967
Total	12	10330	144	6	10492

### DISCLAIMER

The opinions and views expressed in this Times are those of the contributors. The Federation does not necessarily concur with the opinions/views expressed in this journal.

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month. No part of this Times may be reproduced or transmitted in any form or by any means without the permission in writing from All India Federation of Tax Practitioners.



## ALL INDIA FEDERATION OF TAX PRACTITIONERS

215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342/43/49706343  
E-mail: aiftpho@gmail.com • Website: www.aiftponline.org



aiftppofficial



@AIFTPINDIA



@allindiafederationoftaxpra9283



+91 98678 96342