

# BHUJ BRANCH OF WIRC OF ICAI

E-NEWSLETTER FOR THE MONTH OF JANUARY-2021

(FOR PRIVATE CIRCULATION ONLY)

**CA. Jitendra Thacker**

Chairman  
9825537937

**CA. Ramesh Pindolia**

Vice Chairman & WICASA  
Chairman  
9825662808

**CA. Ashish Gadhavi**

Secretary  
9925738543

**CA. Purvi Mehta**

Treasurer  
9374338587

**CA. Hardik P.Thacker**

Imm.Past Chairman  
9825858580

**CA. Rakesh Alshi**

Branch Nominee (WIRC)

**CA Jagrut Anjaria**

Newsletter Advisor  
9426788728

Address:-  
Hall No. 2,  
Katira Complex-2  
Sanskar Nagar  
Bhuj-Kachchh  
Phone:-258580; 9925738543  
E-mail:-  
bhujbranch.wirc@gmail.com

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## ***CHAIRMAN'S COMMUNICATION***

### **Dear Professional Colleagues**

The path to professional excellence has many routes which includes being receptive to changes, learning new processes and adapting technological advances. Though we plan and follow these promising routes but our final goal always remains the same – Achieve Professional Excellence. To make this goal our mission, we must look at our current progress and accordingly chart the way forward.

Professionals need an edge to survive and Innovation can provide that edge—boosting your productivity, growth and profitability. Also, as professionals, let's have a hunger for excellence. Getting passionate about our work, learning from the best, working really hard and believing in ourselves will definitely make us attain excellence. So this coming year, let's innovate and excel in our professional lives.

*Wishing you all a blissful newyear 2021. Hope that joy and success follow you in every sector of life.*

### **The month that was – December 2020**

**-Branch Website Launched:** Much awaited Bhuj Branch of WIRC of ICAI website <http://bhuj-icai.org> launched in Virtual Presence of Chief Guest & Vice President of ICAI CA Nihar Jambusaria & Guest of Honor CCM CA Aniket Talati on 28-12-2020.

-Bhuj Branch has organised Virtual CPE Meeting on “**Current Issues In GST**” by Expert speaker CA Abhay Desai on 28-12-2020 along with the program of website launch.

-Bhuj Branch jointly with Gandhidham(Host) and Anand Branches has organised Virtual CPE Meeting on “**Overview of TDS Provision Applicable for 15CA/CB and Residential Status** “ by Expert speaker CA Paras Savla on 12-12-2020.

-Bhuj Branch of WICASA has arranged **Industrial Visit** at Ashapura Perfoclay Limited on 29-12-2020 for the benefit of students.

-Bhuj Branch of WICASA has arranged virtual **Carrier Counseling Program** at following schools/colleges with help of WIRC.

<b>Sr. No.</b>	<b>Name of Schools</b>	<b>No.</b>	<b>of</b>
			<b>Participats</b>
1.	Matrushree R. D Varsani Kumar VidyalayaBhuj	95	
2.	Sahjanand Girls Institute Bhuj	169	
3.	MuktjivanSwamibapaMahila College	345	

### **Interactive Meet with WIRC Official**

Bhuj Branch has planned an Interactive **Physical Meeting** with WIRC Chairman CA Lalit Bajaj and all office Bearers of WIRC with members and students of branch and also arranged CPE Session on QRMP Scheme under GST by Expert speaker RCM CA Manish Gadhia on 07-12-2021 at Morning session at our branch premises.

### **Quiz and Elocution Contest for Students**

Quiz contest gives benefit of improving and expanding one’s knowledge, the style of offered quizzes is designed to inculcate fun and active participation among students. **Elocution** contest help students improve their communication skills and ultimately become more persuasive when they speak. They can help increase a student’s confidence and ensure that they become more assertive and they are more likely to feel that they can join or even steer conversations. Branch is planning to arrange Sports day in January-2021.

### **Sports Day**

In December we are unable to arrange sports day our traditional events of Branch due to various due dates of compliance. Playing Sports is something most of us love, as this is a fun activity and good source of both Exercise and Entertainment for Students & Members in this competitive world, looking at that, Branch is planning to arrange Sports day in January-2021.

### **Republic Day Celebration**

Republic Day of India is celebrated on January 26 to mark the day when the Constitution of India came into effect. Branch is also planning to celebrate republic day on 26<sup>th</sup> Jan 2021.

### **Forthcoming Academic Program for Members/Students (Virtual Mode)**

Branch will organize virtual programs on any specific suggestion from members on relevant topics

I would like to conclude with the thought,

"What the new year brings to you will depend a great deal on what you bring to the new year." Vern McLellan

Stay Safe. Stay Happy. Stay Updated

Thanks and Regards

CA Jitendra Thacker

Chairman

Date: 01-01-2021

## Revisiting rules of Interpretation of provisions of law

CA Chunauti H.Dholakia

B.Com., FCA, DISA(ICAI)

Interpretation of Statutes is the subject of courts. The Court interprets the provision whenever a challenge is thrown before it. No enactment has been enacted by the legislature for Interpretation of Statutes including on Tax Laws. In many Acts including Income Tax Act, definition clause is inserted to mean a 'word' or "expression" used in respective clause and explanation clause is inserted to explain the meaning of the provision to which it is added. Every section should be read as a whole considering meaning of explanations and proviso added therein. But sometimes it is misinterpreted, when two views are possible for its interpretation and resultantly it leads to litigation. It is well settled that while two interpretations are possible, the court ordinarily would interpret the provisions in favour of a taxpayer and against the revenue. The recent landmark judgment given by Hon. Supreme Court in case of Ramnath & Co. vs. The Commissioner of Income Tax (2020) 116 taxmann.com 885 revisits this rule and explains in detail the principle of interpretation of incentive sections of law.

Interpretation of sections of law:

Generally taxing statutes contains charging provisions, computation provisions, exemption provisions and penal provisions. Rules of interpretation of taxing laws are to some extent different from the general principles of interpretation of other common laws. Different rules of interpretation apply for different kinds of provisions, so as to decipher its meaning, scope and extent. Generally, while dealing with ambiguity in exemption provisions, the principle of 'strict interpretation' should be applied and the benefit of such ambiguity cannot be claimed by the taxpayer and with respect to charging provisions and penal provisions, "liberal interpretation" should be applied and benefit of ambiguity must go in favour of assessee. This general rule is revisited in this judgment of Ramnath & Co.

Interpretation of any section of law obviously depends upon the words used therein. But it must be borne in mind that when the provision is capable of two interpretations, that should be adopted which fits the description.

The basic principles of interpretation of taxing statutes have been re-condensed by this Court in case of *CIT v. Yokogawa India Ltd.*: (2017) 391 ITR 274 (SC), which directs that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. Object of the Act must be kept in view while interpreting the section. The legislative intention must be the foundation of the court's interpretation.

There are some rules regarding interpretation of explanation clause of the section. Explanation is introduced by the Legislature normally for clarifying what is provided in the section itself. It clarifies the meaning of certain phrases and expressions contained in the provision. The Explanation does not enlarge or limit the provision, unless the Explanation purports to be a definition or a deeming clause. If the intention of the legislature is not fully conveyed earlier or there has been a misconception about the scope of a provision and there is conflict in opinion on the construction of a provision, the legislature steps in by inserting the Explanation, to clarify its intent. The purpose of the Explanation would be to fill a gap left in the statute, to suppress a mischief or as is often said to make explicit what was implicit.

There is no general theory as to the effect of the explanation except that the purpose of explanation is determined by its own words. An explanation depending on its language might supply or takeaway something from the content of the provision. If the language of the explanation is plain and suggests departure from the conventional usage of an explanation, full effect of the content of the explanation would be given as would emerge from the plain language from the provision.

In many decisions including *CCE vs. Hari Chand Shri Gopal* (2011), 1 SCC 236, the law of interpretation of exemption clause is explained which stipulates that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an

exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If the exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

Analysis of the case of Ramnath & Co.

Subject matter of the case of Ramnath & Co. vs. Commissioner of Income Tax was interpretation of explanation clause (iii) in relation to statutory language of section 80-O of the Income Tax Act. Section 80-O is an incentive provision, which deals with deduction in respect of income from royalty, commission, fees from technical or professional services or any similar payment received by the assessee from certain foreign enterprises. Section 80-O specifically states that it covers the services rendered “outside India”. The explanation (iii) inserted to section 80-O clarifies that the services rendered or agreed to be rendered outside India shall include services rendered “from India”, but shall not include services rendered “in India” and therefore services rendered by the assessee to a foreign entity must be rendered outside India, in foreign soil, and not in India, though they may be rendered from India.

The issue in the case was whether the benefit of section 80-O would be available if the technical and professional services, though rendered outside India, are used by the foreign Government or enterprise in India. The Counsel of the appellant contended that when the section is incorporated to grant incentive, the section must receive liberal or expanded interpretation and the interpretation which is favorable to the assessee should be considered in case of the ambiguity. The base was taken of some decisions. He argued that as the basic object of the section is to earn foreign exchange, the benefit to the assessee ought to be granted if the object of the section is achieved.

As regards the principle of interpretation, the Ld. Counsel for revenue strongly relied upon the decision in case of *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co. and Ors: (2018) 9 SCC 1*, where it was held that taxing statutes are subject to the rule of strict interpretation, leaving no room for any



intendment; and the benefit of ambiguity in case of an exemption notification or an exemption clause must go in favour of the revenue.

In the case of Dilip Kumar & Co. Constitution Bench of this Court examined several of the past decisions, wherein, the principles were stated in clear terms that the question as to whether a subject falls in the notification or in the exemption clause has to be strictly construed and once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the exemption clause liberally. It overruled the decision given in case of *Sun Exports Corporation vs. Commissioner of Customs* and held that when there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue. The generalized view stated in many cases that in the matter of taxation, when two views are possible, the one favorable to the assessee has to be preferred stands disapproved in this decision and the constitution bench held that exemption notification has to be interpreted strictly; the burden of proving its applicability is on the assessee; and in case of any ambiguity, the benefit thereof cannot be claimed by the subject/assessee, rather it would be interpreted in favour of the revenue.

The Apex Court observed in case of Ramnath & Co. that deductions, exemptions and rebates are the different species of incentives extended by the Income Tax Act, 1961. "Incentive" is generic term and "deduction", "exemption" is species of incentive. The law declared by the Constitution Bench in relation to exemption notification would apply to the interpretation and application of any akin proposition in the taxing statutes for exemption, deduction, rebate which all are essentially the form of tax incentives given by the Government to incite or encourage or support any particular activity. The principles laid down by the Constitution Bench, when applied to incentive provisions like those for deduction, would also be that the burden lies on the assessee to prove its applicability to his case; and if there be any ambiguity in the deduction clause, the same is subject to strict interpretation with the result that the benefit of such ambiguity cannot be claimed by the assessee, rather it would be interpreted in favour of the revenue. Thus, at and until the stage of finding out eligibility to claim deduction, the ambit and scope of the provision for the purpose of its applicability cannot be expanded or widened and remains subject to strict interpretation.



It is held by the Apex Court that for the purpose of eligibility, the service or activity has to precisely conform to what has been envisaged by the provision read with its explanation; and the other requirements of the provision are also to be fulfilled. It is only after that stage is crossed and a particular activity falls within the ambit of the section, this provision will apply with full force and may be given liberal application.

The Court further held that any process of construction of a written text primarily begins with comprehension of the plain language used. In such process of comprehension of a statutory provision, the meaning of any word or phrase used therein has to be understood in its natural, ordinary or grammatical meaning unless that leads to some absurdity or unless the object of the statute suggests to the contrary. In the context of taxing statute, the requirement of looking plainly at the language is more pronounced with no room for intendment or presumption. In this process, if natural, ordinary or grammatical meaning of any word or phrase is available unquestionably and fits in the scheme and object of the statute, the same could be, rather need to be, applied. In this very sequence, it is an accepted principle that when a word is not defined in the enactment itself, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. In fact, for the purpose of gathering ordinary meaning of any expression, recourse to its dictionary meaning is rather interlaced in the literal rule of interpretation. However, the court should not look only at the dictionary meaning, but should equally look at the object and purpose of the section. The interpretation of explanation inserted may not go out of purview of the section.

The other guiding rules of interpretation would be the internal aides like definition or interpretation clauses in the statute itself. Yet further, if internal aides do not complete the comprehension, recourse to external aides like those of judicial decisions expounding the meaning of the words used in construing the statutes should be taken.

The Apex Court held that the clarification inserted by way of explanation is in tune with the nature of provision meant for extending incentive but does not do away with the basic requirements that qualifies for deduction under respective section.

The Apex Court referred dictionary meaning of the expressions used in the context of the section and held that assessee fails to establish his claim for

deduction and failed to place any material in that regard. The Court has refrain from giving benefit of ambiguity in interpretation of incentive section to the assessee. Hence the Court answered the question of law in favour of revenue and dismissed the appeal of the assessee.

Conclusion:

The choice between a strict and liberal interpretation arises only in case of doubt regarding the intention of the legislature, manifest on the statutory language. If the words used in the provision are plain and clear and directly convey the meaning, there is no need for any interpretation. It is the duty of the Court while interpreting machinery provisions of a taxing statute to give effect to its manifest purpose. In fact, interpretation is the art of finding out of true sense of enactment.

## Revisiting the rule of Natural Justice

CA Khushbu Morbia

M.Com., ACA

Rules of “natural justice” are the principles which every disciplinary authority should follow while taking any decision, which may adversely affect the rights of individuals. It is to be seen that rules of natural justice are not codified anywhere; they are procedural in nature and their aim is to ensure delivery of justice to the parties.

Over the years, two rules have evolved as representing the rules of natural justice in judicial, quasi-judicial and administrative processes. The first rule is ‘nemo debet esse judex in propria causa’ and the second principle is ‘audi alteram partem’. One of the recent Supreme Court judgments relates to this second principle, so first we shall understand what this principle is.

### WHAT IS "AUDI ALTERAM PARTEM"?

It simply includes 3 Latin word which basically means that no person can be condemned or punished by the court without having a fair opportunity of being heard. The literal meaning of this rule is that both parties should be given a fair chance to present themselves with their relevant points and a fair trial should be conducted.

This is an important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him.

It is also known as a rule of fair hearing. The components of fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

### OPPORTUNITY NOT A RIGID DOCTRINE:

Where nothing unfair can be discerned from the act of not giving opportunity, the rule may not be attracted. It is not a rigid doctrine. The rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice.

Can the breach of audi alteram partem rule by itself lead to the conclusion that prejudice has been caused? Supreme Court makes it clear.

A Three Judge Bench of the Hon'ble Supreme Court comprising of Justice RF Nariman, Justice Navin Sinha and Justice KM Joseph passed a Judgment dated October 16, 2020 in the case of State of U.P. v. Sudhir Kumar Singh (Civil Appeal No. 3498 of 2020) and held that breach of principles of natural justice will not render the proceedings invalid unless prejudice is caused to the litigants.

In the present case, the Allahabad High Court had set aside the cancellation of some tenders for unloading/loading of foodgrains/fertilizer bags into railway wagons, trucks etc., stacking the foodgrains/fertilizers in bags, bagging, standardization, cleaning of food grains/fertilizers etc. and transporting of food grains/fertilizers etc. from Railway Station to Corporate godowns or vice versa or transporting them from place to place for the Vindhyachal (Mirzapur) region, on the ground of breach of principles of natural justice. The High Court observed that as the award of tender in favour of the Applicant was cancelled, it constituted a breach of the principle of audi alteram partem.

The Apex Court while dismissing the State's Appeal against the Judgment of High Court of Allahabad laid down the following guidelines:

“Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

The court was hearing the cancellation of tender on the ground that it was “impractical” to go ahead with such tender. It was argued that such cancellation was illegal and arbitrary and against the principles of natural justice.

Applying the aforementioned principles to the facts of the case, the Court came to the conclusion that the respondent has been kept completely in the dark so far as the cancellation of the award of tender in his favour is concerned, the audi alteram partem rule having been breached in its entirety. Prejudice has indeed been caused to his client as it is clear that Respondent has been completely in the dark so far as the cancellation of the award of

tender in his favour is concerned and the fact that one year of the contract period has been taken away.

The appeals arising out of SLP (C) 5136 of 2020 and SLP (C) 7351 of 2020 are thus partially allowed, and the impugned judgment of the High Court of Judicature at Allahabad dated 11.12.2019 is set aside only to the extent indicated above.

## POWER OF CIVIL COURTS TO SET ASIDE THE AWARD GRANTED BY THE ARBITRAL TRIBUNAL

CA Yash R. Bhide

B.Com., ACA

Carrying on the business activities calls for many issues and one of them is disputes between parties to the contract. Generally, the contracts are made defining the terms and conditions for carrying out the activities, however it is not humanly possible to provide for all the events and situations which could result in disputes, lays down it and to provide a means to avoid them in it. And therefor to settle such disputes, Arbitration now a days become the preferred options by the industries. As far as the India is concern, the matters relating to Arbitration and its conciliation deals with the help of Arbitration and Conciliation Act, 1996 (hereafter called "The Arbitration Act"). Disputes under the act ought to be settled with the help of Arbitral Tribunal (hereafter referred as "The Tribunal") and the Civil Courts have the limited powers to intervene the judgement of it. The present case is one of the cases where Supreme Court have interfered with the award granted by the Tribunal and enlightened those limited powers.

### **SOUTH EAST ASIA MARINE ENGINEERING AND CONSTRUCTIONS LTD. (SEAMEC LTD.) Vs. OIL INDIA LIMITED (CIVIL APPEAL NO. 673 OF 2012)**

#### **Facts of the Case :**

SEAMEC Ltd. was awarded the work of well drilling and other auxiliary operations to be carried out in Assam through floating tender by Oil India Ltd. in 1994 accomplished by contract. The same was came to the effect in the year 1996.

One clause of the contract, Clause 23 was about "SUBSEQUENTLY ENACTED LAWS", which stated likewise :

#### **SUBSEQUENTLY ENACTED LAWS**

*Subsequent to the date of price of Bid Opening if there is a change in or enactment of any law or interpretation of existing law, which results in*



*additional cost/reduction in cost to Contractor on account of the operation under the Contract, the Company/Contractor shall reimburse/pay Contractor/Company for such additional/reduced cost actually incurred.*

During the subsistence of the contract, price of the one of the essential materials for carrying out the drilling operations, High Speed Diesel (“HSD”) increased through the circular of the Government. SEAMEC Ltd. considering the same as “change in law” as per clause 23, raised the claim of reimbursement of such increase in cost to Oil India Ltd.. However, the said claim was kept on rejected by the later party.

Upon rejection of the claims, SEAMEC Ltd. eventually invoked the arbitration clause in the year 1999 and thereby matter was referred to an Arbitral Tribunal.

### **Judgement of Arbitral Tribunal :**

The Tribunal through testimony of the witness of Oil India Ltd. came across the fact that the company had been aware at time of entering the contract that changes in the oil price was never brought out by any Statutory Legislation, but always through the Government’s Order, Resolution, Circular etc. and taking into the consideration of the above facts the Tribunal interpreted the Clause 23 in liberal sense stating that while an increase in HSD price through a circular issued by Government is not a “law” in the literal sense but has the “force of law” and thus falls within the ambit of the clause.

While granting the award, the Tribunal has also observed that harmonious approach should be made reading or taking the document as whole and exclusion should not be readily inferred unless it is clearly stated in the particular clause of the document. Also, a consistent interpretation should be given with a view to smooth working of the system, which the document purports to regulate. Here particularly, the increase in the cost of the contractor due to rise in the price of HSD is one of the subject matters of the contract and thus, Clause 23 may be termed as “Habendum Clause”, wherein the rights granted to the SEAMEC Ltd. were required to be construed broadly.

### **Judgement of District Court :**

Aggrieved to the award, Oil India Ltd. has challenged the order before the District Court as per section 34 of the Arbitration Act. Court in the year 2006 rejected the appeal of the company stating that the order of the tribunal was not without the basis or patently illegal thereby nor against the public policy of India and did not warrant judicial interference.

### **Judgement of High Court :**

Upon the decision of the District Court, Oil India Ltd. has once again challenged the matter to the High Court of Assam in the same year. High court, while running through the facts, was of the view that clause 23 of the contract must have been inserted to meet the uncertain and unforeseen eventualities but not to revise the fixed rate contract. Further it observed that contract had the clause 44.3 “force majeure” clause (unforeseeable circumstances that prevent someone from fulfilling a contract) which clearly defined “the acts and regulations of the Government” to revoke a contract. Considering the clause, High Court believed that clause 23 was similar in nature to it. Further, Court believed that clause 23 of the contract must have made the part of the contract keeping in mind section 56 of the Indian Contract Act, 1872 – “Agreement to do impossible act” and also the matters of the clause were resembled to the “doctrine of frustration and supervening impossibility”. Thus, High Court vide its impugned judgement in the year 2007, exercising the power granted under section 37 of the Arbitration Act, allowed the appeal of Oil India Ltd. and set aside the award granted by the Tribunal considering the same as an erroneous and thus against the public policy of India.

Aggrieved from the above, SEAMEC Ltd. appealed against the judgement to Supreme Court.

### **Arguments before the Supreme Court :**

Arguments of SEAMEC Ltd. :

- High Court while sitting the judgement imparted its own personal view while interpreting clause 23, however the Arbitral Tribunal has correctly interpreted the clause.

- When the two possible interpretation could be taken on the question of law, according the judgement of Apex Court in the case of McDermott International Inc. v. Burn Standard Co. Ltd. [(2006) 11 SCC 181] High Court could not substitute the view taken by Arbitral Tribunal and set aside the same.
- The award granted by the Arbitral Tribunal was beyond the judicial review and thus High Court could not interfere with it as it was neither against the public policy of India nor patently illegal.

### Arguments of Oil India Ltd. :

- Arbitral Tribunal essentially rewrites the contract and thus awarding additional reimbursement not contemplated under Clause 23, is perverse and patently illegal. It was thereby against the public policy of India also.
- Arbitral Tribunal by overlooking the terms and conditions of the contract, contemplated the provision of section 28 of the Arbitral Act and thereby travel beyond its jurisdiction.
- It was not case where Tribunal accepted one view on the question of law out of two possible. Tribunal has failed to follow the cardinal principle of interpretation of contract by not consider the contract as whole and thus the findings of the Tribunal were perverse and unreasonable, attracts the provisions of Section 34 of the Act.

### Questions answered by the Supreme Court in this case:

1. Whether the interpretation provided of the contract in the award of the Tribunal was reasonable and fair, so that the same passes the muster under Section 34 and thus, impede the judicial interference.
2. Whether Clause 23 akin to the “force majeure” clause and attract the provisions of Section 56 of the Indian Contract Act, 1872?
3. Whether circular issued by the Government of India to raise the prices of HSD be considered as “change in law” as broadly interpreted by Arbitral Tribunal?

To answer the first question, Supreme Court dig into the Section 34 of the Arbitration Act. Bare reading of the relevant part of the Section 34 of the Act goes like :

### **34. Application for setting aside arbitral award**

*(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

*(2) An arbitral award may be set aside by the Court only if—*

*(a) the party making the application furnishes proof that—*

*(i) ....*

*(ii) ....*

*(iii) ....*

*(iv) ....*

*(v) ....*

*(b) the Court finds that—*

*(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

*(ii) the arbitral award is in conflict with the public policy of India.*

*[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,— (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81]*

*(3) .....*

*(4) .....*

Stating the earlier judgement in the case of Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd. [2019 SCC Online SC 1656], Supreme Court cleared that judicial courts have limited scope of interfering with the award granted by the Arbitral Tribunal under Section 34. Courts usually were not required to examine the merits of the interpretation provided in the award by the arbitrator, if it concludes that such an interpretation was reasonably possible.

The court could only be interfered if it found that perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation. By indulging section 34, the wisdom behind option for alternate dispute resolution through Arbitral Tribunal provided in the act, must not be frustrated. However, in this case Oil India Ltd. has argued that the view taken by the Tribunal was not even a possible interpretation, therefore the award being unreasonable and unfair suffered from perversity as well as suffers from patent illegality and thereby against the public policy of India sets the ground for court to intervene.

With regards to the second question, under the events of “force majeure” Supreme Court observed the provisions of Indian Contract Act and Common Laws. Supreme Court stated that when the parties to contract have not provided for what would take place when an event which renders the performance of the contract impossible, then Section 56 of the Indian Contract Act applies. And, when Section 56 applies, the contract becomes void. Further, in such cases Section 65 of the Indian Contract Act, comes into the picture. According the Section 65, when the contract becomes void, any person who has received any advantage under such contracts, that person is bound to make the compensation for the loss to the other. In this case, contract specifically recognising the “force majeure” clause through Clause 44.3. Further, parties under their commercial wisdom, decided the rate of temporary “force majeure” events under Clause 23. Therefor it was not in line with the effect of frustration as contemplated under section 56 of the Indian Contract Act, under which all future obligation of parties to the contract stood discharged. Thereby Court was not fully agreed with the observation put up by the High Court.

With regards to the interpretation of the Tribunal considering the circular as “change in law”, by citing the judgement of the of Sumitomo Heavy Industries Limited v. Oil and Natural Gas Corporation Limited [(2010) 11 SCC 296] Court stated that broad interpretation should be supported with evidence on place through which any reasonable person can take plausible view and accordingly sustained the award. In the present case, no such evidence on record suggests that the parties to the contract had agreed to a broad interpretation to the clause in question.

Further in this context, Court held that wide interpretation cannot be accepted as Tribunal even though observed, failed to apply the thumb rule of the interpretation that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In this matter court found the further evidence in the contract which clearly suggesting that contract was made to be the Fixed Rate Contract.

### **Final Judgement :**

Supreme court held that it neither agreed with broad interpretation of the Tribunal nor fully with view of the High Court. Court observed that contract had the clauses which described that the rates, terms, and conditions were to be in the force until the completion of the last operation of work. Further, “Consolidated Statement of Equipment and Services Furnished by Contractor or Operator for the Onshore Rig Operation” being part of the contract clearly indicated that fuel would be supplied by the contractor at his expense. In the light of the above clauses of the contract and evidence place on record, Court considered the Tribunal’s interpretation perverse and thereby rejected the appeal placed by the SEAMEC Ltd.

### **Matter post amendments in the act :**

In the above case, appeal was filed to the Apex Court before the amendments take place in the Arbitration Act in the year 2015. Therefor the court has declared its verdict in the light of the pre-amendment law. In the original law, “patent illegality” was not statutorily defined. Various judgement of the Courts had defined the term and was considered as a part of “against the public policy of India”.By inserting sub-section (2A) to the section 34 wide the amendments, “patent illegality” was made the grounds for the appeal to set aside the award independent of public policy. However, sub-section lays down conditions that such appeal can only be considered as ground of appeal if the “patent illegality” appeared on the face of the award. Further such award granted by the Tribunal shall not be set aside merely on this ground of an erroneous application of the law or by reappreciation of the evidence. The same test essentially been laid by the Honourable Court in this matter also. Another amendment was taken place in section 28(3) and accordingly, now the Tribunal can grant the award in accordance with the terms and conditions of the

contract along with other trade usages applicable to the transactions, as compared to pre-amended erawhere tribunal needs to take into consideration of only the terms and conditions of the contract. The awards granted by the Tribunal based on the tradability aspect along with terms and conditions of the contract were mostly became the grounds for the parties to challenge the violation of the patent legality and thus, against the public policy of India under section 34(2). The same was the matter in above case also. However, with the amendment taken place in the year 2015, Law has widened the powers of the tribunal and restricting the courts to intervene in such judgements of the Tribunal.

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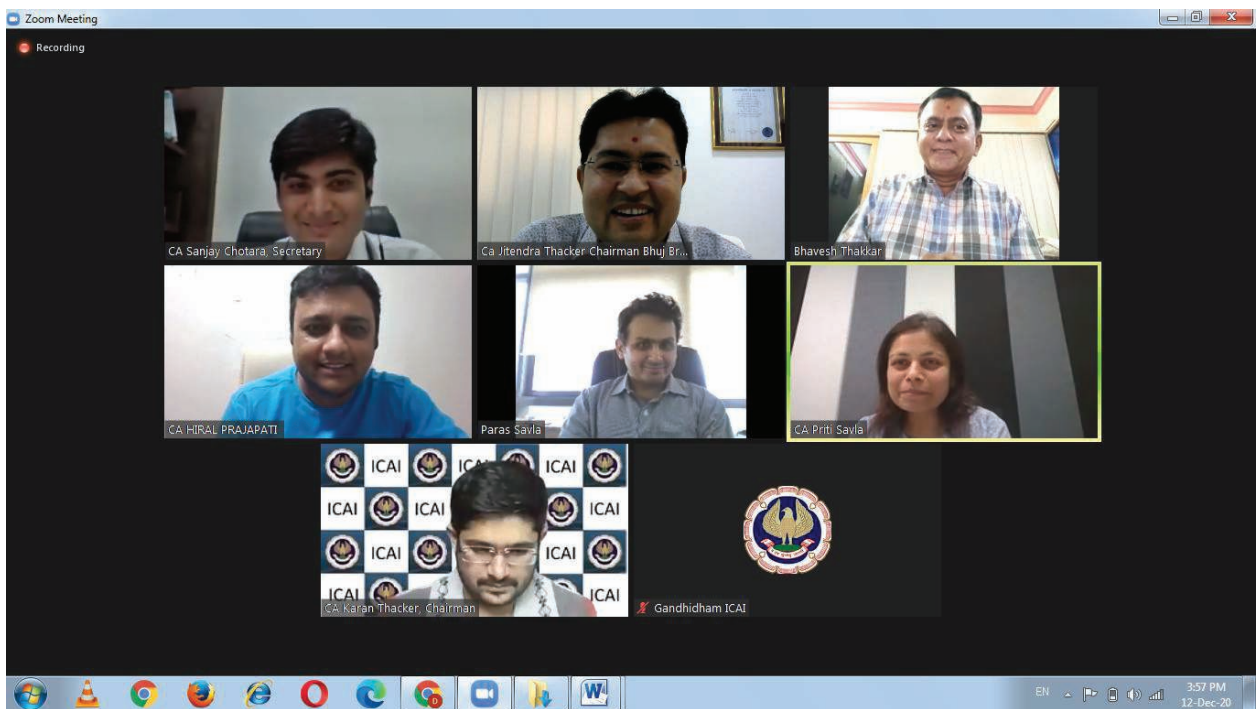
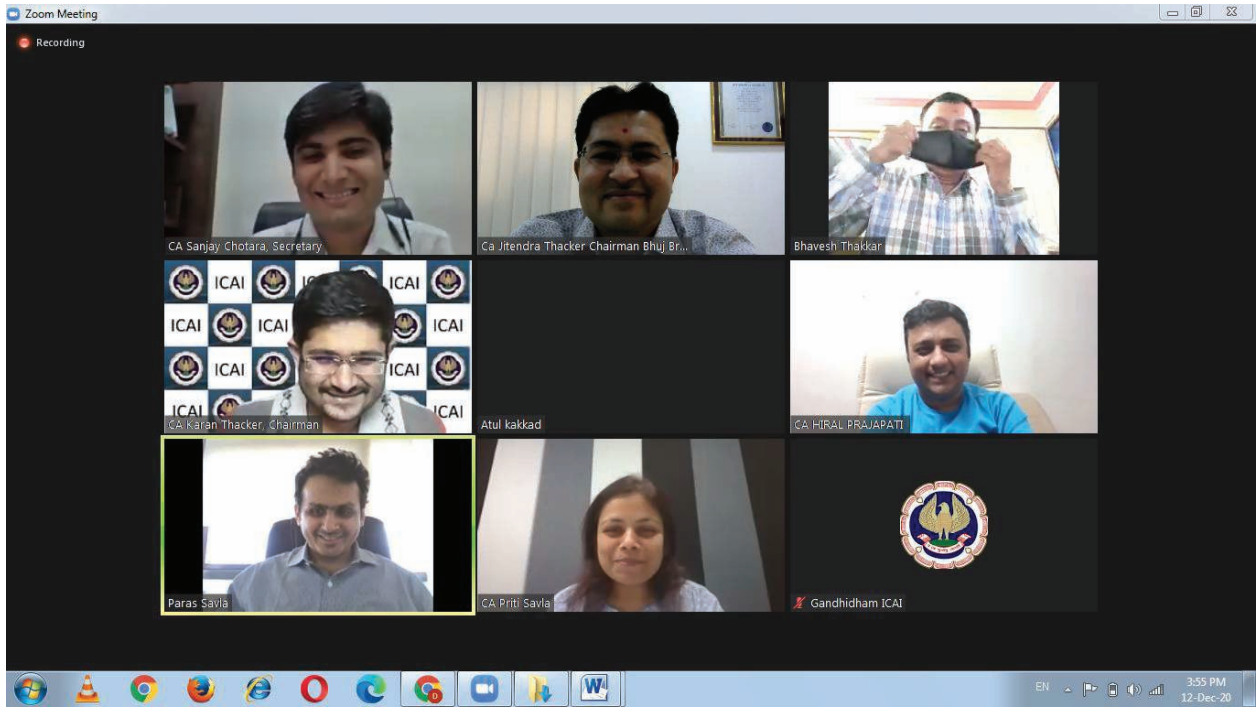
**Contributed by: CA Deep Koradia**  
**B.Com, FCA, DISA(ICAI)**

Sr No	Notification No	Category	Date	Description	Keyword / Reference / Comment	Link
1	90/2020	Central Tax	01-12-2020	Seeks to make amendment to Notification no. 12/2017- Central Tax dated 28.06.2017.	For certain Chemical related products, HSN has to be mentioned at 8 digit level	<a href="#">Click Here</a>
2	91/2020	Central Tax	14-12-2020	Seeks to extend the due dates for compliances and actions in respect of anti-profiteering measures under GST till 31.03.2021.	actions for anti-profiteering measures under GST extended till 31.03.2021	<a href="#">Click Here</a>
3	92/2020	Central Tax	22-12-2020	Seeks to bring into force Sections 119,120,121,122,123,124,126,127 and 131 of Finance Act, 2020(12 of 2020)	Certain provisions of Finance Act 2020 came in force	<a href="#">Click Here</a>
4	93/2020	Central Tax	22-12-2020	Seeks to waive late fee for FORM GSTR-4 filing in UT of Ladakh for Financial year 2019-20	Late fee for GSTR-4 Waived for UT of Ladakh for FY 2019-20	<a href="#">Click Here</a>
5	94/2020	Central Tax	22-12-2020	Seeks to make the Fourteenth amendment (2020) to the CGST Rules.2017.	<ul style="list-style-type: none"> <li>- Rule 36(4) - Gap reduced to 5%</li> <li>- For Registration, aadhar Bio-metrix introduced</li> <li>- 1% payment in cash if TO exceeds 50 lakhs in a month</li> <li>- Cancellation of Registration if mismatch in 3B Vs G1</li> <li>- if 3b Not filled for 2 months, G1 will be suspended</li> </ul>	<a href="#">Click Here</a>
6	95/2020	Central Tax	30-12-2020	Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021	Time limit for GSTR-9 & 9C extended to 28-2-2020 for FY 2019-20	<a href="#">Click Here</a>
7	144/2020	Circular - CGST	15-12-2020	Waiver from recording of UIN on the invoices for the months of April 2020 to March 2021	Mentioning of UIN on Invoices till Mar-2021 is waived and refund can be granted with attestation of such invoices by AR of UIN	<a href="#">Click Here</a>

INDUSTRIAL VISIT: 29-12-2020

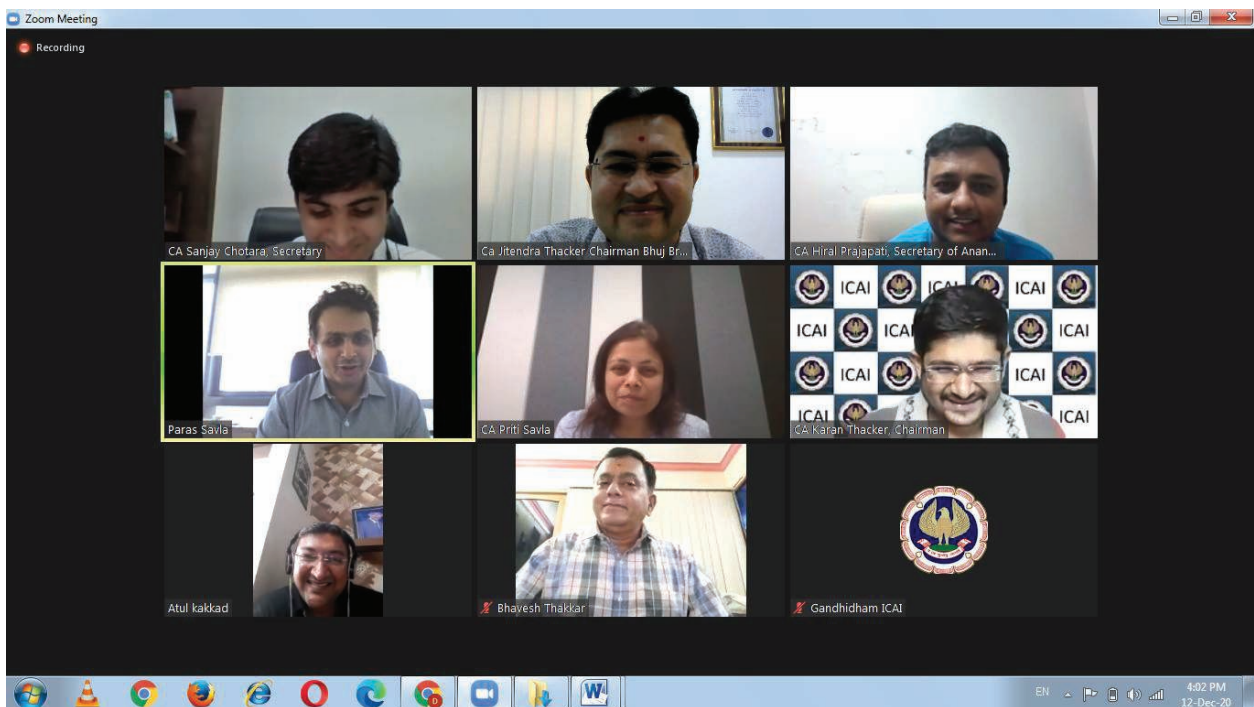
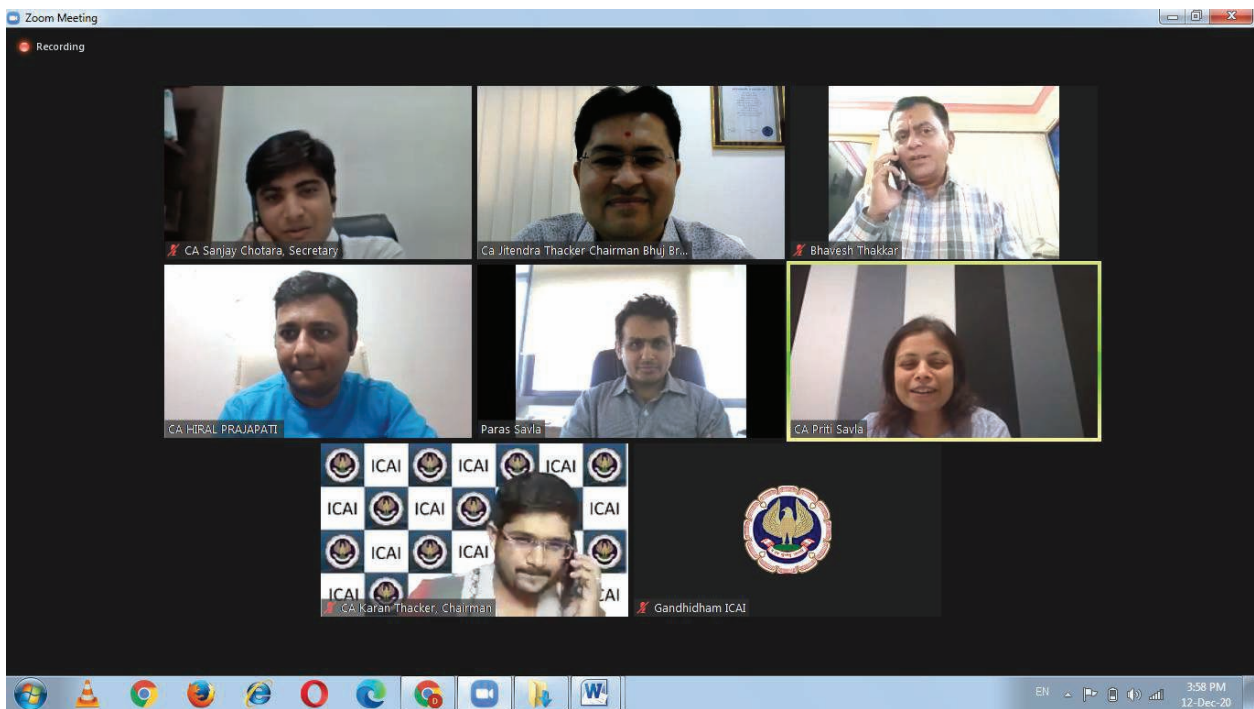


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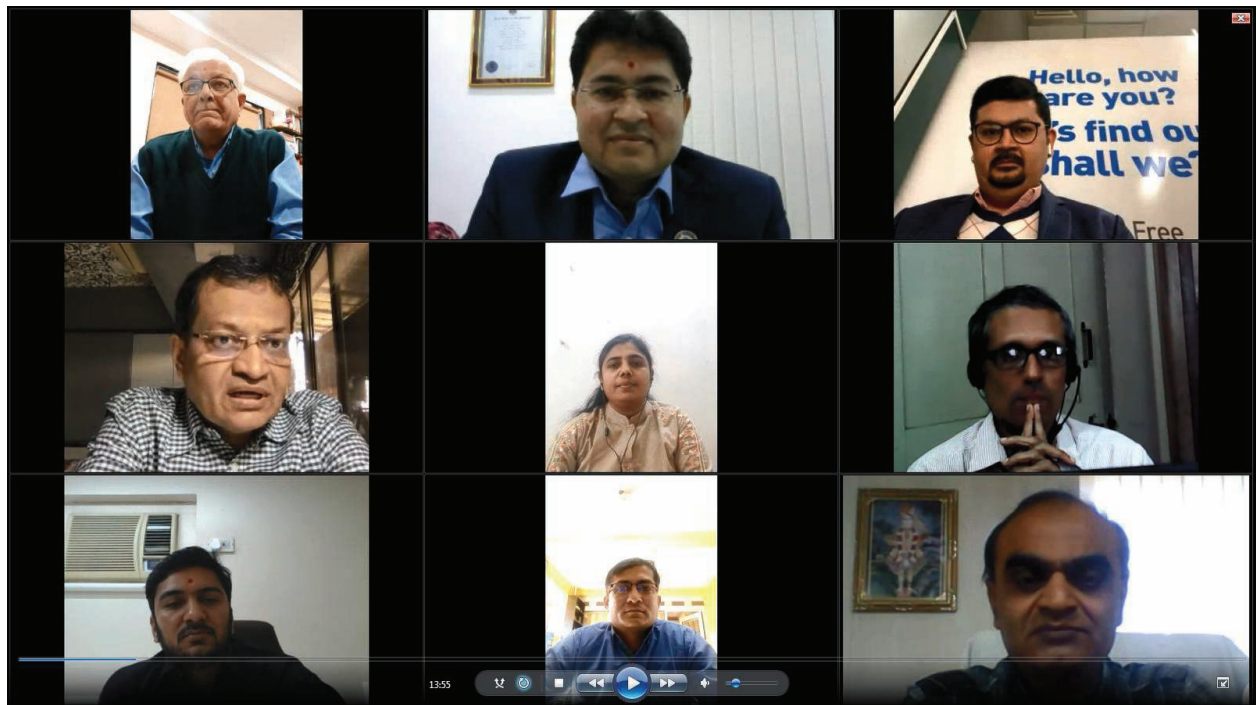




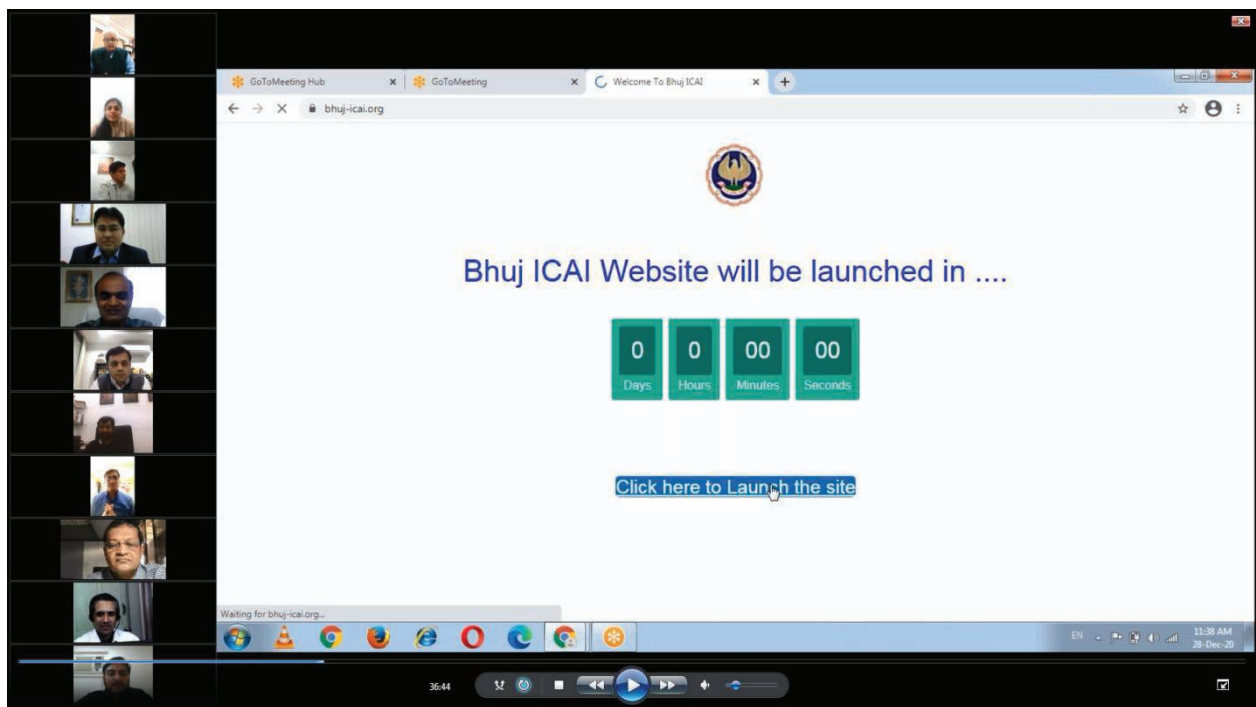
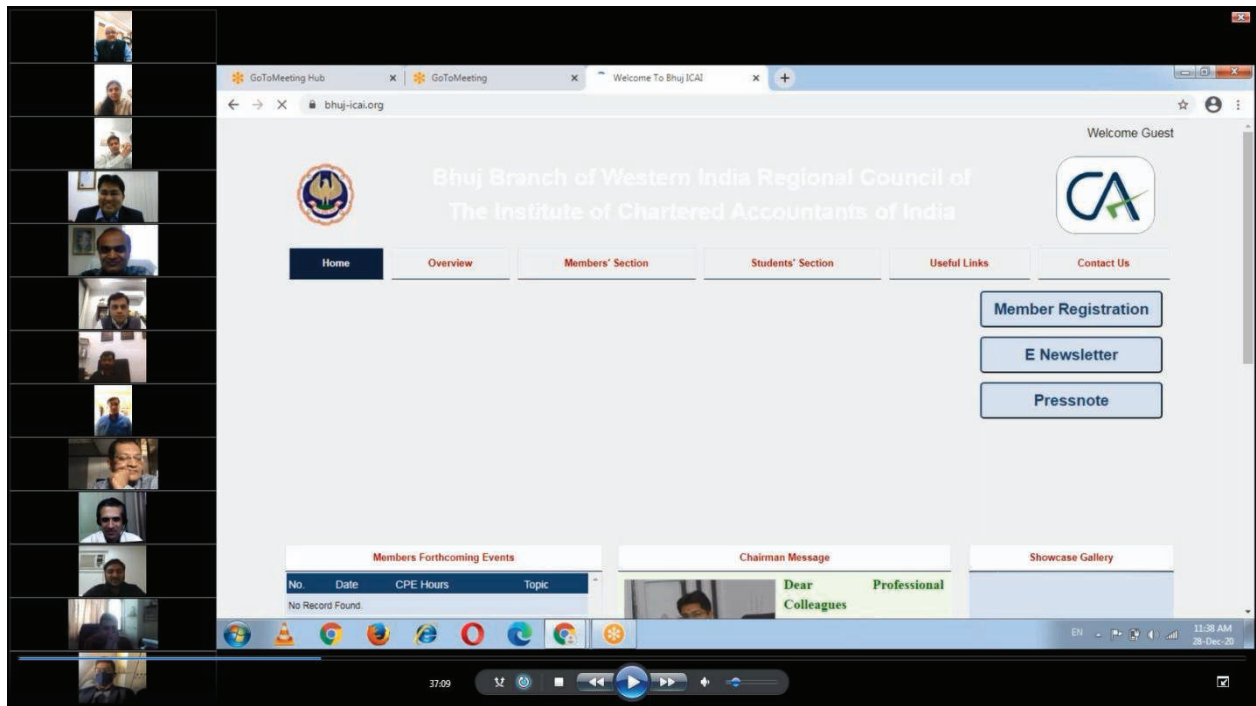
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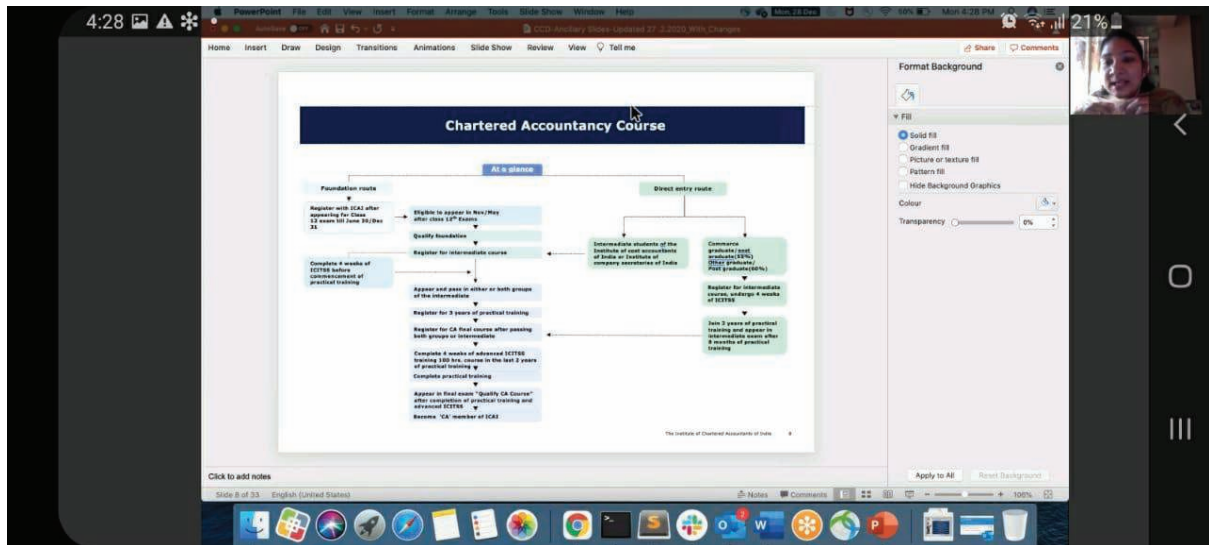
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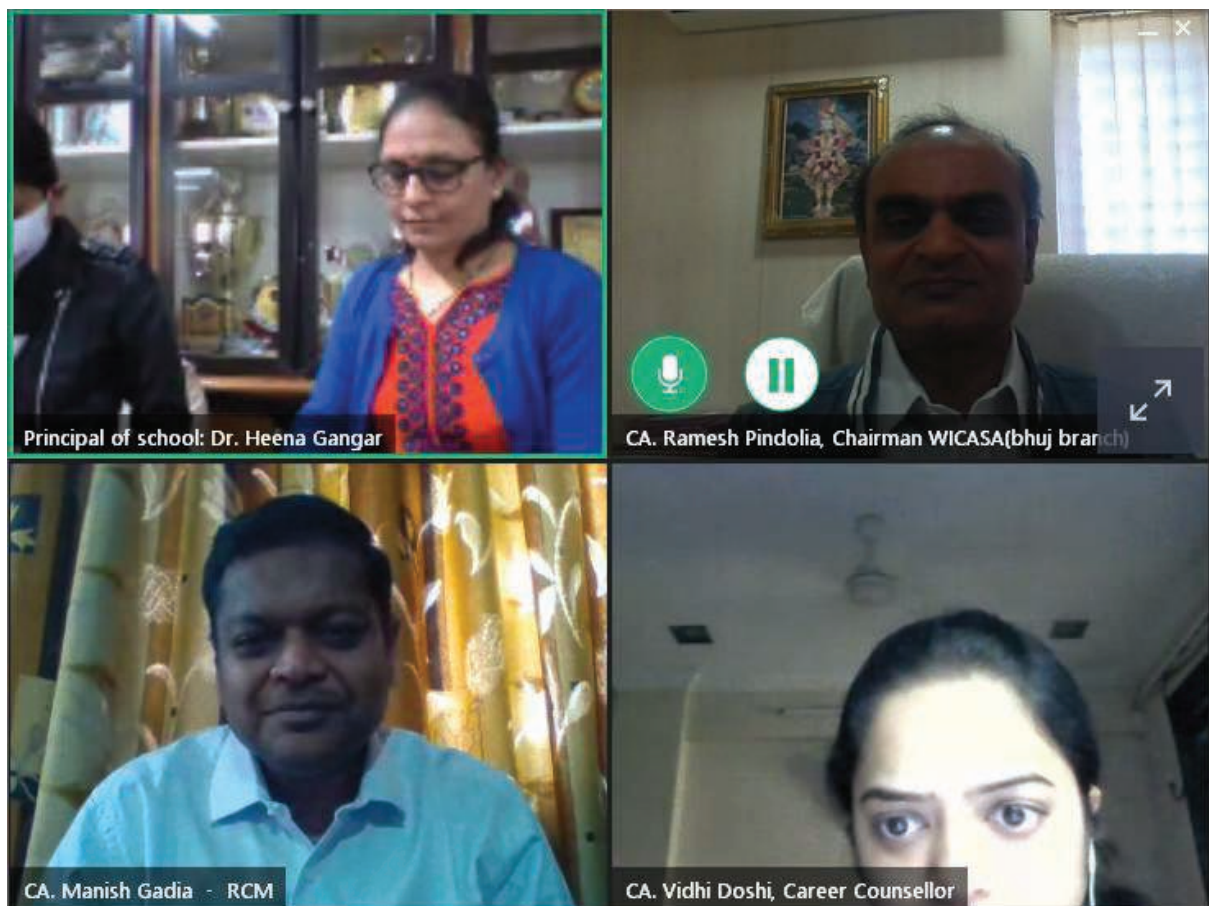


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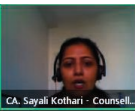
SHREE SAHAJANAND GIRLS INSTITUTE



SHREE MUKTJIVAN SWAMIBAPA MAHILA COLLEGE



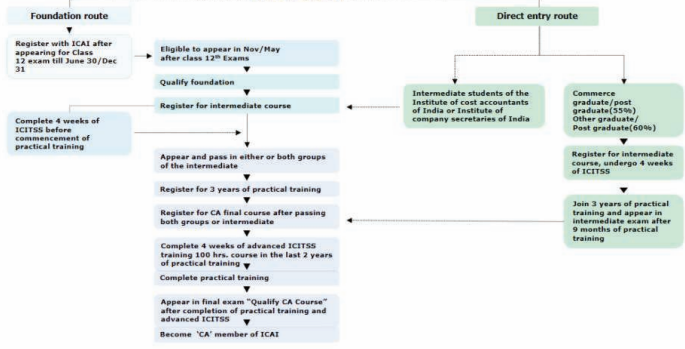
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SHREE R.D.VARSANI SCHOOL



CA. Sayali Kothari - Counsellor

### Chartered Accountancy Course

At a glance



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graph TD
    A[At a glance] --> B[Foundation route]
    A --> C[Direct entry route]
    
    B --> B1[Register with ICAI after appearing for Class 12 exam till June 30/Dec 31]
    B1 --> B2[Eligible to appear in Nov/May after class 12th Exams]
    B2 --> B3[Qualify foundation]
    B3 --> B4[Register for intermediate course]
    B4 --> B5[Complete 4 weeks of ICTSS before commencement of practical training]
    B5 --> B6[Appear and pass in either or both groups of the intermediate]
    B6 --> B7[Register for 3 years of practical training]
    B7 --> B8[Register for CA final course after passing both groups or intermediate]
    B8 --> B9[Complete 4 weeks of advanced ICTSS training 100 hrs, course in the last 2 years of practical training]
    B9 --> B10[Complete practical training]
    B10 --> B11[Appear in final exam "Qualify CA Course" after completion of practical training and advanced ICTSS]
    B11 --> B12[Become "CA" member of ICAI]
    
    C --> C1[Intermediate students of the Institute of cost accountants of India or Institute of company secretaries of India]
    C --> C2[Commerce graduates/post graduates(55%) Other graduates/ Post graduate(60%)]
    C1 --> C3[Register for intermediate course, undergo 4 weeks of ICTSS]
    C2 --> C3
    C3 --> C4[Join 3 years of practical training and appear in intermediate exam after 9 months of practical training]
    C4 --> B8
    
    B4 --> C3
    B8 --> C4
    
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The Institute of Chartered Accountants of India

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KUTCHMITRA DAILY



મુજ સીએ બ્રાન્ચની વેબસાઇટના ઉદ્ઘાટનની તસવીર.

# સીએની ભુજ બ્રાન્ચની વેબસાઇટ શરૂ

ભુજ, તા. ૩૦ : આજનો પુરા ટેકનોલોજીનો છે, વ્હોબલ વિલેજ કહેવાય છે, ટેકનોલોજીનું આપણા વિકાસમાં મોટું યોગદાન છે. ટેકનોલોજી સમય બચાવે છે, એવું ભુજ બ્રાન્ચ એક ચાર્ટર્ડ અકાઉન્ટન્ટ્સની વેબસાઇટ ઇન્સ્ટોલમેન્ટ વર્ચ્યુઅલ ઉદ્ઘાટન કરતા મુખ્ય અધિષ્ઠિત ઉપસ્થિત આઇસીઆઇઆઇના વાઇસ પ્રેસિડેન્ટ સીએ બિહાર જાબુસરીઆએ જણાવ્યું હતું.

ઓનલાઇન કાર્યક્રમમાં શ્રી જાબુસરીઆ અને અધિષ્ઠિત તરીકે સેન્ટ્રલ કોન્સિલ મેમ્બર સીએ. અનિકેતભાઈ તલાટી

ઉપસ્થિત રહ્યા હતા. સભ્યો અને વિદ્યાર્થીઓની હાજરીમાં ભુજ બ્રાન્ચના ચેરમેન વર્ચ્યુઅલ સમારોહમાં આઇસીઆઇઆઇના વાઇસ પ્રેસિડેન્ટ અને સેન્ટ્રલ કોન્સિલના સભ્ય જોડાયા.

જિતેન્દ્ર કક્કરે મહેમાનોને આવકાર્યા હતા અને બ્રાન્ચની પ્રવૃત્તિઓ અંગે માહિતી આપી હતી.

આ પ્રોગ્રામ સાથે આયોજિત કોન્સર્ટી કાર્યક્રમમાં આવેલા કેરકારો વિષે વડેદરાથી નિખાત

સીએ અભ્યભાઈ દેશાઇએ વક્તવ્ય આપ્યું હતું. બ્રાન્ચના વાઇસ ચેરમેન રમેશભાઈ પિંડોરિયાએ મહેમાનોનો પરિચય અને આભારવિધિ સીએ ટીપ કોરડિયાએ કરી હતી. પ્રોગ્રામનું સંચાલન બ્રાન્ચ ટ્રેઝરર પૂર્વ દોશીએ કર્યું હતું.

કાર્યક્રમમાં સિનિપર મેમ્બર ઇશરભાઈ દેશાઇ, નીતિનભાઈ કક્કર, જાગૃતભાઈ અંજલિયા, બ્રાન્ચના પાસ્ટ ચેરમેન બંદીભાઈ પોપટ, ભાવીબેન કક્કર, દર્શનભાઈ મંગેલ અને હાર્દિક કક્કર તેમજ ૧૦૦થી વધુ સભ્યો ઉપસ્થિત રહ્યા હતા.



## ચાર્ટર્ડ એકાઉન્ટન્ટ ઓફ ભુજ બ્રાન્ચની વેબસાઇટ વર્ચ્યુઅલ રીતે ખુલ્લી મૂકાઇ

ભુજ : ભુજ બ્રાન્ચ ઓફ ચાર્ટર્ડ એકાઉન્ટન્ટની વેબસાઇટનું વર્ચ્યુઅલ રીતે આઈસીએઆઈના વાઈસ પ્રેસિડેન્ટ સી.એ. નિકાર જાંબુસરિયા અને ગેસ્ટ ઓફ હોનર સેન્ટ્રલ કાઉન્સિલ મેમ્બર સીએ અનિકેતભાઈ તલાટી દ્વારા ખુલ્લી મૂકવામાં આવી હતી.

આ પ્રસંગે ભુજ બ્રાન્ચના ચેરમેન સી.એ. જીતેન્દ્ર ઠક્કર દ્વારા મહેમાનો તથા મેમ્બરોને આવકાર આપ્યો હતો અને ભુજ બ્રાન્ચ દ્વારા કરવામાં આવતી પ્રવૃત્તિઓ વિશે માહિતગાર કર્યા હતા. બ્રાન્ચના સભ્યો અને વિદ્યાર્થીઓને સારી સગવડતા મળી રહે તેની માટે વેબસાઇટ બનાવવાનું નક્કી કરાયું હતું.

બ્રાન્ચની વેબસાઇટનું ઓનલાઇન ખુલ્લી મૂકતાં વાઈસ પ્રેસિડેન્ટ નિકારભાઈ જાંબુસરિયાએ



જણાવ્યું હતું કે, આજનો યુગ ટેકનોલોજીનો યુગ છે અને આ વેબસાઇટથી સમયનો બચાવ થશે સાથે સાથે વિકાસમાં પણ ખૂબ મહત્વનો ફાળો રહેશે.

આ ઉપરાંત કાર્યક્રમમાં હાલમાં જીએસટીના કાયદામાં આવેલા નવા ફેરફારની માહિતી વડોદરાના જીએસટી નિષ્ણાંત અભયભાઈ શાહ

દ્વારા આપવામાં આવી હતી. સમગ્ર કાર્યક્રમનું સંચાલન પૂર્વી દોશીએ તથા આભારવિધિ ટિપ કોરળિયાએ કરી હતી. આવકવેરા અને જીએસટી રીટર્નની છેલ્લી તારીખ નજીક હોવા છતાં આ કાર્યક્રમમાં સભ્યો બહોળી સંખ્યામાં હાજર રહ્યા હતા અને કાર્યક્રમમાં માહિતી મેળવી હતી.