CASE STUDY 6

Luminous Ltd. is a company engaged in the manufacture of solar panels. The vision of the company is to provide the most compelling value in solar energy industry. By value, the company means designing and installing highest quality solar panels on a timely basis with proper safety standards and lowest cost. The company aims at providing the country with clean, abundant, low cost, distributed and renewable energy. It is one of the largest vertically integrated solar company that offers services across the spectrum of photovoltaics manufacturing. The company offers and produces high efficiency solar panels with higher performance and enhanced reliability. The company has the following vision:

"To be world class leader in businesses that contribute to nations in building infrastructure through sustainable value creation".

Luminous Ltd. has always been a standard for all the manufacturing companies for product quality. The company has multiple quality checks during its solar module production. This helps to ensure flawless production of solar panels and hence attain utmost customer satisfaction.

The company believes that in resource-scarce developing countries, identifying and targeting R&D policies in critical areas, such as energy, is particularly important to maximize benefits derived from limited funds and skilled manpower. Energy R&D policy analysis and formulation in a developing country should not be carried out in isolation — it must be consistent with overall technology policy, as well as national energy policy. The management of the company is of the view that ultimately, energy R&D policies and priorities must support the goals of national socioeconomic development. Therefore, these priorities must be determined on the basis of an analytical framework that recognizes and addresses national development objectives. The company's Research & Development department is working very hard to come out with solar panels with the lowest possible cost, so as to compete with the foreign manufacturers of solar panels. During the FY 2023-24, the Government gave the following grants to Luminous Ltd. for its business of solar panel:

1. ₹ 30 lakhs for past research of technology related to solar system. There is no condition attached to the grant.
2. ₹ 5 lakhs towards purchase of machinery of ₹ 15 lakhs. Useful life of the machinery is 5 years and depreciation on the machinery is to be charged on straight line basis.

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3. 3 acres of land to set up a plant. The fair value of the land is ₹ 20 lakhs.

4. Government grant of ₹ 20 lakhs to defray expenses for environmental protection. Expected environmental costs to be incurred is ₹ 6 lakhs per annum for the next 5 years.

B R Sridharan & Associates are statutory auditors of company for FY 2023-24. The said chartered accountant firm has a robust team of skilled and proficient Chartered Accountants, who can handle all financial services areas relating to accounting, auditing and assurance, income tax, GST, company law matters, foreign exchange matters, etc.

During the financial year under consideration, the Board of Directors of the company passed a board resolution to sell one of the company's undertakings out of the multiple undertakings of the company. One of the directors of the company, Mr. Ramesh, is of the view that the board can exercise this power with the consent of shareholders by way of an ordinary resolution and passing only a Board resolution would not be sufficient. The other directors on the Board, however, did not agree with him. The investment of the company in the said undertaking which has been proposed to sell is 22% of its net worth as per the last audited balance sheet of F.Y. 2022-23.

Further, Mr. Ramesh stays in Delhi with his wife. With respect to one of his immovable house properties in USA, he took the professional services of a consulting engineer, Mr. George, based in Chennai. Mr. George has high engineering qualifications, specialised background and wide experience and can plan, design and supervise and help in undertaking maintenance of any type of structure according to the needs of the client.

On 31.05.2023, Mr. Ramesh took his family to an amusement park located in Gurugram (Haryana). This particular amusement park has various attractions such as rides and games as well as other events for entertainment purposes. For such visit, son of Mr. Ramesh who stays in Jaipur for his studies came to Delhi. Mr. Ramesh bought three tickets for the amusement park.

Luminous Limited is based in Delhi, primarily. During the FY 2023-24, the company receives legal services from an attorney in Dubai (unrelated person) in relation to registration of company's trademark in Dubai. The company paid AED 10,000 for the same to the attorney in Dubai.

The company has 10 directors on its board. Three of the directors have retired by rotation at the Annual General Meeting conducted recently. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM

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could not complete the said business, it was adjourned to the same day in the next week, at the same time and place. At this adjourned meeting also, the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Further, Mr. Baldev is one of the directors of the company. During the financial year under consideration, the company paid him the sitting fees amounting to ₹ 35,000, for the month of December.

The company has its retail showrooms in Patiala and Delhi and factory at Ludhiana. During the F.Y. 2023-24, the company has manufactured 1,50,000 units of solar panels at its factory at Ludhiana, Punjab. The management decided to transfer half of the units manufactured to one of its retail showrooms in Patiala and the second half to its retail showroom in Delhi for sale therefrom. The factory and the aforesaid retail showrooms are registered under GST, in the states where they are located. Further, the company has obtained separate registrations under GST, for Ludhiana factory and the Patiala showroom. The management of the company understands that such transfer shall not be considered as supply under GST as such transfers are without any consideration.

I. Multiple Choice Questions

1. Is understanding of Mr. Ramesh for obtaining prior consent for selling one of the undertakings of the company, correct, considering the fact that Luminous Limited is not a private company?

   (a) No, as only board's resolution is required in this case, which has been duly passed.

   (b) No, as the Board can exercise this power with the consent of the shareholders by a special resolution and not on its own simply by passing of an ordinary resolution.

   (c) Yes, his understanding is correct.

   (d) Partly correct, as the Board shall exercise the powers with the consent of the company by an ordinary resolution and not only by passing a Board resolution at a Board meeting. Further, prior approval of the Registrar of Companies is also required.

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2. What is the place of supply with respect to the professional service rendered by Mr. George to Mr. Ramesh?

   (a) Chennai

   (b) Delhi

   (c) USA

   (d) Place of supply is not relevant, as such services are not liable to GST as the property is situated outside India.

3. What is the place of supply with respect to the tickets bought by Mr. Ramesh for the amusement park?

   (a) Delhi

   (b) Gurugram

   (c) With respect to tickets purchased for Mr. Ramesh and his wife, the place of supply is Delhi and for the ticket purchased for his son, the place of supply is Jaipur.

   (d) Either Delhi or Gurugram

4. Which of the following is the correct statement with respect to the GST liability in case of the fees paid to Mr. Baldev?

   (a) GST shall be payable by Luminous Ltd. under reverse charge mechanism.

   (b) GST shall be payable by Mr. Baldev.

   (c) Sitting fees paid to the director of a company is not liable to GST.

   (d) Sitting fees paid to the director of a company is treated as salary paid to the director and is subjected to deduction of TDS under section 192 of the Income Tax Act, 1961 and not liable to GST.

5. Mr. Baldev has got sitting fees amounting to ₹ 35,000 in the capacity of director of company for month of December. Which of following statements is most appropriate in this regard?

   (a) Such an income is taxable in hands of Mr. Baldev under the head "Income from other Sources". The company should deduct tax at source @ 1% while making such payment.

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(b) Such an income is taxable in hands of Mr. Baldev under the head "Salaries". The company should deduct tax at source at rates in force applicable to salaried individual while making such payment.

(c) Such an income is taxable in hands of Mr. Baldev under the head "Income from other Sources". The company should deduct tax at source @ 5% while making such payment.

(d) Such an income is taxable in hands of Mr. Baldev under the head "Income from other Sources". The company should deduct tax at source @ 10% while making such payment.

II. Descriptive Questions

6. (i) Whether the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?

(ii) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?

(iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?

7. Whether the management's understanding related to the transfer of solar panel to the company's retail showrooms, correct, in view of the GST law?

Also determine the place of supply in case of services procured from attorney by Luminous Limited and suggest if the company is required to pay tax under reverse charge on such transaction.

8. How should Luminous Ltd. recognise the government grants in its books of accounts for the F.Y. 2023-24?

ANSWERS TO THE CASE STUDY 6

I. Answers to the Multiple Choice Questions

1. (b) No, as the Board can exercise this power with the consent of the shareholders by a special resolution and not on its own simply by passing of an ordinary resolution.

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Reason: The powers of the Board of Directors of a company are not unrestricted or uncontrollable as Section 180 of the Companies Act 2013 portrays. This Section contains directive provisions which direct that the powers in respect of specified matters shall be exercised by the Board subject to the certain restrictions i.e. in such cases the exercise of powers by the Board shall be restricted as per law. Section 180 is not applicable to a private company.

(i) Matters in respect of which powers shall be exercised after obtaining consent by a special resolution: According to Section 180 (1), following are the matters in respect of which the Board shall exercise the powers with the consent of the company by a special resolution and not on its own simply by passing a Board resolution at a Board meeting:

(a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. In other words, out of multiple undertakings of a company even if one is sold, leased or disposed of, either wholly or substantially, the consent by special resolution shall be required.

2. (b) Delhi

Reason: The place of supply of services,–––

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

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(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

3. (b) Gurugram

Reason: The place of supply of following services-

(i) services provided by way of admission to following types of events: cultural, scientific, sporting, artistic, entertainment.

(ii) services provided by way of admission to amusement park or any other place.

(iii) services ancillary to the above-mentioned services.

is the place where the event is actually held or where the park or such other place is located.

4. (a) GST shall be payable by Luminous Ltd. under reverse charge mechanism.

Reason: Sitting fee paid to director – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to ₹ 35,000, payable to Mr. Baldev by Luminous Ltd., is liable to GST under reverse charge and thus, recipient of service – Luminous Ltd. – is liable to pay GST on the same.

5. (d) Director's sitting fees are not in nature of salary. Such income is taxable under head "Income from other Sources". Further, company should deduct tax at source on such fees @ 10% in accordance with provisions of section 194J of Income Tax Act, 1961.

II. Answers to the Descriptive Questions

6. In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a

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director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such director was put and lost or he has given a notice in writing addressed to the company or the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answers to the asked questions shall be as under:

(i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.

(ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.

(iii) Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM.

Accordingly, the directors will retire as soon as the AGM is held on its due date. Further, as per Section 96 (dealing with Annual General Meeting), every company other than a One Person Company is required to hold an Annual General Meeting each year. Hence, it is necessary for the company to hold the AGM, where the directors liable to retire by rotation shall retire. In case AGM is not held till the last date on which it should have been held, the term of retiring directors ends on this last date and it cannot be extended till the new date when the AGM shall be held. As the calling of the AGM is the duty and responsibility of the directors, they by omitting to call the AGM on its due date cannot take advantage of their own fault and by that means cannot extend their own continuance in the office for any period of their choice and as long as the holding of the next AGM does not take place.

7. **Stock transfers or branch transfers qualify as supply:** It is a common practice in business that one branch supplies services to another branch of same entity without

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consideration. Similarly, goods are transferred among different units of same entity free of cost, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. These transactions are termed as self-supplies.

Under GST, these transactions undertaken, even without consideration, will also qualify as supply, provided the transfer of goods or services is between

(i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or

(ii) establishments of distinct persons.

The establishments of a person with **separate registrations** whether within the same State/UT or in different States/UTs are considered as distinct persons as per section 25(4) of the CGST Act.

Therefore, transfer of solar panels from Ludhiana factory to showroom in Delhi will be considered as a supply under GST.

Also, since the company has obtained separate registrations for the Ludhiana factory and the showroom in Patiala, the transfer of solar panels will also constitute supply.

Service of Attorney taken by Luminous Limited:

In the given case, the service provider i.e. the attorney, is outside India, and the service recipient i.e. Luminous Limited, is based in Delhi, India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the general rule, i.e. place of supply of services will be the location of the recipient of service, which in this case is Delhi (India).

Further, the given case is import of service in terms of section 2(11) of the IGST Act, as the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. Since the services are imported for a consideration from an unrelated person, the same tantamount to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge *Notification No. 10/2017 Integrated tax(R) dated 28.06.2017*, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the

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recipient of service under reverse charge. Therefore, Luminous Limited will pay GST under reverse charge on AED 10000 paid by it to the attorney in Dubai.

8. Luminous Ltd. should recognise the government grants in its books of accounts in the following manner:

1. Entire grant amount of ₹ 30 lakhs should be recognised immediately in the profit & Loss account as there are no conditions attached to the grant.

2. ₹ 5 lakhs should be recognised as deferred income and will be transferred to profit and loss over the useful life of the asset. In this case, ₹ 1,00,000 [₹ 5 lakhs/5] should be credited to profit and loss each year over period of 5 years.

   Alternatively, ₹ 5,00,000 may be deducted from the cost of the asset and depreciation shall be charged at ₹ 10,00,000 (₹ 15,00,000 – ₹ 5,00,000).

3. Land should be recognised at fair value of ₹ 20 lakhs and government grants should be presented in the balance sheet by setting up the grant as deferred income. Alternatively, deduct the amount of grant from the cost of the asset. In the given case, the land is granted at no cost. It will be presented in the books at nominal value.

4. As per paragraph 29 of Ind AS 20, Grants related to income are presented as part of profit or loss, either separately or under a general heading such as 'Other income'; alternatively, they are deducted in reporting the related expense.

In accordance with the above, presentation of grants related to income under both the methods are as follows:

Method 1: Credit in the statement of profit and loss: The entity can recognise the grant as income on a straight line basis i.e., ₹ 4,00,000 per year (₹ 20 lakhs / 5) in the statement of profit and loss either separately or under the head "Other Income".

Method 2: As a deduction in reporting the related expense:

Since the grant relates to environmental expenses incurred/to be incurred by the entity, it can present the grant by reducing the grant amount every year from the related expense i.e., environmental expense of ₹ 2,00,000 (i.e., net expense ₹ 6,00,000 – ₹ 4,00,000).

The Standard regards both the methods as acceptable for the presentation of grants related to income. However, method 2 may be more appropriate when the company can relate the grant to a specific expenditure. The Standard also provides that disclosure of the grant may be necessary for a proper understanding of the financial statements. Disclosure of the effect of the grants on any item of income or expense which is required to be separately disclosed is usually appropriate.

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