

DISCUSSION ON 15

CRITICAL ISSUES

in GST

by Suraj Bhalla &
Pitambar Goel

1st May 2020 (5 PM Onwards)

FREE



1 Hour

CE Uplift Unlimited Series #36



RK Bhalla & Co. Chartered Accountants

GST Webinar: Discussion on Critical Issues in GST



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ITC Eligibility on CSR Expenditure

and

**ITC Eligibility on Goods
Lost/Destroyed Due to COVID 19**

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Input

- Under Section 2(59) “input” means any goods other than capital goods used or intended to be **used by a supplier in the course or furtherance of business**

Input Service

- Under Section 2(60) “input service” means any service used or intended to be **used by a supplier in the course or furtherance of business**

Capital Goods

- Under Section 2(19) “capital goods” means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and **which are used or intended to be used in the course or furtherance of business**

CSR Expenditures

Free distribution of Mask/Ventilators etc.

Construction of Hospital

Free Distribution of Food and Beverages

This concept is similar to the concept of claiming of business expenditure under **Section 37 of Income Tax Act, 1961** ("IT Act"). There, the courts in various judgements have discussed the basic principle of "**commercial expediency**". The courts laid down the law that if an expenditure is commercially required to be incurred with a **view to benefit the trade and to facilitate the carrying on the business**, such expenditure will be **allowed** as deduction under Section 37 of the Income Tax Act, 1961.

Sec 16(1) of CGST Act - Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

CSR Activity

- Whether in nature of gift ?

Gifts

- Gift ordinarily means something which is given voluntarily to other person without consideration and the donor should not derive any advantage from such gift.

Section 17(5)(h)

- Input tax credit in respect of goods lost, stolen, destroyed, written off, or disposed of by way of gifts or free samples shall not be available.

Goods destroyed on account of COVID 19

- Covered u/s 17(5)(h)



ITC on Work Contracts and Construction Services

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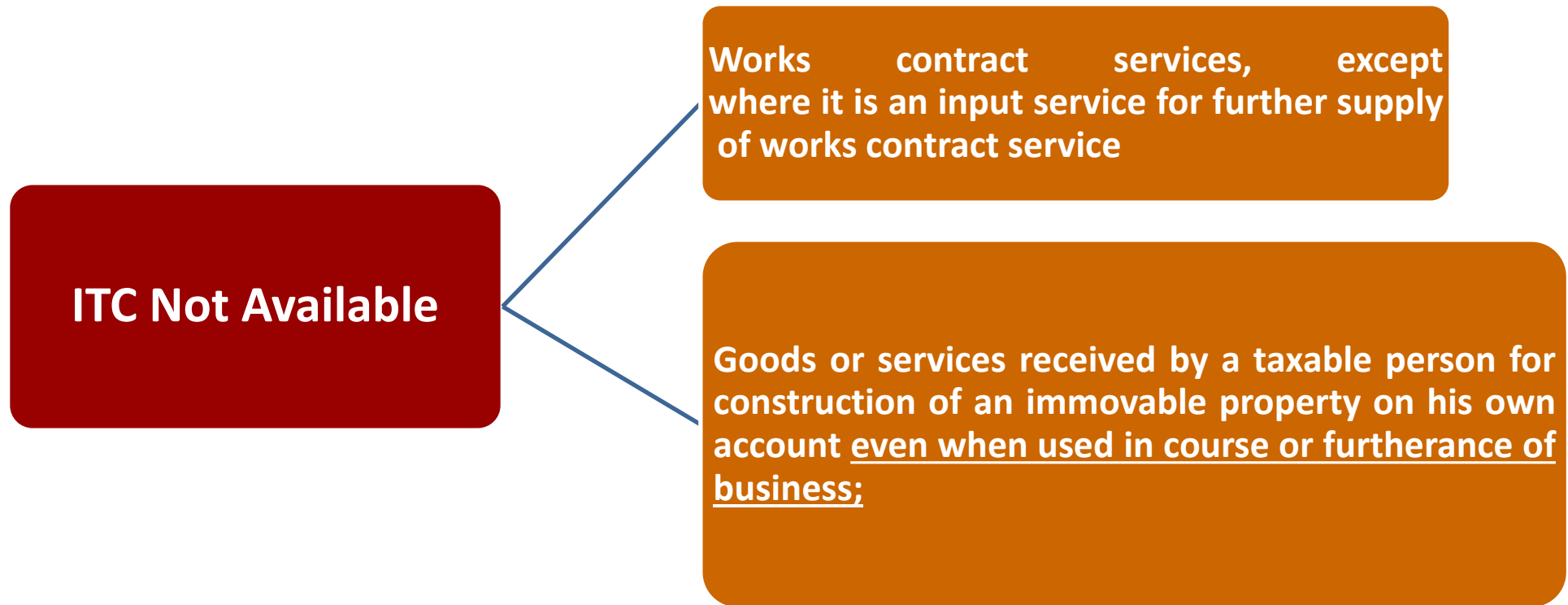
Sec 2(119) states as under:

“works contract” means a contract for building, **construction**, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

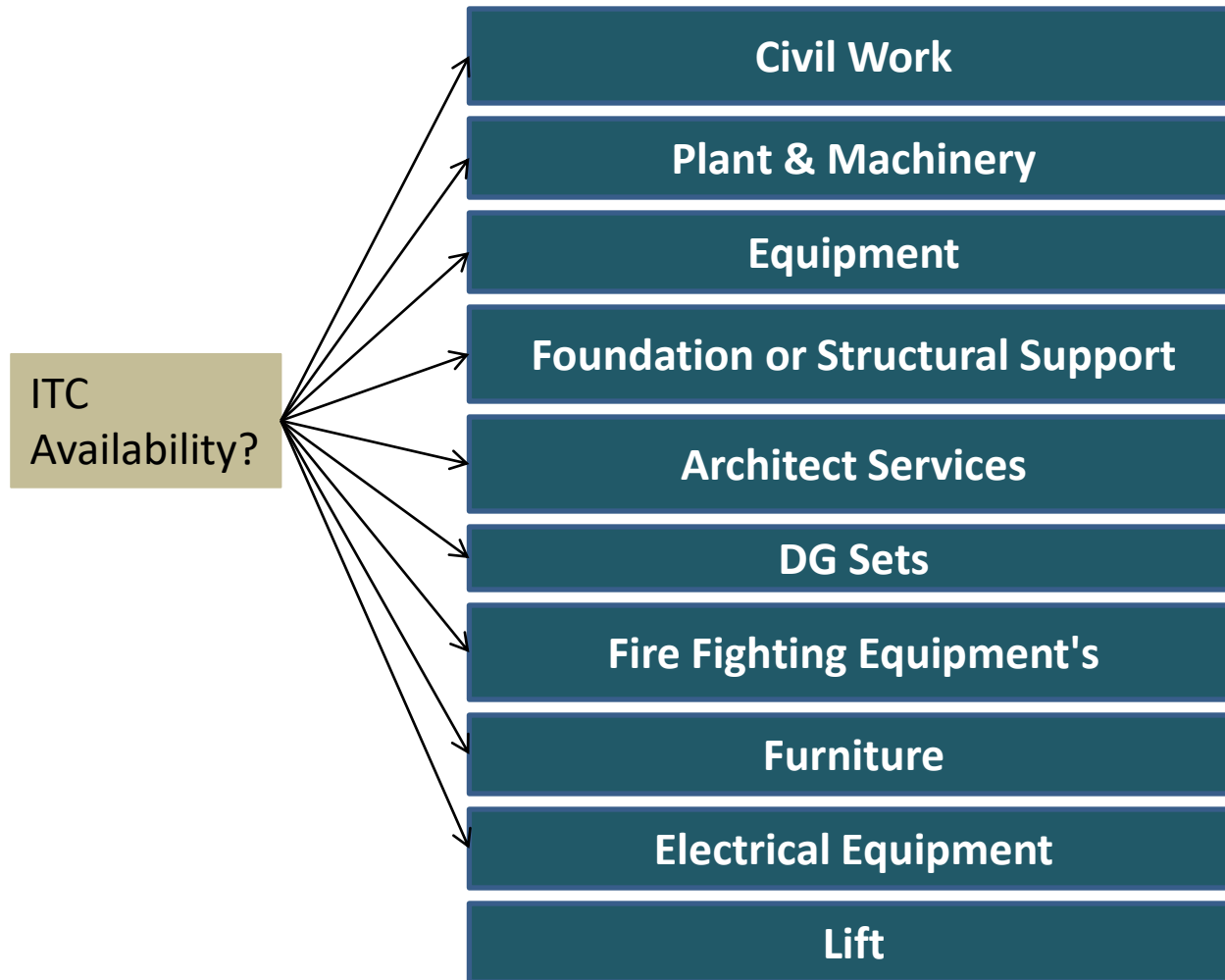
S.No. 6 of Schedule 3 of CGST Act:

The following composite supplies shall be treated as a supply of services, namely:

- (a) works contract as defined in clause (119) of section 2



Construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalisation





Refund Related Clarifications

(Third Amendment) Rules,
2020

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$$\frac{\textit{Turnover of zero rated supply of goods and services}}{\textit{Adjusted total turnover}} \times \textit{Net ITC}$$

Turnover of Zero Rated Supply of Goods

- Rule 89 (4) (C) has been substituted as :“Turnover of zero-rated supply of goods" means the value of zero rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking **or the value which is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier, as declared by the supplier, whichever is less,** other than the turnover of supplies in respect of which refund is claimed under sub rules (4A) or (4B) or both.
- As per the above, the value of exports (zero rated supply) shall be limited to 1.5 times of the domestic price of such goods supplied either by the same supplier (refund claimant) or similarly placed supplier.

Calculation of Refund Value as per Old Provision

Particulars	Reference	Total Amount
Actual Value Zero Rated Supply of Goods	A	15,000.00
Local Sales	B	3,000.00
Net ITC as per Rule 89(4)(B)	C	2,500.00
Total Sales	D (A+B)	18,000.00
Amount of Refund = $(A \times C / D)$	E	2083.33

Calculation of Refund Value as per New Provision

Actual Value Zero Rated Supply of Goods	A	15,000.00
Local Sales	B	3,000.00
Net ITC as per Rule 89(4)(B)	C	2,500.00
Total Sales	D (A+B)	18,000.00
Zero Rated Supply of Goods -(1.5 times of the Domestic value of like goods by the same, (i.e Domestic value is Rs 8,000))	E $(8000 \times 1.5) = 12,000$	12,000.00
Zero Rated Supply of Goods (Lower of A or E)- As per amendment in Rule 89(4)	F	12,000.00
Amount of Refund = $(F \times C / D)$	G	1666.67

Recovery of Refund in case of Exports of Goods (Rule 96B w.e.f. 23rd March 2020)

- Sec 2 (5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
- Where sale proceeds are not realized within period specified in FEMA, 1999
- Said person to deposit the amount along with interest within 30 days of expiry of above period
- Condition applicable for both LUT & Tax paid exports
- Sale proceeds realized after recovery and within time period allowed by RBI, then proper officer to refund the amount recovered. Intimation to be sent to department within 3 months of realization of sale proceeds.



Relaxations in Claiming ITC

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Section 16(2)(d) states as under:

“where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the **value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier**, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed”

Whether, for calculating these 180 days period, the period of Lockdown shall be included or shall not be included?



Notification No. 35/2020 states that, where any time limit for completion or compliance of any action by any authority or by any person as per GST Act falls during the period from 20th March 2020 to 29th June 2020, the same shall be extended upto 30th June 2020



As per my humble submission, the period shall be extended

Section 16(4) states as under:

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~* debit note pertains or furnishing of the relevant annual return, whichever is earlier.

*** Deleted vide Finance Act 2020**



Now, in section 16(4) as amended by Finance Act 2020, the date of debit is delinked with date of invoice, meaning thereby that if debit note is received in FY 2019-20 pertaining to invoice of the FY 2018-19, then assessee can claim ITC by upto due date of furnishing of return for the month of September 2020 instead of September 2019.



The act has been amended, but not yet notified, so we must still follow old time limit, until the amendment gets notified



RCM liability for FY 2017-18 and FY 2018-19 is paid in the month of April 2020.

Whether registered person can claim ITC of RCM paid in the month of April 2020?

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Section 9(3) states as under:

The Government may, on the recommendations of the Council, by notification, specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or service.

**Sec 9(4)-Before
Amendment**

- The central tax, in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person, shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

**Sec 9(4) - After
Amendment
(01.02.2019)**

- The Government may, on the recommendations of the Council, by notification, **specify a class of registered persons** who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

Section 16(4) states as under:

A registered person shall not be entitled to take input tax credit in respect of **any invoice or debit note** for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~* debit note pertains or furnishing of the relevant annual return, whichever is earlier.

*** Deleted vide Finance Act 2020**

Section 31(3)(f) states as under:

A registered person, who is liable to pay tax under sub-section(3) or sub section(4) of section 9, shall issue an invoice, in respect of goods or services or both received by him from the supplier who is not registered, on the date of receipt of goods or services or both.

Section 16(2) states as under:

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

- ✓ he is in possession of a tax invoice or debit note
- ✓ he has received the goods or services or both
- ✓ subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- ✓ he has furnished the return under Section 39



GST on Salary paid to Directors ?

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Under Section 9(3) of the CGST Act, Notification No. 13/2017- Central Tax (Rate) has been issued to prescribe supply of services on which GST is payable on RCM basis.

S.No. 6 of the said Notification reads as under:

S.No.	Category of Supply of Services	Supplier of Service	Recipient of Service
1	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

Scope of Supply under CGST Act

- The scope of supply is contained u/s 7 of the CGST Act, 2017
- Sec. 7(2)(a) of the said Act provides that the activities or transactions specified in Schedule III would not be treated as supply. In other words, the transactions listed in Schedule III would not be liable to tax.
- Sr. No. 1 of the said Schedule III provides that the services by an employee to the employer in the course of or in relation to his employment shall not be considered as supply of services liable for tax.**

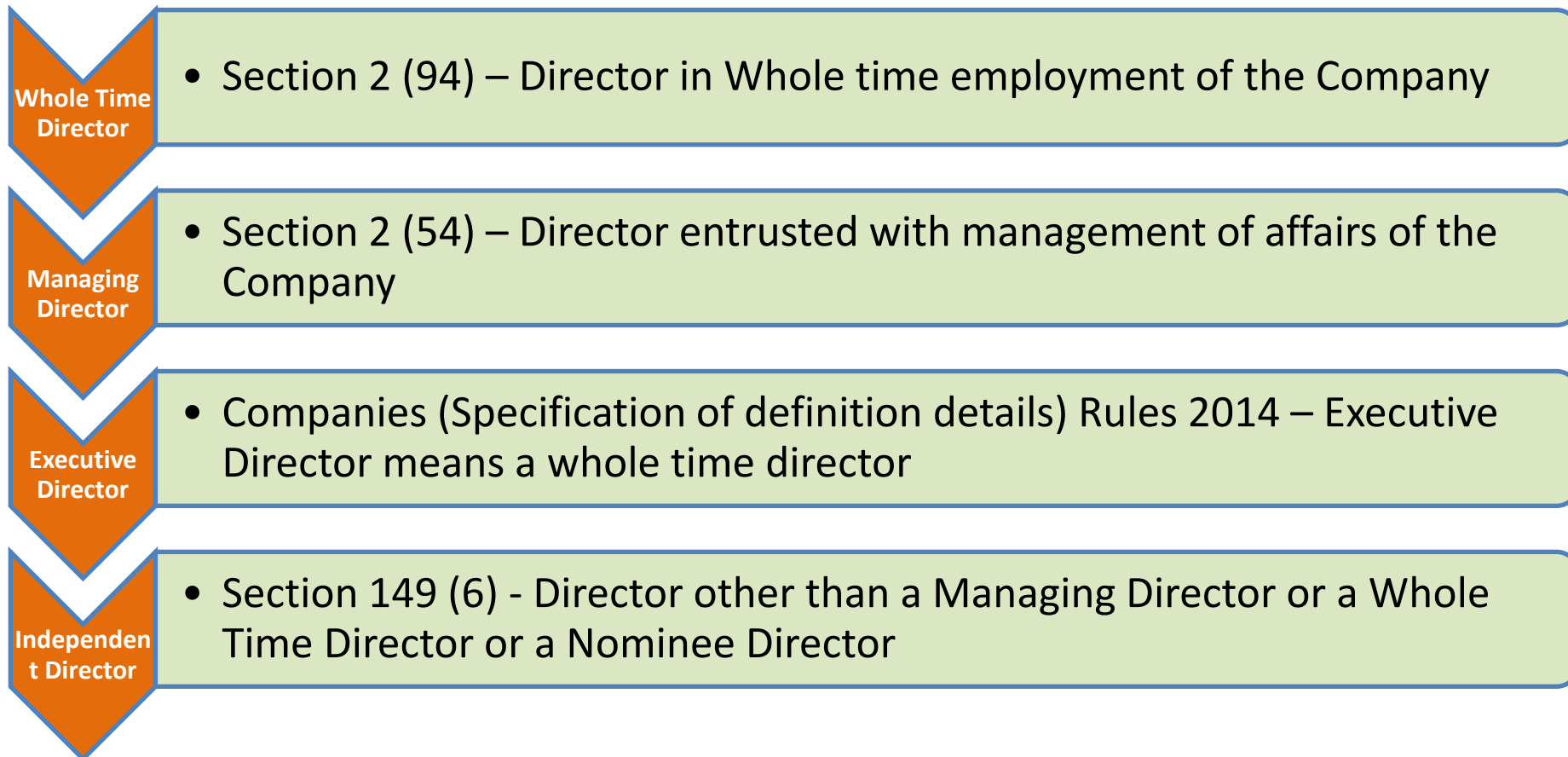
Ruling AAR of Rajasthan

Please read Para No. 5.8 of the ruling AAR of Rajasthan, which is reproduced here as under:

We further observe that consideration paid to the Directors as against the supply of services provided by them to the applicant company and are not covered under clause (1) of the schedule III to the CGST Act ,2017 as the directors are not the employee of the company .

In the instant case, director is the supplier of goods and services and the applicant company is the recipient of services rendered by the Director for which the consideration is paid to him in any head, is liable to pay GST under RCM.

Definition of Directors from Companies Act, 2013 are as under:



In my view, the test of nature of employment is whether the nature of employment results in master servant relationship or not?

In my humble submission:

- Any amount paid to Director which is in nature of employment contract is not liable to GST
- Whereas, any amount paid to Directors in nature of professional relationship will be liable for GST under RCM

Case Studies – Applicability of GST under following cases:

1. Sitting Fees paid to Independent Directors
2. Rent
3. Professional Fees
4. Commission

THANK YOU

For any assistance, please call at 9811968321 or mail at casurajbhalla1@gmail.com
Regards, CA Suraj Bhalla