



Aatma Capital
Nurturing Relationships



Code on Social Security, 2020

Part III

CS Meenakshi Jayaraman

A member of



Independent legal & accounting firms

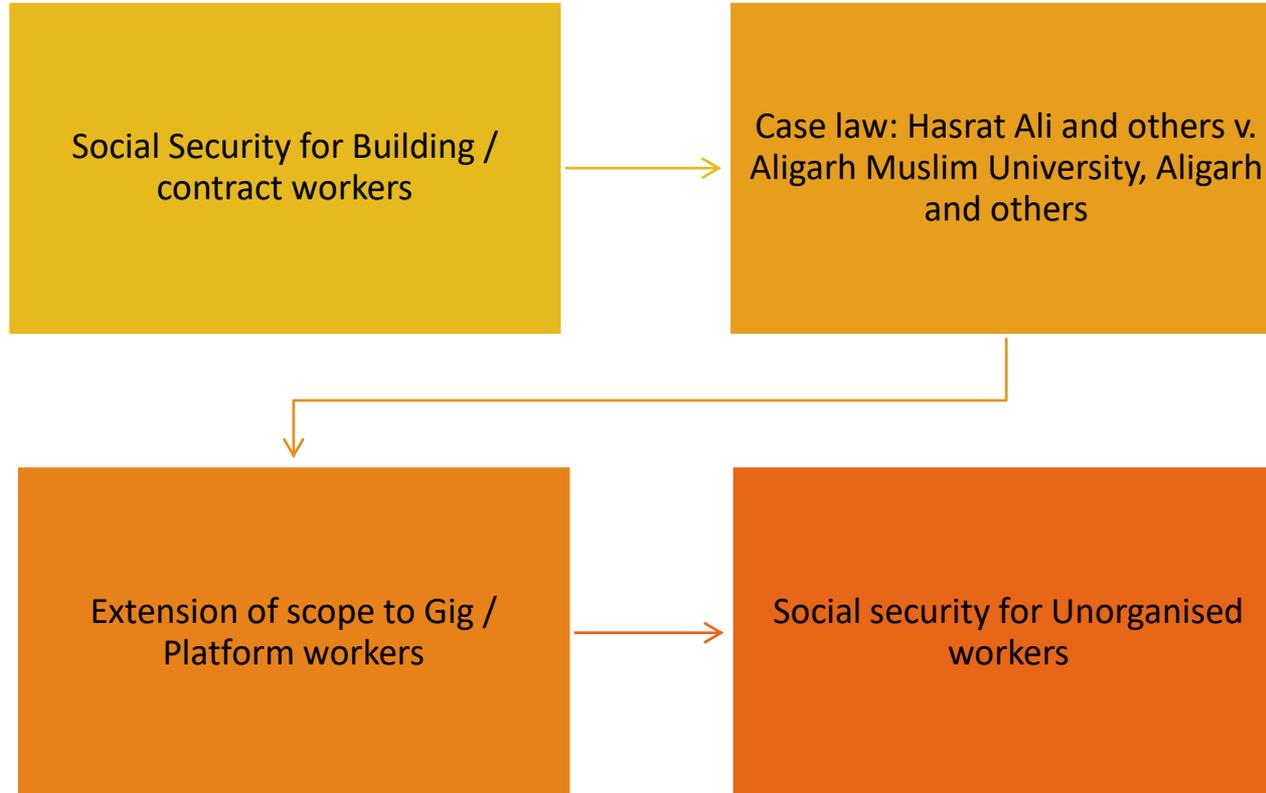
Credits and Acknowledgments

Iswariya BS

Legends used in the Presentation

CG	Central Government
Code	Code on Social Security
CSR	Corporate Social Responsibility
FY	Financial Year
Govt.	Government
HC	High Court
SG	State Government
u/s	Under section
w.e.f.	With effect from

Presentation Schema



Definition

Aggregator means a digital intermediary / a market place for a buyer / user of a service to connect with the seller / the service provider

Building worker means a person who is employed to do any skilled, semi-skilled / unskilled, manual, technical / clerical work for hire / reward, whether the terms of such employment are express / implied, in connection with any building or other construction work

Excludes: any such person who is employed mainly in a managerial / supervisory / administrative capacity

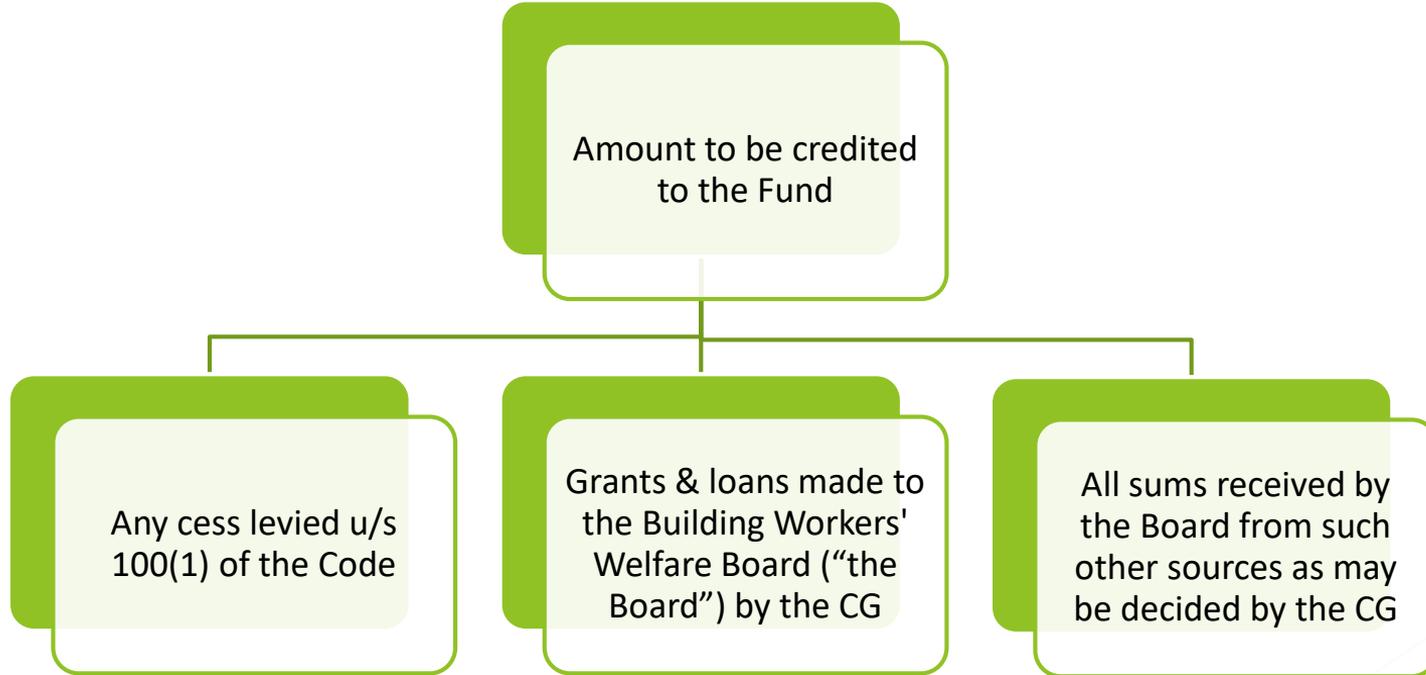
Chapter VIII- Social security & cess in respect of building and other construction workers

A comparison

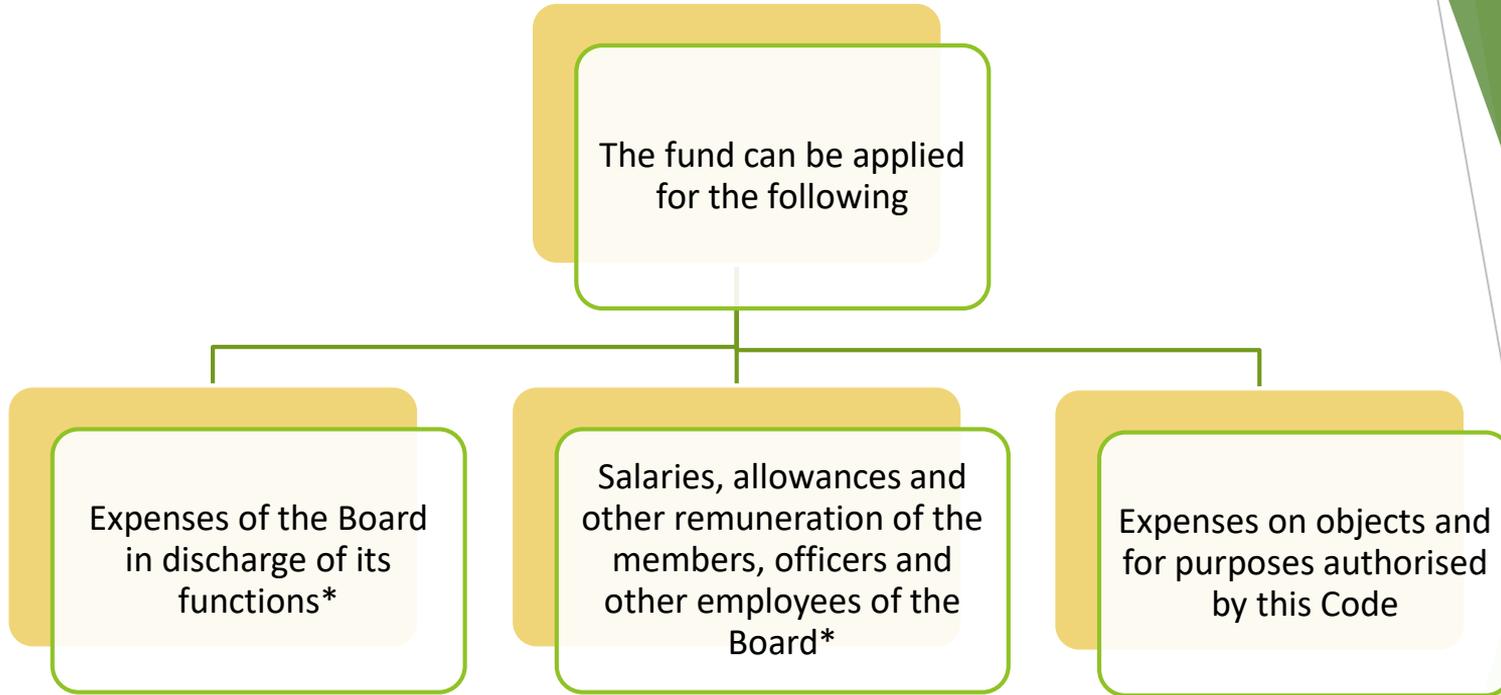
Particulars	The Building and other Construction workers' welfare cess Act, 1996 ("the Act")	Code on Social Security, 2020 ("the Code")
Purpose	Levy and collection of cess for the purpose of safety, health and welfare of building and other construction workers	Levy and collection of cess for the purpose of social security and welfare of Building workers
Interest rates for delay in payment of cess	Rates are prescribed	Power given to CG
Power to exempt employer from payment of cess	Power given to CG	Power given to appropriate Govt.
Assessment of Cess	Employer shall furnish a return to such officer / authority who will confirm / correct the same and assess the amount of cess	Within 60 days of completion of each building / other construction work, pay such self-assessed cess and file return after payment of cess

<p>Similar provisions in the Building and other Construction workers' welfare cess Act, 1996 and the Code</p>	<p>Similar provisions in the Building and other construction workers (Regulation of employment and conditions of service) Act, 1996 and the Code</p>
<ul style="list-style-type: none"> • Penalty for non-payment of cess within the specified time: • It shall be deemed to be in arrears • The prescribed authority may impose a penalty for the same not exceeding the amount of cess after giving an opportunity of being heard 	<ul style="list-style-type: none"> • Registration of building workers as beneficiaries: • Completed 18 years of age but not completed 60 years of age • Engaged in the work for a period of not less than 90 days during the preceding 12 months
<ul style="list-style-type: none"> • Appeal: • Any employer aggrieved by the order of assessment / order of penalty may make an appeal to the appellate authority • The order passed in appeal shall be final and shall not be called in question in any court of law 	<ul style="list-style-type: none"> • Cessation as beneficiary: • On attaining 60 years of age • Not engaged in the work for not less than 90 days of age • Exception: If a person had been a beneficiary for at least 3 years continuously immediately before attaining the age of 60 years, then he is eligible for such benefits as prescribed by CG

Creation & Utilisation of Building & Other Construction Workers' Welfare Fund

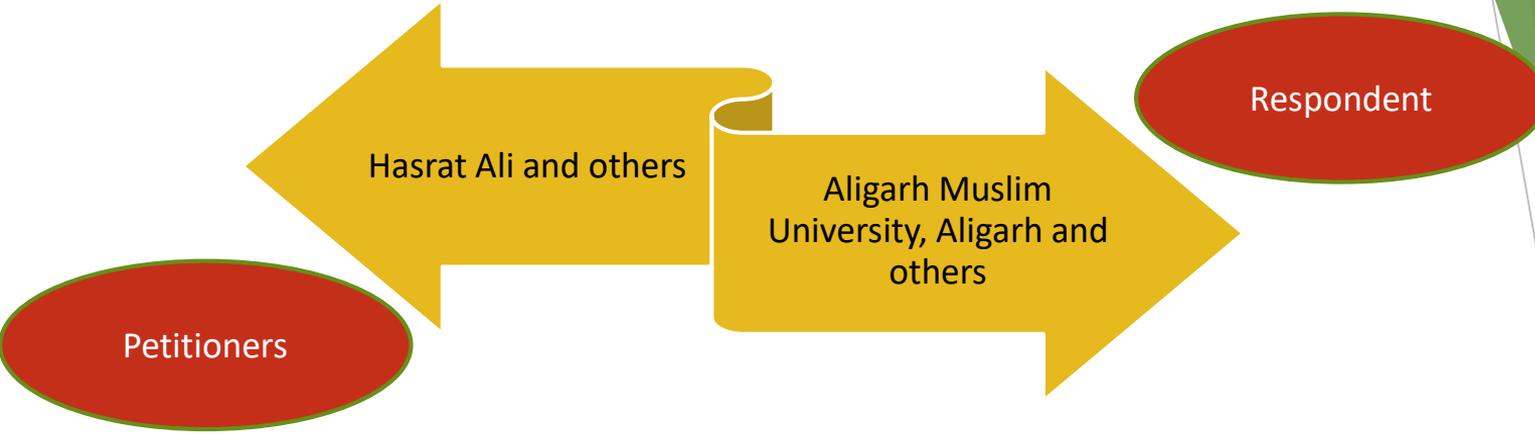


Contd.



*Limit – Expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses in a FY **shall not exceed 5% of its total expenses** during that FY

Case law



Facts of the case

Petitioners, who were 26 in numbers had entered into a contract with Respondent on a date subsequent to February, 2009

While making payment to the Petitioners for the work done, the Respondent had deducted 1% of labour cess from the contractor's bill w.e.f February, 2009

Contd.

There was no provision for levy of labour cess at the rate of 1% as per the terms and conditions agreed between the parties

Filed petition in Allahabad HC

Learned counsel of Petitioner held that:

There was no provision in the contract about the liability to pay labour cess. Therefore, the petitioners had not included the impact of the same in the price quoted by them in response to the tender

Respondent under office memo dated 9th February, 2013 had decided to adopt the Building and Other Construction Workers' Welfare Cess Act, 1996 ("the Act") and therefore, it is only from a date subsequent to 9th November, 2013 liability of labour cess can be raised / demanded from the petitioner contractors

- The demand impugned is wholly unjustified and thus, the learned counsel prayed that the respondents may be restrained from making any deduction from the bill of the contractor to the extent of 1% as labour cess

Learned counsel of Respondent held that:

The terms and conditions as agreed upon between the parties includes the below, under Clause-6 of the preamble to the schedule of quantity specification-

“that prices quoted shall include royalty, monopoly charges, and any other taxes levied by the Govt. or local bodies except where stated otherwise in the contract”

Contd.

- The Act was adopted by the State of Uttar Pradesh w.e.f. 2009. Therefore, in view of Clause-6, the component of labor cess being included in the price offered by the petitioners logically follows being in the nature of tax
- Hence, the University is justified in making the deduction of 1% of the labor cess from the contractors bill towards such tax liability

Allahabad HC analysis and decision as on 12/12/2014

- It is not in dispute that the Act has been adopted by the State of U.P. w.e.f. February, 2009
- The liability of payment of labour cess under the said Act is accrued
- This labour cess is in the nature of compulsory payment of money for the welfare of the labors engaged in building and other construction works
- The cess answers the description of tax and therefore, in view of Clause-6 it would be a tax levied by SG, included in the price quoted

Contd.

As it is held by us that labor cess is in the nature of tax levied by the SG, it became payable from the date the Cess Act was adopted by the State of U.P. (i.e) February, 2009

The tax liability was transferred to the contractors / petitioners in view of Clause-6

There was no illegality in the demand raised by the Respondents

As the petitioners had entered into the contract with open eyes, they could not be wriggled out from the liability, which accrued because of the labour cess implementation w.e.f. February, 2009

Accordingly the writ petition was dismissed

Chapter IX- Social security for Unorganised workers, gig workers & platform workers

Extension of scope to gig and platform workers

The erstwhile Unorganised Workers' Social Security Act, 2008 had covered only Unorganised Workers

But, the new Code on Social Security has extended the coverage to gig workers and platform workers

The Code provides for framing of schemes for gig workers and platform workers by the CG like framing schemes for unorganised workers

India stood at 7th place in the world wide top 10 list of freelance markets in 2019. The number of freelancers in India increased from 11% in 2018 to 52% in 2019. The revenue growth of freelancers in India was at 28%

Distinguish

Particulars	The Unorganised Workers' Social Security Act, 2008 ("the Act")	Code on Social Security, 2020 ("the Code")
Framing of welfare schemes by CG for unorganised workers	Covers life and disability, health and maternity benefits, old age protection	Includes education
Funding of CG schemes	By CG wholly or CG / SG / Beneficiaries / employers party	Includes CSR Fund within the meaning of Companies Act, 2013
Funding of SG schemes	By SG wholly or SG / Beneficiaries / employers party	Includes CSR Fund within the meaning of Companies Act, 2013
Record keeping	By District Administration	Authority for record keeping will be prescribed by Appropriate Govt. Electronic mode is allowed

Particulars	The Unorganised Workers' Social Security Act, 2008 ("the Act")	Code on Social Security, 2020 ("the Code")
Facilitation centres	Generally prescribed as Workers Facilitation centres	Toll free call centres / helpline / such other facilitation centres
Registration	<ul style="list-style-type: none"> Completed 14 years of age Self declaration stating that he is an unorganised worker 	<ul style="list-style-type: none"> Completed 16 years of age Details to be mentioned in the self declaration will be prescribed by the CG Submission of Aadhaar Number in application form
	Authority: District Administration	No such authority
	Issue of Identity card having a Unique Identification number	Issue of a distinguishable number
Board	National Social Security Board and "State Name" Unorganised Workers' Social Security Board	

Schemes for Gig & Platform workers

Scheme

- CG may notify social security schemes on matters relating to life & disability cover, accident insurance, health and maternity benefits, old age protection, creche and any other benefit as determined by CG

Contribution

- Wholly by CG / wholly funded by contribution of aggregators or partly by CG and partly by SG / partly by CG, SG and partly through contribution collected from beneficiaries or aggregators or CSR fund or any other sources
- Date of commencement of contribution from aggregator shall be notified by CG

Schedule VII

Classification of Aggregators

Ride sharing services

Food and grocery delivery services

Logistic services

E-Market place (both market place and inventory model) for wholesale/ retail sale of goods and/or services (B2B/B2C)

Professional services provider

Healthcare

Travel and hospitality

Content and media services

Any other goods and services provider platform



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