



# AHAR Connect



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## 4th Monthly Managing Committee Meeting

The Report of the 4<sup>th</sup> Monthly Managing Committee Meeting held on Monday 24<sup>th</sup> March 2014 at 8.00 pm at Hotel Sai Palace, Chakala, Andheri [East], Mumbai.

Forever News reporter

Welcome address :

Shri Sudhakar T Shetty, VP - Zone- IX and the host of 4<sup>th</sup> Monthly Managing Committee Meeting welcomed all delegates to the meeting. He thanked the members for their support and assured that he and his team will strive to fulfill the aspirations of the Hoteliers of AHAR in general and his Zone in particular.



President Shri Arvind Shetty then proceeded with the Agenda which was circulated in advance.

**Confirmation of Minutes**

Hon. Gen. Secretary **Shri Sukesh Shetty** presented the minutes of the 3<sup>rd</sup> Monthly Managing Committee Meeting held on 24.2.2014. The house unanimously approved by the same.

Proposed by **Shri K. V. Shetty**

Seconded by **Shri K. K. Mahale**

**Approval of Accounts**

Hon. Treasurer **Shri Nitin R Shetty** presented the accounts of AHAR and Orchestra Bar for the month of February 2014. The house approved the same.

Proposed by **Shri Prasanna Shetty**

Seconded by **Shri Vijay Shetty**

**Events of the Month**

President briefed the events of the month as under:

**Minimum Wages**

The interim stay is still available to the Hoteliers against implementation of the **Revised Minimum Wages** in Maharashtra. Members are advised to pay 70% of the Notified amount till further directions from the **Nagpur High Court** & the **balance amount to be kept aside till the case is concluded.**

**FSSAI**

The petition against certain clauses in the **FSSAI Act** which is detrimental to the Hotel Industry is still pending in the **Bombay High Court.** Members may note that two FSOs have been trapped by the ACB on a complaint from a Milk Vendor.

**Service Tax**

The Association through the guidance from our Lawyers and Members has attended to Summons/ Notices issued to Members by the Service Tax Department. Meanwhile, the **Hon'ble Bombay**

**High Court** heard the submissions on 12<sup>th</sup> and 14<sup>th</sup> March 2014 and concluded arguments from both sides. The matter is reserved for an order. **Members are once again reminded that they should keep aside an amount equivalent to the Service Tax payable till the final judgment.**

**BMC License 394**

The **FSSAI Act** has mandated that all other acts governing the food industry is to be repealed after the same is enacted. Our representation to the BMC for the above since the last 2 years went unheeded. Hence, we had appointed a committee to confer with Adv Anjali Purav to prepare a petition for Clarifications on the Duplication of the implementing Authorities.

**Notices from BMC Environment Department**

We had asked for clarifications from the BMC Environment Department against notices received by our members.

**Hike in FL-III License Fee**

In spite of all earlier efforts together with the other Associations, **the 50% Hike** in License Fee was not withdrawn as the election code of conduct was notified during the process of Representation. As the Government was rendered helpless, we had no other option but to move the **Bombay High Court** for an interim Relief against the Hike and continue the Renewal Process by paying the Previous Year's Fee till the Government starts functioning again for addressing our issues. When the matter was brought to the notice of the Hon'ble Division Bench the Judge refused to address the issue until the Public Prosecutor could file his Reply. The PP insisted on minimum two weeks to file the Reply which subsequently falls in the first week of April which was of no use to our Members as the Deadline for Renewal is 31st March. Our only hope now lies in the Petitions filed by our Associates which may come for hearing shortly.

Nevertheless, during a Joint Meeting held at Bunts Annexe on 20th March, a unanimous decision was arrived at to inform all the members to refrain from renewing their Liquor Licenses till the 26th March. We will continue the process of Representation after the Election Code of Conduct is lifted in the State.

The road ahead

1. Membership Collection.
2. PR Agency to highlight the plight of Hotel Industry and keep it alive throughout the year.
3. Hiring Lawyer/s or Law Firm to deal with various Legal matters.
4. Streamline Office Administration.
5. To collect the Data of all members.

6. Contacting/hiring Ex-Bureaucrats/ Government officers for proper guidance.
7. Formation of a State Level Body.
8. Reserve Fund of Rs Five Crores.

**Reserve Fund**

A **Reserve fund** of at least Rs 5 crores should be raised for sustaining the Present momentum and achieving our objectives of becoming the Largest and most Respected Association of Hoteliers in India. The future of Governance and Legislation will be built on Transparency. Hence, it will be in the interest of the Hospitality Industry for us to be present in various forums during policy initiatives.

**Presentations by VPs**

**Zone I - VP - Shri Shailendra Shetty :** Presentation - Had two corner meetings to discuss and brief about FL-III Fee Hike.

**Zone - II - VP - Shri Gangadhar Shetty**

**Zone - IV - VP - Shri Prithviraj Shetty :** Presentation - Conducted corner meeting to brief about the FL-III License Fee Hike and also about the Child Labour matters.

**Zone - V - VP - Shri Ravindranath Nire :** Presentation - Had corner meeting to brief about FL-III License Fee Hike. Had meeting with Adv Anjali Purav regarding BMC License 394 at AHAR Office. Also briefed about PPL Matters.

**Zone - IX - VP - Shri Sudhakar T Shetty :** Presentation - Conducted corner meetings to brief about the FL-III License Fee Hike and the efforts taken by AHAR. Attended the complaints about insurance with SREI and sorted out.

(Cont. on pg. 3)



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**Zone - X - VP - Shri Anil Salian :**  
Presentation - Conducted corner meetings for briefing about the FL-III License Fee Hike matters. Briefed in detail, about the Gaurav Hotel, Kandivili matter.

The President said that we will work together and attend every genuine complaint. He also requested the members to support their Vice Presidents in any of their initiatives.

**Presentations by Sub Committee Chairmen**

**Committee - Police - Chairman - Shri K.V. Shetty : Briefing** - Briefed that all the complaints received in writing were duly attended and guided. Since the matter of **Gaurav Hotel**, Kandivili is in court we have to wait till the court direction. We will be meeting the Commissioner of Police soon with our main grievances.

**Committee - Hawkers Chairman : Shri K. K. Mahale : Briefing** - Briefed that the Writ Petition will be filed soon in illegal hawkers matter. We will be meeting the DMC, Encroachment soon for clarification on illegal **Food Hawker's** matters.

**Committee - Publication Chairman : Shri Bhaskar Shetty : Briefing** - Thanked the VPs for collecting the data. We are updating the Website on a regular basis. It is observed that the number of visitors to the website is increasing. The members are requested to visit the website regularly and update themselves.

**Committee - Excise Chairman : Shri Vijaykumar Shetty : Briefing** - We had put all efforts in meeting the MLAs, MPs for revision in **Excise Fee Hike**. The Election code of conduct has closed all options.

**Committee : Orchestra Bar Chairman : Shri Bharat Thakur : Briefing** - **Dance Bar** Hoteliers had filed individual affidavit, which has been forwarded to Supreme Court. The **Ladies Service** matter in Mumbai High Court is expected to come up for a hearing on 27.3.2014. Our matter in **Supreme Court** is expected to come soon on board. Announced Rs.5,000/- as contribution to Legal Fund every month.

**Others**

**Shri Shashikant Shetty**

**FHRAI** has moved to court in the IPRS matters. Briefed about the court orders **IPRS and PPEL**. Any members receiving notices from Satellite TV Channel providers may contact the AHAR Office for guidance.

**Shri Shashidhar Shetty**

Those who have not paid the FL-III License Fee on 31.3.2013 can pay the License Fee with 2% per month.

**Hon. Gen. Secretary's brief**

The Members are again requested to submit their data including Cell Number/s and Email address for easy and immediate delivery of relevant messages. Unless we have a complete data of both Cell Number/s and the Email address, we will not be able to communicate with members in time, as many of the messages are of urgent nature. So far, we have been able to collect about 1300 contacts of members. Our target is more than 5000 contacts within 3 months.

**Speech by Advisors**

**Shri Chandras K. Shetty**

The fight against the FL-III License Fee involving all the other Associations of Maharashtra is a commendable effort on the part of **AHAR**. Once the code of conduct is lifted, we should pursue our efforts in revision of the FL-III License Fee with the Government as assured by them. A number of urgent Legal matters may require huge funds. Unless a strong Reserve fund is created, the Association will not be able to bring to its logical end of the various cases it is fighting for the Hotel industry. The data collection efforts are good and members must support and cooperate.

**Shri Narayana M Alva**

Appreciated the efforts of **AHAR** in attending various urgent and serious issues pertaining to the Industry.

**Shri Sudhakar Hegde**

The kind of work the Association is doing is worth appreciating. We have many Hoteliers with vast knowledge on various matters. They should come forward and support the Association.

**Contribution.**

**Shri Manish Bilakhia**, Hotel Spring Blossom, Ghatkopar contributed his committed amount of Rs.4500/- towards Legal fund.

**Stall Support**

- Sahara Q Shop
- SREI Insurance
- Vodafone
- First Energy
- MSwipe Tech
- Qauard Asset Management
- ECO Choola
- Eco Wheel Solution

The Representatives briefed about their products and were presented with floral bouquets.

**Vote of thanks**

The meeting was concluded with Vote of Thanks by Shri Sukesh Shetty, Hon. Gen. Secretary.

## BOMBAY HIGH COURT JUDGMENT ON SERVICE TAX MATTER

**Bombay High Court has upheld the levy of Service Tax. Bombay High Court has not agreed with the Kerala High Court's judgment. The Kerala High Court had held that levy of service tax on hotels is ultra-vires the Constitution and hence had set aside the same. However, the Bombay High Court has not accepted the same : Parliament competent to impose Service Tax on Restaurants and hotels - Single Judge Kerala HC order cannot be accepted: Bombay HC.**

By this Writ Petition under Article 226 of the Constitution of India, the Petitioners are claiming a writ, order or direction declaring

- clause (zzzzv) of Section 65(105) of the Finance Act, 2011 as ultravires the Constitution of India, null, void and of no legal affect.

Clause (zzzzv) reads -

(zzzzv) to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises; It is inter alia the submission of the petitioner that the tax which is sought to be imposed on services in the present case is nothing but a tax on the sale or purchase of goods.

The High Court observed -

++ Article 366(29A)(f) is inserted by the Constitution (Forty-sixth Amendment) Act, 1982 so as to take care of the continuing controversy, namely, that while taxing sale or purchase of goods the State Legislature cannot impose a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

++ We do not see as to how a service tax can be said to be a component of tax on sale or purchase of goods envisaged by Entry 54 of List II (State List). To say that the Parliament was denuded of its competence to legislate and impose a tax on service provided by an airconditioned restaurant serving food and drink, under its taxing power, is to do violence to the plain language of the Constitutional provisions, Articles and Entries.

++ Once we take care of the argument and hold that the very foundation has no basis in law, then, there is no difficulty in holding that the Parliament is fully competent to impose a tax on service.

++ It is, therefore, clear that a sales tax is on sale of goods while selling, supply thereof is contemplated and covered by Article 366(29A) (f) of the Constitution of India. It does not mean that the service during the course of or while supplying the goods is taxed, but the tax is and remains on sale of goods. That is why the State Legislatures were held to be empowered to impose, levy, assess and recover a tax on sale of articles of food and drink which have been termed as "goods".

++ In this context if one refers to amendment to the Finance Act and Chapter V of the Finance Act, 1994, it would be clear that what is imposed is a service tax. Therefore, a service must be to any person by the Restaurant and which can be called by any name such

as hotel, lunch home, dining or lunch & dinner home having the facility of airconditioning in any part and that is termed as an establishment. The restaurant and which has licence to serve food or alcoholic beverages or both in its premises, is rendering a taxable service. When it renders such service that service can be taxed in terms of the Finance Act.

++ A service tax or tax on a service, which is made taxable by the Finance Act is thus a completely distinct tax. It should not be and cannot be confused leave alone equated with a tax on sale or purchase of goods.

++ A "service" has been defined to mean the action of serving, helping or benefiting. It is also understood as something provided, usually for a fee that may not be classed as manufacturing or production in any form. That is how professional services are identified and known.

++ By no stretch of imagination, therefore, a service tax can be the same as a tax on sale and purchase of goods. By the nature of the tax, which has been imposed, so also, bearing in mind the wording of the entries in the Seventh Schedule to the Constitution of India, it would be evident that a service tax is not a tax on supply of goods.

++ The Parliament cannot be said to have transgressed into leave alone encroached upon the power of the State Legislature to impose a tax on sale or purchase of goods vide Entry 54 of List II. The taxing power of the Parliament and traceable to Article 248 of the Constitution of India r/w Entry 97 of List I of the Seventh Schedule enables it to impose a service tax. To enable it to so impose, the term "taxable service" has been defined. The definition of the term "taxable service" makes the nature of the tax clear and precise.

**Amongst the plethora of case laws cited by the petitioner is also the Kerala High Court decision Kerala Classified Hotels and Resorts Association v/s Union of India 2013-TIOL-533-HC-Kerala-ST . The High Court held that the analysis of the Single Judge of Kerala High Court in the cited case cannot be accepted.**

The High Court observed -

The learned Single Judge of Kerala High Court beyond referring to three Supreme Court judgments, namely, Associated Hotels of India Ltd.

(supra), Northern India Caterers Limited (supra) and K.Damodarasamy Naidu (supra), neither observes or holds that the tax in question is covered by the State List (Entry 54). A categorical finding in that regard is necessary. The analysis of the learned Single Judge and of the Constitutional definition, with respect, cannot be accepted. The attempt by the learned Single Judge to get over the judgments of the Honourable Supreme Court relied upon by the learned Additional Solicitor General, does not commend to us. The learned Single Judge has not underscored and noted the distinction, with respect, referred by us in detail. We are, therefore, unable to agree with the view of the learned Single Judge of Kerala High Court.

Nonetheless, the High Court held that the reliance placed by the ASG on decision of the Supreme Court in Tamil Nadu KalyanaMandapam (2004-TIOL-36-SC-ST) is well founded.

**The Writ Petition was accordingly dismissed.**

For Full Judgment please visit AHAR website on [www.ahar.in](http://www.ahar.in)

### Condolence

The House prayed for the eternal peace of the following deceased persons,

- **Shri Muddu L Shetty** (Hotel Ashraya International, Sion)
- **Shri Sanjeev Shetty** (Hotel Sagar, Goregaon)
- **Smt Rudru Shetty** (Mother of Shri.Bhaskar Shetty, Shabari, Santa Cruz West)

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