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JULY 2021

# VEDANAM

**A MONTHLY NEWSLETTER BY  
MEHTA & MEHTA  
LEGAL & ADVISORY SERVICES**



We, with Vedanam, look forward to spreading knowledge to professionals in a unique way. We cover monthly regulatory updates, case laws and such other relevant topics in the legal world.

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# REGULATORY UPDATES

## MINISTRY OF CORPORATE AFFAIRS (MCA)

Incorporating Companies can now apply for Shop & Establishment license through AGILE PRO S.

<https://egazette.nic.in/WriteReadData/2021/227408.pdf>

The restriction to approve certain transaction through video conference has been removed.

<https://www.mca.gov.in>

Manner of transfer of shares under Section 90(9) is introduced through New Rule 6A

<https://www.mca.gov.in>

A penalty of Rs. 1000/- has been introduced for delay in applying to Institute of Directors for inclusion of name.

<https://egazette.nic.in/WriteReadData/2021/227694.pdf>

Companies (Indian Accounting Standards) Rules, 2015 have been revised.

<https://egazette.nic.in/WriteReadData/2021/227712.pdf>

MCA has introduced Companies (Accounting Standard) Rules.

<https://mca.gov.in/bin/dms/getdocument?mds=RKk43Bmg99ksfVobUGr6XA%253D%253D&type=open>

MCA has allowed conducting of Extra Ordinary General Meeting through video conference until 31.12.2021

<https://mca.gov.in/bin/dms/getdocument?mds=fYGpVQRhK8ssM3lRSs7fsG%253D%253D&type=open>

## SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

SEBI has relaxed minimum vesting period in case of death of employee

[https://www.sebi.gov.in/legal/circulars/jun-2021/relaxation-from-the-requirement-of-minimum-vesting-period-in-case-of-death-of-employee-s-under-sebi-share-based-employee-benefit-regulations-2014\\_50545.html](https://www.sebi.gov.in/legal/circulars/jun-2021/relaxation-from-the-requirement-of-minimum-vesting-period-in-case-of-death-of-employee-s-under-sebi-share-based-employee-benefit-regulations-2014_50545.html)

SEBI has introduced refined Delisting regulations

[https://www.sebi.gov.in/legal/regulations/jun-2021/securities-and-exchange-board-of-india-delisting-of-equity-shares-regulations-2021\\_50517.html](https://www.sebi.gov.in/legal/regulations/jun-2021/securities-and-exchange-board-of-india-delisting-of-equity-shares-regulations-2021_50517.html)

Amendment in Securities Contracts (Regulation) Rules with respect to IBC

<https://ibbi.gov.in/uploads/legalframework/cfc752ae9f65738a0b8e125a86c5f257.pdf>

## GOODS & SERVICES TAX

Relief to taxpayers, regarding late fee, for delay in filing Form GSTR-3B returns

<https://www.gst.gov.in/newsandupdates/read/479>

Waiver of interest and late fee for normal taxpayers (filing return on monthly or quarterly basis) and composition taxpayers

<https://www.gst.gov.in/newsandupdates/read/478>  
<https://www.gst.gov.in/newsandupdates/read/477>

## RESERVE BANK OF INDIA

RBI reframes regulation of microfinance.

[https://rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=51725](https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51725)

## INCOME TAX

Government unveils new Income Tax website.

<https://incometaxindia.gov.in/>



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## REGULATORY UPDATES

### MINISTRY OF LABOUR & EMPLOYMENT (MLE)

MLE has published the draft rules relating to Employee's Compensation under the Code on Social Security, 2020

<https://egazette.nic.in/WriteReadData/2021/227359.pdf>

### MICRO, SMALL AND MEDIUM ENTERPRISES (MSME)

Government Simplifies Registration Process for MSMEs.

Through PAN & Aadhar card, Micro, Small and Medium Enterprises can now be registered.

## SYNOPSIS OF CONCEPTS

### Delisting of securities

What is meant by delisting of securities?

Delisting of securities means removal of securities from stock exchange, which further means that company would no longer be traded at stock exchange. The process of delisting is regulated by Securities and Exchange Board of India. Delisting of securities can be done in different ways voluntary, involuntary and compulsory.

Amid Corona virus many companies opted for delisting for instance in last two months majority of company decided to go for delisting like Vedanta limited, Adani Power limited, and Hexaware Technologies Ltd. Such companies are going private due to various benefits such as it increases better focus of management on optimizing returns, quick decision-making power, resource allocation, and it also offer shares at cheaper rate.

Case : Vedanta Limited

Facts: Vedanta Limited, a subsidiary of Vedanta Resources Ltd, decided to go for delisting on a voluntary basis. There were several reasons for this. One of the reasons was to privatize company which would have provide its parent company better access to Vedanta Ltd's cash surpluses, thereby enabling the former to manage

## SYNOPSIS OF CONCEPTS

assets and liabilities (repayment of group debt of over \$10 billion) more efficiently across its various subsidiaries.

Analysis: Further Vedanta was not able to get delist because it received offers only around Rs. 125.47 crore shares as against the limit of Rs. 134 crore shares that was necessary for the delisting process to be successful. Hence Vedanta said that its shares would continue to remain listed on the exchanges.

Views: In the last two months, the majority owners of Vedanta Ltd, Adani Power Ltd, and Hexaware Technologies Ltd decided to go private. Such non delisting of shares can be seen as negative point to promoters of company but it can somehow increase prices of shares which further turns out beneficial to the existing shareholders.

Such cancellation of delisting was also seen in Adani Power which worked in favour of Adani Power share price.

### New E-commerce rule maybe imposed by MCA

The ministry of consumer affairs (MCA) has proposed changes to the e-commerce rules under the Consumer Protection (E-commerce) Rules 2020, which may tighten the functioning of large online shopping portals such as Amazon, Flipkart, Uber ,Ola, Zomato, Swiggy etc. According to the draft rules will be applicable to all e-commerce companies including facebook marketplace. Such changes in the e-commerce rules are aimed at increasing liabilities for online retailers for goods and services purchased on their platforms.

What are the matters included in the proposed draft?

As per the draft issued by the Consumer Affairs Ministry it seek to ban specific flash sales by online entities. Whereas conventional e-commerce flash sales aren't banned. It is very important to ban specific flash sales or back-to-back sales which limits consumer choices, sell goods at increased prices and force consumers to buy such goods by offering heavy discounts. Additionally, government makes it mandatory for all e-commerce entities to setup adequate redressal mechanisms and appoint Chief Compliance Officer and Resident grievance officer for redressing consumer grievances.

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## SYNOPSIS OF CONCEPTS

Fall-back liability has been introduced which says that e-commerce firms are getting to be held liable just in case a seller on their platform fails to deliver goods or services which causes loss to the customer.

The draft amendment also proposes e-commerce firms to mandatory register them with Department of Promotion for Industry and Internal Trade (DPIIT).

Need to impose such rules ?

The proposed changes are introduced to overcome market dominance and deep discounting practices undertaken by various e- platforms. Such changes can be closely linked to recent IT intermediary rules announced for social media companies by Ministry of Consumer Affairs.

Whereas Competition Commission of India (CCI) is undergoing investigation on Flipkart and Amazon India for alleged abuse of market dominance and providing preferential treatment to sellers in which they continue to hold indirect stakes. Such initiatives are taken to help offline sellers, as offline markets are sinking due to availability of great offers and discount by such online entities.

To tackle the growing concerns of preferential treatment, the new E-commerce Rule also propose to make sure that online sellers are not allowed to use any consumer information (from the web platform) for unfair advantages like selling consumer data with other online companies.

What will be the Impact of such new rule ?

- The proposed rule seek e-commerce entities accountable for any defect in consumer goods.
- It will increase various compliance proposed by MCA under the new rule.
- All entities will have to register with DPIIT.
- Setting up of adequate redressal mechanisms and entities need to appoint Chief Compliance Officer and Resident grievance officer for consumer grievances.
- The concept of “fall-back liability”, which says that e-commerce firms will be held liable directly just in case a seller on their platform fails to deliver goods or services which causes loss to the customer.

Still clarification is needed on many terms included in proposed draft .The proposed rule also seek regulation with regards to the consent obtained from consumers, for sharing their data on such online platforms.

E-commerce firms have time until July 6 to submit their comments and suggestions to the changes in E-commerce Rules.

### Companies (Meetings of Board and its Powers) Rules, 2021

Previously MCA had introduced conducting physical Board Meeting through Video Conference during pandemic situation. But noticing the ease whilst conducting Board Meeting through Video Conferencing and augmenting COVID-19 problems, MCA has omitted Rule 4.

What Rule 4 said?

Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means

(1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board’s report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for 2[consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act]; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Impact of the new amendment:

- Increased demand of security while holding Board Meeting
- Maintenance of recordings under the authorized person's custody
- Ensuring proper conducting of Board Meeting without any technical glitches
- Providing proper training to Board of Directors before conducting any Board Meeting
- Hiring a professional for management of virtual meetings

Will the new amendment affect the on-going practice of holding physical Board Meeting?

MCA has just removed the restriction of approving certain transaction through Video Conferencing. The on-going practice shall not be affected.

Moreover, it will bring ease in the business. Considering the pandemic situation, this decision by MCA shall come out in a positive manner and encourage Companies to be more compliant.



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## CASE LAWS

### INSOLVENCY & BANKRUPTCY CODE, 2016

If the borrowing from the Creditor is contrary to the limit prescribed under the Companies Act 2013 (Sec. 186), it is not a legally enforceable debt.

### M/s. UKG Steel Private Limited Vs. M/s. Erotic Buildcon Private Limited – NCLT Principal Bench

Facts: A loan agreement was executed between the parties on 16.03.2019 and pursuant to that the financial creditor had advanced the loan of Rs. 3,76,45,000/- at interest rate of 6.5% per annum. The respondent had assured and agreed to make the repayment, in 8 quarterly instalments starting from 30th June 2019, and operative upto 31st March 2021 i.e till the validity of the Loan Agreement. Further, subject to the renewal with the mutual consent of the parties. The respondent had defaulted in repayment of the principal amount and did not make any repayment of the interest and principal amount.

### Decision of the Adjudicating Authority, ('AA')

AA observed that from a perusal of the Bank Statement and Passbook, ex-facie there is no evidence which reflects that the money was transferred from the Petitioner-financial creditor to the Respondent-corporate debtor. In furtherance of this the Balance sheet nowhere shows the disbursement of the principal amount from the Petitioner's account. The Corporate Debtor in its reply has not denied the disbursement of loan. On the basis of that if we still presume that the loan was still disbursed, then the question which still remains before us is whether the Financial Creditor, who is neither a Bank/NBFC nor a body corporate recognised by the RBI for carrying out financial business, was authorised to give such loan amount or not.

To calculate whether the Petitioner-financial creditor has given loan in terms of Section 186 of Companies Act 2013, the Balance Sheet of the Financial Creditor depicts the aggregate of Paid-Up Share Capital and Reserves and Surplus of the Financial Creditor amounts to Rs. 1,64,33,092 and 60% of that amount is Rs 98,59,855.2. If we compare both the amounts, then we observe that the loan amount disbursed by the Financial Creditor is more than 3 Crore which is much more than 60% of aggregate of Paid-up Share Capital and Reserve and Surplus.

AA referred to Section 186 of the Companies Act 2013, which deals with Inter-Corporate Loans and sets out a

limit on a company for disbursing loan to the other entities and held that the Petitioner has neither made the disclosure of such Inter Corporate Loan in its Balance Sheet nor it had produced the Special Resolution passed in the EGM of Shareholders for the purpose of compliance of Section 186(3) of Companies Act 2013. Further, the Loan Agreement does not speak about any such resolution passed by the shareholders. Therefore, the material available on the record suggest that the borrowing given by the Petitioner is contrary to the limit prescribed under Companies Act 2013 which amounts to an ultra vires act committed by the Petitioner. Hence the loan advanced by the Petitioner is not a legally enforceable debt. Therefore, the bench finds no merit in the petition and the same is hereby dismissed as misconceived.

### SECURITIES EXCHANGE BOARD OF INDIA

### IFCI Ltd. and Goldyne Technoserve Ltd. (GTL)

Facts: IFCI Ltd had given loan to M/s. Glodyne Ventures and Holdings Pvt. Ltd. for which the shares of GTL held by Mrs. Divyani Sarnaik (a Promoter and Whole Time Director of the GTL) were pledged with the IFCL Ltd. IFCI Ltd had an aggregate of 5% or more of the share capital of GTL in the form of these pledged shares and subsequently, these pledged shares were invoked by IFCI Ltd.

subsequent to invocation of pledge, IFCI Ltd shareholding in GTL was increased to 5% or more and the change also resulted in its shareholding increasing by 2% or more which required IFCI Ltd. to make the disclosures in terms of Regulation 29(1) & 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

Therefore, it was alleged that IFCI Ltd. had failed to make the required disclosures in terms of regulation 29(1) & 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with regulation 13(5) of PIT Regulations and thereby had violated the same.

IFCI Ltd. submitted that being a public financial institution, it is not liable for such disclosures.

However Securities Appellate Tribunal in its order said that the shares acquired by invoking the pledge were sold from time to time, and as a result, the shareholding of the appellant did not exceed the limits prescribed under the SAST Regulations and PIT Regulations, has been inadvertently not considered in the impugned Order.”

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## CASE LAWS

**Decision:** SEBI ordered that no penalty is warranted against IFCI Ltd. in the matter and accordingly the matter is disposed of.

### WIPRO and Stakeholders Empowerment Services (SES)

**Facts:** It talks about ambiguity regarding interpretation of section 149(10) of the Companies Act, 2013, which resulted in delay in Wipro's reappointment of two independent directors Patrick Dupuis and Patrick J Ennis.

**Rules:** Section 149(10) talks about specific provision regarding reappointment of independent directors. It states that "subject to the provisions of Section 152, an independent director shall hold office for a term up to five consecutive years, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the board's report".

**Analysis:** Subject to Wipro's reappointment SES concluded that the process followed in reappointment was not in accordance with the law. Hence, it is a case of "non-compliance" the SES issued a recommendation to Wipro shareholders to vote against the resolution. Further Wipro wrote letter to SES stating various sections of the Companies Act & Sebi regulations relating to the appointment of directors, Wipro said, "The nomination and remuneration committee recommends reappointment of the independent director to the board of directors, which in turn approves and recommends the same to the shareholders for approval by way of a special resolution."

With reference to provisions of Sections 149(10), Wipro argued that approval does not necessarily mean "prior" approval and that it was not the legislature's intent to add additional eligibility criteria, which further strengthens the view that the intention is to require approval by the way of special resolution.

SES, however, stuck to its guns, arguing that specific provisions in the law override the general provisions and that the law does not explicitly use the term 'prior', however, the word 'eligible' itself intends to mean pre-requisite or pre-condition. Therefore, eligibility cannot be ratified at a later date," it observed.

**Views:** "We are of the view that seeking shareholders' approval for reappointment of independent director prior to expiry of the first term may be seen as a better governance practice, but in no way can be considered as non-compliance with the provisions of the Act or Sebi Listing Regulations,"

Hence in the above case Wipro received shareholders' approval and no longer considered as non-compliance with the provisions of the Companies Act or Sebi Listing Regulations,"

### COMPANIES ACT, 2013

### Zacharia Maramkandathil Mohan and Ors. vs. Union of India

**Facts:** Several petitions were filed by Petitioners with Kerala High Court for deactivation of their DIN solely on the basis of disqualification due to non-filing of Financial Statement/Annual Returns by the Companies.

**Decision:** Petition allowed

**Judgement:** Kerala High Court ruled that aforesaid Sections are not ultravires to Article 14 or Article 19(1)(g) of Constitution of India. Also Section 164(2) does not have retrospective effect. It is only applicable to the defaults made by the Companies on or after Financial Year 2014-15. It was held that DIN cannot be deactivated solely on the basis that petitioners are disqualified under Section 164(2). The Court directed the Respondents to reactivate the DIN but they can at anytime deactivate it as per Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

## INTERESTING FACTS:

- **With total donations of \$102.4 billion, India's Jamsetji Tata has topped the 2021 Edelgive Hurun philanthropists of the century in the world.**
- **The Wadia Group is the oldest conglomerate of India established in 1736.**
- **SEBI is set to introduce a framework for SPACs (Special Purpose Acquisition Company).**

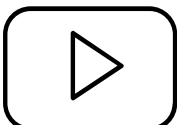
## NEWS HIGHLIGHTS:

- **CBDT has decided to provide income tax exemption to the amount received by an employee from employer or from third party for treatment of COVID-19 during FY 2019-20 and subsequent years.**
- **TATA steel shareholders are set to receive highest dividend in the history of company at Rs. 25 per fully paid equity share.**
- **MCA extends deadline for filing of certain forms upto August 31, 2021.**
- **SEBI tightens penalizing provisions for technical glitches caused because of Stock Exchanges' technology failure.**
- **Supreme Court finds that trials are still pending under scrapped section 66A of Information Technology Act. It has asked clarification from 11 state government.**

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