

VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA

TABLE OF CONTENTS:



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Legal and Advisory Services

WHAT'S INSIDE?

- KEY UPDATES
- CASE LAWS
- ARTICLES
- HIGHLIGHTS OF WEEKLY WEBINARS



KEY UPDATES

MINISTRY OF CORPORATE AFFAIRS

MCA extends last date of filing of Cost Audit Report to the Board of Director.

<https://mca.gov.in/bin/dms/getdocumentmids=KG1UmY7RepuZpkNfr7ThCw%253D%253D&type=open>

SECURITIES AND EXCHANGE BOARD OF INDIA

SEBI updates Disclosure of risk-o-meter of scheme, benchmark and portfolio details to the investors

https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-risk-o-meter-of-scheme-benchmark-and-portfolio-details-to-the-investors_52262.html

SEBI issues Revised guidelines for Liquidity Enhancement Scheme in the Equity Cash and Equity Derivatives Segments

https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-risk-o-meter-of-scheme-benchmark-and-portfolio-details-to-the-investors_52262.html

HIGHLIGHTS OF SEBI BOARD MEETING

Following are the highlights of the SEBI Board Meeting held on 28th September, 2021:

- The Board approved the framework of Gold Exchange. Gold will be allowed to trade at recognised stock exchanges in the form of Electronic Gold Receipt (EGR).
- The Board approved the concept of Vault Manager which will be responsible for managing EGRs.
- The Board approved the concept of Social Stock Exchange. Here eligible Non-Profit Organizations can raise funds.
- The Board amended the regulatory framework related to delisting of equity shares.
- The Board decided to relax the eligibility requirements related to Superior Voting Rights (SR) Shares.
- The Board amended SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with regards to Related Party Transactions.
- The Board approved the concept of Investor Charter of SEBI.
- The Board approved amendment to SEBI (Alternative Investment Funds) Regulations, 2012; SEBI (Mutual Funds) Regulations, 1996; SEBI (Portfolio Managers) Regulations, 2020; SEBI (Foreign Portfolio Investors) Regulations, 2019.
- The Board approved the agenda on criteria for determining 'Fit and proper Person'.
- The Board included Practicing Cost Accountants for carrying out share reconciliation audit of issuer companies.

https://www.sebi.gov.in/media/press-releases/sep-2021/sebi-board-meeting_52976.html

CASE LAWS

INSOLVENCY & BANKRUPTCY CODE

NCLAT found no bar in IBC to proceed against both the co-borrowers when the debts were outstanding.

Case Title – Maitreya Doshi vs Anand Rathi Global Finance Ltd. & Anr

Case Citation – NCLAT 191

Date of Order – 25th Aug 2021

Brief of the case:

The Appellant, Maitreya Doshi was Suspended Director of 'M/s Doshi Holdings Pvt. Ltd. (the Corporate Debtor). Anand Rathi Global Finance Ltd. filed application under Section 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor wherein the Adjudicating Authority admitted the application under Section 7 of IBC. It was argued that Doshi Holdings was merely a pledgor of shares and for Doshi Holdings it cannot be said to be a Financial Debt; and that for the loan issued to Premier Ltd., CIRP had already started and so for same debt CIRP could not be initiated against Doshi Holdings, especially when Adjudicating Authority earlier observed in its order initiating CIRP against Premier Ltd., that after CIRP starts against Premier Ltd., claim against Doshi Holdings would not be maintainable.

Decision:

Hon'ble NCLAT dismissed the appeal with following observations:

"21. This is a matter of Co-borrowers jointly applying and receiving loan in account of one of them who executed documents jointly with promise to pay...

27. If there had been 'only a security interest' like pledging of shares, it would have been different. However, in the present set of facts considering the documents executed between the parties, apart from the pledging of shares, the Corporate Debtor-Doshi Holdings entered into agreement with the Financial Creditor as Co-borrower and as the Co-borrower a loan was received.

28. We thus, agree with the Adjudicating Authority when the Adjudicating Authority admitted the Application under Section 7 of IBC although there was error in observations where reference is made interchangeably to Co-borrower and Guarantor. The Adjudicating Authority at the same time dealt with the case as a matter of Co-borrower. It is a case of Co-borrower and for reasons recorded by us in this judgment we decline to interfere with the impugned order admitting the Application"

Personal Properties of Guarantors cannot be included in a Resolution Plan of the Corporate Debtor.

Case Title - Nitin Chandrakant Naik & Anr. Vs. Sanidhya Industries LLP & Ors.

Case Citation- NCLAT 257

Date of Order – 26th Aug 2021

Brief of the case:

The Appellants, Promoter and Suspended Directors of the Corporate Debtor Simrut Foods & Hospitality Private Limited' preferred an Appeal against impugned order dated 13.11.2019 passed by the Adjudicating Authority wherein the AA allowed the Application filed for seeking approval of the Resolution Plan approved by the Committee of Creditors.

CASE LAWS

The Appeal claims that the Resolution Plan approved made provision of transfer of personal properties of the Appellants. It is claimed that the personal properties of the Shareholders/ Directors cannot form part of the Resolution Plan under Regulation 37 of the CIRP Regulations. Resolution Plan has to be with respect to the property of the Corporate Debtor and cannot enforce action against the properties of Shareholders/ Directors or Guarantors without proceeding against them.

Decision:

Hon'ble NCLAT disposed of the appeal with following observations:

“24. For the above reasons, we hold under Section 61(3) of the IBC that the Resolution Plan as approved by the Adjudicating Authority is in contravention of the provisions of law as discussed above and there have been material irregularities in exercise of powers by the Adjudicating Authority when it directed the Appellants (in para 26 of the impugned order (referred supra)), that the owners of the premises as mentioned in the judgment shall enter into Tripartite Agreements for transfer of the premises (as mentioned in para 18 of impugned order). In fact, if para 18 is seen, after describing the properties in the chart there is also portion added which says that the Financial Creditors shall be at liberty to proceed against the properties of the Promoters erstwhile Directors/ Guarantors “other than those mentioned above to recover their balance”. This, in the Resolution Plan would be blank cheque given to proceed even with regard to any other property also of the Personal Guarantors. In our view, without resorting to appropriate proceedings against the Personal Guarantors of Corporate Debtor this is irregular exercise of powers.”

Doctrine of derivative action cannot be applied in Petition under Section 7 of the IBC.

Case Title - M Sai Eswara Swamy Vs. Siti Vision Digital Media Pvt. Ltd.

Case Citation-NCLAT 706

Date of Order – 9th Sept 2021

Brief of the case:

The Appellant is a director and 50% Shareholder of both the Financial Creditor Companies i.e. Vision Infotel India Pvt. Ltd. and Vision Infracon India Pvt. Ltd. The Appellant requested several times to Mr. K Siva Rama Krishna Kancharla to sign the board resolution to initiate legal proceedings against the Corporate Debtor but he refused to sign the Board Resolution. Adjudicating Authority dismissed the Application under Section 7 of the IBC on the ground that no board resolution authorizing the Appellant to file the Petition. In this regard, it was submitted that Shareholder/Director of the Company can initiate action on behalf of the Company if the same is in the interest of the Company and the Board is not pursuing the same. As per doctrine of derivative action the Appellant being 50% shareholder and director of the Petitioner Company can maintain the Petition under Section 7 of the IBC.

Decision:

Hon'ble NCLAT dismissed the application with following observations:

“7. Ld. Adjudicating Authority has also held that no Board Resolution was filed in regard to advance loan to Corporate Debtor Company as required under Section 186 of the Companies Act, 2013.

CASE LAWS

In this regard, Ld. Sr. Counsel for the Appellant submitted that the Corporate Debtor Company in his balance sheet acknowledged the debt. Therefore, such resolution is not required to maintain the petition under Section 7 of the IBC. We are not convinced with this argument. We found no flaw in the findings of Ld. Adjudicating Authority”

In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded.

Case Title - In Re: Cognizance for Extension of Limitation

Case Citation – Supreme Court 665

Date of order - 23rd Sept 2021

Brief of the case:

Due to the outbreak of COVID-19 pandemic in March, 2020, the Hon’ble Supreme Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State). On 23.03.2020, the Court directed extension of the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders.

Decision:

Hon’ble Supreme Court disposed the M.A with following observations:

“8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded.

Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of 5 proceedings.”

A separate application to deal with a new issue cannot be entertained under Rule 11 of the NCLT Rules, 2016, after approval of Resolution Plan

Case Title- SM Milkose Ltd. Vs. M/s Onyx Components and Systems Pvt. Ltd

Case Citation- NCLT 543

Date of order- 16th Aug 2021

The Adjudicating Authority observed that Section 60(5)(c) of IBC, 2016 states that any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation

CASE LAWS

proceedings of the corporate debtor or corporate person under this Code shall be considered by the Adjudicating Authority. In the present matter, the Resolution Plan has already been approved. Therefore, at this juncture, we would like to consider the meaning of 'insolvency resolution process period', which has been defined in Section 5(14) of IBC, 2016, which is quoted below:

5(14) : "insolvency resolution process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.

A bare perusal of the provision shows that the insolvency resolution process period means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.

This period of 180 days may be extended under Section 12 of IBC, 2016 and in terms of the amended provision of Section 12 of IBC, 2016, the total period of insolvency resolution process is 330 days, which means that the period so referred to in Section 5(14) of IBC, 2016 is subject to the extension made under Section 12 of IBC, 2016 or when the Resolution Plan is approved by the Adjudicating Authority. Here in the case in hand, the Resolution Plan has already been approved by the Adjudicating Authority on 02.04.2019. Therefore, no insolvency proceeding is pending before the Adjudicating Authority. Under such circumstances, in our considered view, the application filed by the applicants under Section 60 (5) of IBC, 2016 is not maintainable under the law.

So far as the application maintainable under Rule 11 of NCLT Rules, 2016 is concerned, in our considered view, during the pendency of any matter before the Tribunal, when there is no specific provision under the Act/Code is given only then the Tribunal may pass order by exercise of its power under Rule 11 of the NCLT Rules to deal with such situation. But herein the case in hand, no such matter is pending after the approval of Resolution Plan by the Adjudicating Authority, therefore, in our considered view, a separate application to deal with a new issue cannot be entertained under Rule 11 of the NCLT Rules, 2016. Therefore, in our considered view, Rule 11 of NCLT Rules, 2016 is also not applicable in the case in hand. And the application filed by the applicants is also not maintainable under Rule 11 of NCLT Rules.

Participation of the financial institutions in the management based on an investor agreement categorise them as related parties and hence exclude them from CoC- NCLAT

Case Title- Sai Peace and Prosperity Apartment Buyers Association Vs. ASK Investment Managers P Ltd & Ors.

Case Citation- NCLAT 252

Date of order- 20th Sept 2021

Brief of the Case

An appeal was preferred against the impugned order dated 3rd January 2020 whereby the Adjudicating Authority directed the Resolution Professional to make the ASK Investment Managers Limited, a member of CoC with voting rights proportionate to its claim against the Corporate Debtor despite the fact that ASK Investment Managers Limited though being a Financial Creditor but is not eligible to be a part of CoC for the reason that the Respondent is a related party

CASE LAWS

in terms of Sec. 5(24)(m) & 5(24) (i) of the Insolvency and Bankruptcy Code 2016. In order to determine whether a party is a related party in terms of Section 5 (24) and Section 21 (2) of the Insolvency and Bankruptcy Code, 2016, it is imperative to know the nature of the transactions entered into between the said party and the Corporate Debtor and examine the influence and inter-relationship between the parties. Undisputedly there was a 'Subscription and Shareholders Agreement' (SSHA) entered into between ASK Investment Managers Private Limited, Ambojini Property Developers Private Limited (Corporate Debtor), Real Value Promoters Private Limited, V S Suresh, (directed in real Value) and R. Damodaran (directed in Real Value) on 23 March 2011.

Decision

Hon'ble NCLAT allowed the appeals with following observations:

"'ASK' is, in effect, an insider of the Corporate Debtor having substantial interest in the ownership of the Corporate Debtor.

Hence 'ASK' being a related party, and their claim with the IRP concerning the above mentioned CIRP should be rejected, and they are not entitled to participate in the CoC.

Both the Appeals deserve to be allowed and the impugned order deserves to be set aside.

Accordingly, the Respondent No. 1 ASK Investment Managers Ltd is a related party to the Corporate Debtor; therefore, it cannot be made part of COC with voting rights."

M/s. NCC Infrastructure Holdings Ltd. Vs. M/s. TAQA India Power Ventures Pvt Ltd.

Case Citation- 545 NCLT

Date of order- 06th Aug 2021

The entire disputes between the parties arose in respect of SPA (Share Purchase Agreement) and by which Corporate Debtor has agreed to purchase the major shares of the Operational Creditors in SHPL.

The question which arises is:

Whether the said SPA and any claim made in respect of the same would be treated as a claim in respect of the provisions of goods?

The term 'provisions' has not been defined under IBC 2016.

As per the definition of 'Goods' under section 2(7) of the Sale of Goods Act, 2013 includes stocks and shares. However, the term 'goods' cannot be given the independent meaning. The term provisions being prefixed to the said definition.

As per the SPA, it is the Corporate Debtor who has agreed to buy the shares by paying money to the Operational Creditors.

The right to claim money from the Corporate Debtor emanates from a SPA pursuant to which the Corporate Debtor had acquired the shares from the Operational Creditor. The transaction as transpired between the parties could have been treated as an 'operational debt' had it occurred in the 'ordinary course of business.

However, it is not so in the present case and the parties to the present proceedings are governed by a Share Purchase Agreement', and non - adherence / violation of the said terms and conditions envisaged thereunder, cannot be, under any circumstances, be treated as a claim in respect of the provision of goods as defined under Section 5(21) of IBC, 2016.

Whether there is any dispute exists between the parties that exist before the issuance of the Demand Notice by the Operational Creditor?

CASE LAWS

The Operational Creditors has issued a demand notice on 22.02.2019 and the Corporate Debtor responded to the Demand Notice on 05.03.2019.

In the said reply the facts that are point out are as follows

- 1) There exists a dispute between the parties in relation to the claim of Rs 9 crore.
- 2) The Corporate Debtor has explained the disputes which existed between the parties before the issuance of the Demand Notice and also the disputes which have arisen after the Award being passed by the Arbitral Tribunal.
- 3) Certain civil suits were filed by the parties before the Hon'ble High Court of Bombay even before the issuance of the Demand Notice.

Thus, from the evidence it is clear that there exists a dispute between the parties before the issuance of the Demand notice.

Whether the Award passed by the Arbitral Tribunal, which is a foreign Award has become legally enforceable in India and if so, what would be the consequences?

The Supreme Court in the matter of Government of India - Vs- Vedanta Limited has held that a petition for enforcement and execution of a foreign award by way of a petition is required to be filed under Section 47 and a foreign award does not become a decree until and unless it passes the muster of Section 47 to 49, only after which it acquires the status of a decree.

Only after the Court adjudicates on the enforceability of the foreign award under Section 47 to 49, the foreign award would deem to be a decree of the Court.

In the present case the foreign award is yet to be enforceable under Section 47 to 49 of the Act 1996.

The views expressed in this regard by Hon'ble NCLT Hyderabad Bench and Bombay Bench they don't wish to render any findings and keep it open.

SUPREME COURT

Senior Officials can't automatically be liable for company offence

Case: Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd & others etc.

Judgement date: September 27, 2021

By - Supreme Court of India

Law: Criminal Procedure Code, 1973

The Complainant was the owner of the immovable property situated at Mangalore-Bajpe Old Airport Road. The Accused were Mangalore Special Economic Zone Ltd (MSEZL) (A1), Chairman of Mangalore Special Economic Zone Ltd (A2), Managing Director of Accused No.1 (A3), Deputy General Manager (Civil & Env.) (A4), Planner and Executor of the project work of Accused no.1 (A5), Company incorporated under the Companies Act (A6), Chairman of A6 (A7), Executive Director of A6 (A8), Site Supervisor (A9), Sub-contractor (A10), Employees of accused (A11, A12 & A13).

A1 planned to lay water pipeline by the side of Mangalore-Bajpe Old Airport Road adjoining the schedule properties. A2 appointed A6 as contractor, in return A6 authorized A7 and A8 to execute and oversee the said work. Further, A9 to A13 were appointed for completing the job at site.

CASE LAWS

A4 and A5 were to supervise the job and A6 to A8 had put into service heavy machineries and excavators and their vehicles for carrying out the work.

It was asserted that A2 to A5 & A7 to A13 collectively conspired to lay pipeline underneath the schedule properties belonging to the complainant without any legitimate authority and right whatsoever. They had further trespassed over the complainant property and dismantled the compound wall, cut and destroyed around 100 valuable trees present on the complainant property; and caused other damages. It resulted in pecuniary loss of more than Rs.27 lakhs to the Complainant.

It was argued that "... the accused have committed the act of mischief and waste and caused pecuniary loss of more than Rs.27 lakhs to the complainant. All the accused are jointly and severally liable to make good the loss to the complainant."

The Bench noticed that presence of A2 to A5 & A7 to A8 only at the time of conspiracy and not otherwise and anywhere at the job. Hence it is observed that A2 to A5 and A7 to A8 were merely grouped as Directors, Chairman and Managers accordingly.

"Therefore, as such, in absence of any specific allegations and the specific role attributed to them, the learned Magistrate was not justified in issuing process against accused nos.

1 to 8 for the offences punishable 12 under Sections 427, 447, 506 and 120B read with Section 34 IPC."

Cases referred:

GHCL Employees Stock Option Trust v. India Infoline Limited, (2013) 4 SCC 505

Sunil Bharti Mittal v. Central Bureau of Investigation, (2015)

Maksud Saiyed v. State of Gujarat, (2008)

Pepsi Foods Ltd. v. Special Judicial Magistrate (1998)

Judgement:

The Court held that issuing summons/process by the Court is a very serious matter and therefore unless there are specific allegations and the role attributed to each accused more than the bald statement, the Magistrate ought not to have issued the process.



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ARTICLES

GST DEPARTMENT IS NOT ALLOWED TO COLLECT ANY TAX, INTEREST, PENALTY WITHOUT ISSUANCE OF NOTICE.

GST department is not allowed to collect any Tax, Interest, Penalty without the issuance of notice under section 74(1) of the Goods and Service Tax Act, 2017 which was declared in the case of Telangana High Court while dealing in the case of Deem Distributors Private Ltd Vs Union of India.

The high court held an investigation and it was found that the petitioner was receiving fake invoices from bogus suppliers or fake firms with an intention to pass on the Input Tax Credit and to use credit in a fraudulent manner without actually receiving any material. It was observed by the high court that the notice under section 74(1) of the Act should be issued by the proper officer or the officer in charge, if he is of the opinion that the Input Tax Credit has been wrongly or fraudulently utilized by the person, and has an option under section 74(5) of the Act.

The officer issued a notice to the petitioner regarding the Input Tax Credit that has been availed by the petitioner on the basis of fake invoices of Rs 1,52,35,820/-

Accordingly, the petitioner has to reverse the Input Tax Credit mentioned by the officer which was availed as per the invoices. In addition to that, officer sent a notice

by saying there was tax liability of Rs. 1,17,35,822/- for the period of one year from February 2018 to March 2019, and as per the notice the petitioner was guided to pay, tax liability and if failed a show cause notice would be issued as per Section 74(1) of the Act.

In this case, the officer was stopped from pressurizing the petitioner for making any

payment of tax or liability without issuing a notice under section 74(1).The court ordered the respondent to refund the amount which was paid by the petitioner with the interest of 7% p.a. from the date on which the petitioner gave the money to the date of refund.

The petitioner filed a case on the basis that he is not liable to pay the tax if there is no investigation conducted and tax will be paid only after conducting investigation. Any decision made by the GST department during the investigation then it will be the interim decision. If there is no inquiry held than petitioner will not be held liable to pay any tax.

Determination of tax which is unpaid u/s 74 Section 74 of CGST Act, 2017 explains Determination of tax unpaid or erroneously refunded or input tax credit wrongly availed or utilized for the means of fraud or any suppression of facts as below :-

1. Where it appears to the officer that any tax has remained unpaid or input tax credit has been wrongly availed than such officer shall serve notice, along with interest payable thereon specified under section 50 and a penalty equivalent to the tax should be specified in the notice.
2. The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit for issuance of the order.
3. The proper officer may serve a statement, containing the details of tax not paid on the person chargeable with tax.
4. The person chargeable with tax may pay penalty equivalent to fifteen to twenty-five per cent of such tax on the basis of his own ascertainment or by the proper officer.

ARTICLES

5. Where the proper officer is of the opinion that the amount paid under sub-section falls short of the amount actually payable, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable.

6. The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year within five years from the date of erroneous refund.

Conclusion:

Due to rising numbers of fake invoice creators and other tax evaders High court passed this regulation which is beneficial to both GST officers as well as tax evaders with an objective to catch and book actual fraud amount and unscrupulous events engaged in illegal activities to defraud the government exchequer, Along with legislative and procedural changes in the law, this nationwide drive has contributed to better compliance and revenue collection.

COMPANIES INCORPORATED OUTSIDE INDIA (FOREIGN COMPANIES UNDER COMPANIES ACT, 2013)

The term “foreign company” is defined under Section 2 sub-section (42) as any company or body corporate incorporated outside India which, has a place of business in India whether by itself or through an agent physically or through electronic mode and conducts any business activity in India in any such manner.

According to the new act, a new addition is made into the definitions of a ‘foreign company’ under the Companies Act, 2013 which now include those companies incorporated outside India which subsequently have established an office

or a branch in the territory of India for carrying on business activity through electronic mode even a foreign e-commerce website based outside India not having any office or any other sort of physical presence in India would attract the provisions of the Companies Act, 2013.

Provisions and Sections related to Foreign Company

Section 379: Application of Act to Foreign Companies

This Section applies to companies where more than 50% of the paid up share capital (Equity or Preference shares) is held by

- one or more citizens of India or
 - by companies or body corporates incorporated in India,
- Such Company shall be deemed to be incorporated in India.

Section 380: Documents, etc., to be Delivered to Registrar by Foreign Companies

Every foreign company within 30 days of the establishment of its place of business in India should submit the following documents:-

- a) Certified copies of the charter, memorandum, and Articles of Association, Translated documents and instruments if such documents are not in English language.
- b) The full address of the registered principal office
- c) A list of Directors or Secretary
- d) The name and address of person resident in India authorized to accept any notice or documents required to be served on behalf of the company.

ARTICLES

e) Details of Opening and closing of a place of business in India.

f) Declaration notes of the directors of the Company or authorized representative has ever been debarred from formation of companies and management in India and such other particulars.

Any alteration in the documents shall be delivered to the ROC through a return.

Section 381: Accounts of Foreign Company with Rules

Every foreign company shall prepare financial statement of its India business operations in accordance with Schedule III and the copies of the same shall be delivered to the ROC.

The financial statements shall be audited. Such financial statements shall be filed in Form FC-3. Such form shall also contain list of all the places of business established by the foreign company in India as on the date of balance sheet.

Section 382: Display of Name, etc., of Foreign Company

According to section 382, every foreign company shall exhibit on the outside of every office or place where it carries on business in India the name of the company and the country in which it is incorporated in the English language along with the local language in which office is situated.

Section 383: Service on Foreign Company

According to section 383 any process, notice, or other document required to be served on a foreign company shall be sufficient, if addressed to any person whose details have been delivered to the Registrar and left or sent by post to the Registrar or by electronic mode.

Section 384: Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection

Following provisions shall mutatis mutandis apply to Foreign Companies:

Section 71: Debentures

Section 92: Annual Return

Section 128: Books of Account, etc., to be kept by Company

Chapter VI: Registration of Charges

Chapter XIV: Inspection, Inquiry and Investigation

Section 385: Fee for Registration of Documents

Fees for registering any documents shall be as prescribed by (Registration Offices and Fees) Rules, 2014.

Section 386: Interpretation

This Section gives various interpretations of words like a certified, place of business, director in relation to a foreign company.

Section 387: Dating of Prospectus and Particulars to be Contained therein

This Section says that no person shall circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, a place of business in India, unless the prospectus is dated and signed and should contain particulars as prescribed under this section.

Section 388: Provisions as to Expert's Consent and Allotment

Section 388 says that where the prospectus

ARTICLES

includes a statement purporting to be made by an expert should have written consent to the issue of the prospectus with the statement included in the form and context in which it is included if it contains any report or memorandum appearing on the face thereof or for reference purpose.

Section 389: Registration of Prospectus with Rule

Section 389 deals with registration of prospectus. A chairperson of the company and two other directors of the company should approve the prospectus by passing a resolution and deliver the same for registration to the Registrar.

The prospectus shall state that it has been delivered. It should be accompanied by following documents:

- (a) any consent to the issue of the prospectus required from any person as an expert;
- (b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
- (d) a copy of underwriting agreement; and
- (e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Section 390: Offer of Indian Depository Receipts

The Central Government may make any rules for Indian Depository Receipts in relation to its offer, issue, manner of dealing with depository, sale, transfer or transmission by foreign company having a place of business in India.

Section 391: Application of Sections 34 to 36 and Chapter XX

According to section 391 provisions of following shall apply to foreign company-

Section 34 - Criminal Liability for Mis-statements in Prospectus

Section 35 - Civil Liability for Mis-statements in Prospectus

Section 36 - Punishment for Fraudulently Inducing Persons to Invest Money

Chapter XX - Winding up

Section 392: Punishment for Contravention

If a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twentyfive thousand rupees but which may extend to five lakh rupees.

Section 393: Company's failure to comply with provisions of this Chapter will not affect validity of contracts

Section 393 states that any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, or transaction entered into by the company but the Company shall not bring in new lawsuits.

ARTICLES

STARTUP COMPANIES IN INDIA

Meaning

In recent times word "Startup" has gained a lot of popularity as many individuals are interested to open their own business and desire to become entrepreneurs. Therefore, there are more and more entities helping new businesses. A startup is a company whose goal is to grow and expand rapidly where innovation plays an essential role in the success of a startup, so all entrepreneurs should seriously consider this aspect to make their startup successful.

A startup is a new company that is still at the beginning stage of branding, sales and hiring employees. But the age cannot define a company as a "startup," too often companies are referred to as startups who have been in the market for less than 3 years, however, this is not true it depends not only on age but on a specific set of features. A startup is a company which follows business model that is scalable and repeatable which means it can grow even without increase in human or financial resources. Startups are very dynamic and ready to adapt to the adversities that may arise in the course of businesses they should be ready to tailor their product to meet changing customer requirements as there are various uncertainties in the way. For this reason, Startups are considered risky ventures.

Definition

The concept of "start-up" has been introduced by the MCA under Companies Act 2013, which says that, "A start-up company means a private company incorporated under the Companies Act, 2013 and recognised as a "start-up" in accordance

with the notification issued by the Department of Industrial Policy and Promotion".

How Does a Startup Work?

Whether the end motive of a startup is to change the world or simply make their ideas into reality, Startup founders dream of giving society something what they need by creating products, services etc. On a high level, a startup works like any other company as groups of people work together to create a product that customers will buy.

Usually, companies follow the same old method, tradition, process and work which has been done before. For instance, a food chain owner may concentrate only on the same type of cuisine and never thinks of expansion. That is, they narrow their scope and don't go for new trends, innovation and creativity whereas startup, on other hand aims to create entirely new products, ideas, consider changing trends and adopt new things quickly. For instance, in the food industry companies like Zomato, Swiggy, FreshMenu provide restaurant-like food at the doorstep with convenience, choices, offers which normal restaurants can't match. In turn, these companies easily reach millions of potential customers, instead of thousands.

Speed and growth is the important factor that distinguishes startups from other companies. Startups aim to build on ideas very quickly they continuously try to improve products through feedback, usage data, latest trends and use various techniques to market their products and try to expand their customer bases. This helps them to establish larger market shares, which in turn lets them raise more money than ordinary businesses.

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Startup India

Government of India launched the flagship program called, "Startup India" on January 16, 2016. The program anticipates to building a strong ecosystem that is conducive for the growth of startups and helps to bring revolution in India by taking various initiatives which helps to improve digital connectivity, better market reach and create a favourable ecosystem. India has marked its 5 year journey with this initiative government of India is focusing to make India a \$5 trillion economy, but it won't be possible without building a strong startup ecosystem in India. For instance the digital payments ecosystem is led by State innovation (NPCI), with Aadhaar, Jan Dhan, UPI, and India Stack. Such benefits and exemptions are only available to the startups if they are consider as an 'Eligible Startup'. So first let's understand the conditions to be met to qualify as an "Eligible Startup".

Eligibility for Startup India

As per the Startup India Action plan followings conditions must be fulfilled in order to set up eligible Startup :

A startup is said to be eligible for registration when it has not completed a total period of ten years from the date of incorporation.

Only a private limited company or registered partnership firm or a limited liability partnership are eligible for setting up such companies.

Should not have an annual turnover exceeding Rs. 100 crore for any financial year since incorporation/registration.

Entity should work towards innovation, development or improvement of products or processes or services and should have a scalable business model with a high level of employment generation or wealth creation.

It should not be formed by splitting up any existing company or reconstructing a business already in existence.

Benefits provided under Startup India

1. Simple process

The government of India has launched a mobile app and a website name Startup India and DPIIT for easy registration .Anyone interested in setting up a startup can fill up a simple form available on the website and upload certain documents. The entire process is completely online and simplified which enables startups to save time and money.

2. Self-Certification

Startups being fairly new to eco-systems does not need to comply with various labour law compliance which does not impose strict liability in case of any non compliance.To reduce such liabilities startups are allowed to self-certify compliance with only nine labour and three environmental laws which is very less as compared to normal company and even inspection is not conducted for a period of three years.

3. Reduction in cost

The government provides lists of facilities like patents and trademarks registration and provide high-quality intellectual right services including fast examination of patents and trademarks at lower fees. The government will bear all other fees and the startup will bear only the statutory fees and will enjoy 80% reduction in the cost of filing patents.

4. Easy access to Funds

Government has raised 10,000 crore rupees to fund Indian startup companies by being a venture capitalist. The government also give guarantee to the lenders such as banks and

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other financial institutions to provide funds to such companies. This plan also provides an option to choose between which venture capitalists to choose by giving liberty to all startup companies.

5. Tax Exemption

Startups registered under the startup India scheme are exempted from various taxes. This exemption is provided for a period of three years provided if it gets certification from Inter-Ministerial Board (IMB). Any investment which is made by investors of higher value than the market price is exempted. Further, investments made by angel investors are also exempted. Venture capitalists investing their capital gains in such funds will get exemption from capital gains. This exemption will help startups to attract more investors.

6. Research and Development Benefits

R&D is an important factor to encourage startup companies towards innovation and give inspiration to those who want to be an entrepreneur in a near future. Government has setup seven new research parks which provide different facilities to startups companies in the research sector these parks ensure that facilities are provided to all students, entrepreneurs, and investors to research and develop their desired products and services.

7. Startup fest for entrepreneurs

The government has planned to hold startup fests annually both nationally and internationally twice during a year which enables various stakeholders to meet and exchange ideas and provide huge networking opportunities. Startups are being highly encouraged by such meetings. Such meetings tend to benefit and encourage people and investors to setup in such startups.

8. Adopting Incubator module

The Startup India scheme includes an incubator module this endorse a public-private partnership. It also gives startups the requisite knowledge and support that are required. At present there are 118 incubators setup across India helping various startup companies. If a startup company wants to close its business it can windup within 90 days from the date of application.

Successful Startups in India

Indian startups are provided with unlimited funding across various sectors. In just eight months this year, 24 startups have already made it to the top i.e unicorn club. The successful startup companies of 2021 are from health, social media, e-commerce, pharmacy adding more to successful startups. Lets discuss few India based startups and the way they get various funding benefits.

Meesho

Founded by IIT-Delhi graduates Aatrey and Sanjeev Barnwal in 2015, Meesho is an online reseller application for individuals, small and medium businesses, who sell products within their network on social media channels such as WhatsApp, Facebook, and Instagram. The platform has about 13 Million individual entrepreneurs, bringing the e-commerce benefits to 45 Million customers. Generating over INR 500 Cr income for its entrepreneurs. It has raised \$415 Million funding from investors like Soft Bank, Prosus Ventures, Facebook, Shunwei Capital, Venture Highway and Knollwood Investment.

PharmEasy

PharmEasy was founded in 2015 by Dharmil Sheth and Dr. Dhaval Shah to offer a range

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pharmaceutical products, medicines, and other medical equipments. It connects over 60K pharmacies and 4K doctors in India. It has served over 20 Million patients since its incorporation. After the merger with Medlife it was able to achieve one of its goals entering the unicorn club. The company raised \$323 Million in a Series E funding round, at a valuation of \$1.5 Billion. Notably, it is one of the first successful Indian epharmacy startup.

Groww

Groww is India's second most wealth management startup after Zerodha. Just like Zerodha, It allows users to invest in stocks, mutual funds, IPOs, and Gold using its tech platform available via mobile application and web platform. The company helps user to buy and sell stocks with an easy to use interface trading app. The company was founded by Lalit Keshre, Harsh Jain, Neeraj Singh, and Ishan Bansal who were ex flipkart employees and have over 15 Million investors registered with Groww so far. The company raised \$83 Million funds from its investor like Tiger Global.

Sharechat

ShareChat has finally found its way to the unicorn club, after capturing the attention of users across in India. It is a social media startup and has witnessed massive growth in 2020, as its monthly active user base grew 166% from 60 Million to 160 Million in one year. ShareChat is most interesting trend settler startup which gathered attention in metro cities during the pandemic, without having an English interface.

ShareChat, is founded by IIT-Kanpur alumni Farid Ahsan, Bhanu Singh and Ankush Sachdeva in 2015, started its journey in 2015 as a content-sharing tool for WhatsApp with 100K content pieces per day. The company

Chinese apps like TikTok and Likee. Moj has also been garnering the attention of the audience and has about 80 Million active users.

UpGrad

Mumbai based startup upGrad became the third successful edtech India, after raising a total of \$185 Million funds from IFC (International Finance Corporation, a sister organization of the World Bank and member of the World Bank Group), in August 2021, at a valuation of \$1.2 Billion. UpGrad is founded by Ronnie Screwvala, Mayank Kumar, Phalgun Kompalli and Ravijot Chugh. It offers higher education courses in collaboration with various universities of India. It claims to have a million users globally out of which 45,000 are paid learners.

Conclusion

Startups in India are experiencing a golden era in the history of Indian entrepreneurship the size of the Indian market provides ample opportunities for startups to grow. However, still the Indian government has a crucial role to make India as a Tech Garage of the World. It should act as a catalyst, and bring together the synergies of innovation in the private sector. India is now third-largest tech start-up hub globally with 38,756 officially recognised start-ups with 27 unicorns, eight of which achieved this status in 2020. Apart from it India's economy, market size, and government's active support provides a wide scope for establishing a thriving startup environment.

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Company Secretaries & Legal Advisory

Pune | Kolkata | Cochin | Mumbai
+91 (22) 6611 9696 | info@mehta-mehta.com

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ONE PERSON COMPANY & RISK MANAGEMENT

In this session, compliances of One Person Company (OPC) were highlighted. In detail exemptions of OPC were explained. The presenter also discussed about the conversion of OPC into other entities or body corporate. All the latest amendments related to OPC were deliberated.

Apart from One Person Company, we had covered various aspects of Risk Management and how it can be tackled. Here responsibilities of Company Secretary in managing Risk are also covered.

SEBI LODR AMENDMENTS

SEBI introduced various amendments in 2021. In the session, we have discussed all the amendments in detail and precisely. We had experienced panelists to guide throughout the session.

DEMATERIALIZATION OF SECURITIES & MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

In this session, numerous practical aspects of Dematerialization of Securities were taken into consideration such as is it Compulsory for an unlisted public company to dematerialized there shares, whether Private limited company can use dematerialization process for transferring shares, etc. and such other difficulties faced during the dematerialization process.

In another session, provisions related to Memorandum of Association and Articles of Association were discussed including case studies. Provisions related to alteration of Memorandum of Association and Articles of Association were deliberated in detail.

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