
FEBRUARY 2022 | ISSUE

VEDANAM

A Monthly Newsletter by Mehta & Mehta



Why Vedanam?

Knowledge is Power

Presenting you with our monthly Newsletter Vedanam, which covers Amendments, Updates and judgements pertaining to Companies Act, 2013, SEBI Laws, Insolvency Laws and other regulatory updates.

INDEX

I. MINISTRY OF CORPORATE AFFAIRS UPDATES	
A.	MCA Circulars and Notifications
1.	Central Government through MCA makes further rules in regards to CSR Compliance - 11th February, 2022
2.	MCA Notification under Section 67 of LLP Act 2008 - 11th February, 2022
3.	Central Government delegates power under section 17 of LLP Act, 2008 to Regional Directors - 11th February, 2022
4.	Limited Liability Partnership (Amendment) Rules, 2022- 11th February, 2022
5.	MCA Circular on relaxation on levy of additional fees for various forms - 14th February, 2022
II. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) UPDATES	
A.	SEBI CIRCULARS AND NOTIFICATIONS
1.	SEBI Circular on Schemes of Arrangement by Listed Entities - 01st February, 2022
2.	SEBI Circular on Guidelines on Accounting with respect to Indian Accounting Standards (IND AS) - 04th February, 2022
3.	SEBI comes out with new disclosure format and requirements for abridged prospectus - 04th February, 2022
4.	SEBI Circular on Framework for conversion of Private Listed InvIT into Public InvIT - 09th February, 2022
5.	SEBI directs Asset management companies to form audit committee - 09th February, 2022
6.	SEBI Consultation Paper on new disclosure requirements for loss making companies going for IPO- 18th February, 2022
B.	ORDERS/ CASE LAWS/ PRONOUNCEMENT
1.	SEBI bars Anil Ambani and 3 others from markets for alleged siphoning of funds- 11th February, 2022
2.	SEBI imposed restrictions on 15 entities in Zee insider trading case - 18th February, 2022
III. OTHER UPDATES	
1.	Insolvency Law

IV. KNOWLEDGE SHARING

1. **Independent Director under Companies Act, 2013**

Disclaimer: All views in this Newsletter are expressed by the concerned individuals only and are not the views of the Department or the Company.

I. MINISTRY OF CORPORATE AFFAIRS (“MCA”) UPDATES:

A. MCA CIRCULARS AND NOTIFICATIONS:

1. Central Government through MCA makes further rules in regards to CSR Compliance - 11th February, 2022

Central Government through MCA notification dated 11th February, 2022 avails a new requirement to furnish a report on Corporate Social Responsibility in Form CSR – 2. These rules may be called the Companies (Accounts) Amendment Rules, 2022.

Key Highlights of the Circular :-

- Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar of Companies for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS).
- Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS).
- Under CSR – 2, MCA have mandated following disclosures:
 - Net worth, Net Profit and Turnover of the Company.
 - Constitution of CSR Committee of the Company.
 - Company’s Website details.
 - Impact assessment of CSR projects.
 - Any set-off of amount under sub-rule (3) of Rule 7 of Companies (CSR Policy) Rules, 2014.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mds=%252FAD3Plv%252FhT6P7xcgxfw4tQ%253D%253D&type=open>

GO UP

2. MCA Notification under Section 67 of LLP Act 2008 - 11th February, 2022

Central Government vide MCA notification directs that provisions of sections 90, 164, 165, 167, 206(5), 207(3), 252 and section 439 of the Companies Act, 2013, shall apply to Limited Liability Partnership with modifications. They shall come into force with effect from the 11th February, 2022.

Sr. No.	Part/Chapter/Section /Sub-section(s) in	Part/Chapter/Section /Sub-section(s) in the Companies Act, 2013 Modifications	Comment on the Change
---------	---	---	-----------------------

	the Companies Act, 2013 Modifications		
1.	In section 90, in sub-section (1) to sub-section (11)	(i) for the word “shares”, wherever it occurs, the word “contribution” shall be substituted; (ii) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted; (iii) for the word “member” wherever it occurs, the word “partner” shall be substituted; (iv) for the word “officer” wherever it occurs, substitute the words “partner” or “designated partner” shall be substituted.	Self Explanatory. (In order to align and uniform the provisions to be validated to Limited Liability Partnership.
2.	In section 164 Sub-section (1)	(i) for the words “for appointment” wherever they occurs, the words “to become” shall be substituted; (ii) for the word “director” wherever it occurs, the words “designated partner” shall be substituted; (iii) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted;	Self Explanatory.
	Sub-section (2)	For sub-section (2), the following shall be substituted, namely:- “(2) No person, who is or has been a director of a company or designated partner of limited liability partnership, as the case may be, which— (a) has not filed financial statements or the Statement of Account and Solvency or annual returns, as the case may be, for any continuous period of three financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to become or continue as a designated partner of that limited liability partnership or to become designated partner in other limited liability partnerships for a period of five years from the date on which the said company or limited	The defaults pertaining to non - filing of financial statement, non-repayment of deposits would now be held as a disqualification to be a designated partner.

		liability partnership fails to do so: Provided that where a person becomes as a designated partner of a limited liability partnership which is in default of clause (a) or clause (b), he shall not incur disqualification for a period of six months from the date he becomes designated partner.”.	
3.	In section 165 Sub-section(1)	for sub-section (1), the following shall be substituted, namely:- “(1) No person shall become designated partner in more than twenty limited liability partnerships.”;	Due to the new limits availed, a designated partner cannot hold more than 20 appointments as designated partner and needs to resign from some of the entities if his total appointments exceeds twenty.
	Sub-section (3)	for sub-section (3), the following shall be substituted, namely:- “(3) Any person holding office as designated partner in limited liability partnerships more than the limits as specified in sub-section (1) ,immediately before this notification shall, within a period of one year from such notification,- (a)choose not more than specified limit of those limited liability partnerships , as limited liability partnerships in which he wishes to continue to hold the office of designated partner; (b) resign his office as designated partner in the other remaining limited liability partnerships; and (c) intimate the choice made by him under clause (a),to each one of the limited liability partnerships in which he was holding the office of designated partner before such notification and Registrar having such jurisdiction in respect of each limited liability partnership.”;	
	Sub-section (4)	for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted;	Self Explanatory.
	Sub-section (5)	(i) for the words “director” or “non-executive director” wherever they occurs, the words “designated partner” shall be substituted;	Self Explanatory.

		(ii) for the words “commencement of this Act”, the words “date of this notification” shall be substituted;	
	Sub-section (6)	In sub-section (6), (i) for the words “accepts an appointment as a Director”, the words “becomes a designated partner” shall be substituted; (ii) for the words “liable to a penalty” the words “punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees” shall be substituted.	Self Explanatory.
4.	In Section 167		
	Sub-section (1)	(i) for the word “director” wherever it occurs, the words “designated partner” shall be substituted; (ii) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted; (iii) in proviso of clause (a), for the word “companies” the words “limited liability partnerships” shall be substituted; (iv) clause (b) shall be omitted; (v) for the words “this Act” the words “the Limited Liability Partnership Act, 2008”, shall be substituted; (vi) clause (h) shall be omitted;	Self Explanatory.
	Sub-section (2)	for the word “director” wherever it occurs, the words “designated partner” shall be substituted;	Self Explanatory.
	Sub-section (3)	for sub-section (3), the following shall be substituted, namely:- “(3) where all the designated partners of limited liability partnership vacate their offices under any of the disqualifications specified in sub-section (1), the partners or, in their absence, the Central Government shall appoint the required number of designated partners who shall hold office till the designated partners are appointed by the limited liability partnership.”.	Due to new provisions to be validated, if in case all the designated partners vacate office of limited liability partnership, then until a new designated partner is appointed Central Government will appoint the required number of designated partners
5.	In section 206, sub-section (5)	for sub-section (5), the following shall be substituted, namely:-	After the validation of this provision, Central Government can inspect books

		“(5) The Central Government may, if it is satisfied that circumstances so warrant, direct inspection of books and papers of a limited liability partnership by an inspector appointed by it for the purpose.”.	and papers of limited liability partnership.
6	In section 207, sub-section (3)	for the word “company”, the words “limited liability partnership” shall be substituted.	Self Explanatory.
7.	In Section 252		
	Sub-section (1)	(i) for the words and figures “notifying a company as dissolved under section 248” the words and figures “notifying a limited liability partnership as struck off and dissolved pursuant to section 75” shall be substituted; (iii) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted; (vii) for the words “register of companies” wherever they occur, the words “register of limited liability partnership” shall be substituted;	Self Explanatory.
	Sub-section (2)	(i) for the word “company” occurring at both the places, the words “limited liability partnership” shall be substituted; (ii) for the words “register of companies”, the words “register of limited liability partnership” shall be substituted;	Self Explanatory.
	Sub-section (3)	(i) for the word “member”, occurring at both the places the word “partner” shall be substituted; (ii) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted; (iii) for the words “register of companies” wherever they occur, the words “register of limited liability partnership” shall be substituted; (iv) for the words “twenty years” the words “five year” shall be substituted; (v) for the words, brackets and figures “sub-section (5) of section 248”, the words and figures “pursuance to section 75” shall be substituted.	Self Explanatory.

8.	In section 439		
	Sub-section (1)	for sub-section (1), the following shall be substituted, namely:- “(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, (2 of 1974) every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.”;	The offences under the act has been made “non-cognizable” which is “cognizable” under companies act, 2013, in order to make provisions more lenient for Limited Liability Partnership.
	Sub-section (2)	for sub-section (2), the following shall be substituted, namely:- “(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any limited liability partnership or any designated partners or partners or employee thereof, except on the complaint in writing of the Registrar, or a partner of limited liability partnership, or of a person authorised by the Central Government in that behalf: Provided that nothing in this sub-section shall apply to a prosecution by limited liability partnership of any of its officers .”;	No offence under this act can be held cognizable unless complaint had been made in writing by Registrar, or a partner of limited liability partnership, or of a person authorised by the Central Government in that behalf.
	Sub-section (3)	applicable without modification;	
	Sub-section (4)	for sub-section (4), the following shall be substituted, namely:- “(4) The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a limited liability partnership in respect of any offences alleged to have been committed in respect of any of the matters in Chapter XIII of this Act or rules for winding up and dissolution of limited liability partnership. Explanation. -The liquidator of the limited liability partnership shall not be deemed to be an officer of the limited liability partnership within the meaning of sub-section (2).”.	If any offence has been made under Chapter XIII of this Act or rules for winding up and dissolution of limited liability partnership, then it could be a held cognizable offence.

[Link to the Circular:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=s3NAd1DMJP%252Bb4D3KxSkX1Q%253D%253D&type=open>

3. **Central Government delegates power under section 17 of LLP Act, 2008 to Regional Directors - 11th February, 2022**

Central Government through MCA notification dated 11th February, 2022 delegated powers and functions vested in it under section 17 of the Limited Liability Partnership Act, 2008 (6 of 2009) to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Guwahati.

This notification shall come into force with effect from 01st April, 2022.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mds=3T8qwI0eR3yz4XUEowreBg%253D%253D&type=open>

4. **Limited Liability Partnership (Amendment) Rules, 2022- 11th February, 2022**

Central Government vide MCA notification makes the following rules further to amend the Limited Liability Partnership Rules, 2009. These rules may be called the Limited Liability Partnership (Amendment) Rules, 2022. They shall come into force with effect from the 01st April, 2022.

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mds=WnSUTRIP8aoAr6RLk1JIPg%253D%253D&type=open>

5. **MCA Circular on relaxation on levy of additional fees for various forms - 14th February, 2022**

MCA vide its Circular has further extended the due dates for filing of e-forms AOC-4/ 4 (CFS)/ 4 (XBRL), 4 (Non-XBRL) upto 15/03/2022 and for filing of e-forms MGT-7/ 7A upto 31/03/2022, without payment of any additional fee for the financial year 2020-21, however the normal fee shall be payable as applicable.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mids=dJwPZuhvXhaSatUCw9YnZA%253D%253D&type=open>

GO UP

II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

A. SEBI CIRCULARS AND NOTIFICATION

1. SEBI Circular on Schemes of Arrangement by Listed Entities - 01st February, 2022

SEBI vide its Circular dated 16th November, 2021 and Circular dated 18th November, 2021, has notified changes to the Master Circular dated 22nd December, 2020.

In respect of the No Objection Certificate (NOC) as required in terms of Circular dated 16th November, 2021 and 18th November, 2021, Part I Para A 2(k) of the circular* shall read as follows:

No Objection Certificate (NOC) from the lending scheduled commercial banks/ financial institutions/ debenture trustees, from not less than 75% of the secured creditors in value. (*Addendum to Part I Para A 2(k) of the Master Circular dated 22nd December, 2020)

This Circular shall be applicable for all the schemes filed with the stock exchanges after 16th November, 2021.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/feb-2022/schemes-of-arrangement-by-listed-entities_55805.html

GO UP

2. SEBI Circular on Guidelines on Accounting with respect to Indian Accounting Standards (IND AS) - 04th February, 2022

SEBI issued a notification on 25th January, 2022 mandating that AMCs shall prepare the Financial Statements and Accounts of the Mutual Fund Schemes in accordance with IND AS from April 01, 2023. Accordingly, the following requirements are specified:

- I. Mutual Fund Schemes shall prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of IND AS.
- II. Perspective historical per unit statistics requires disclosure of scheme wise per unit statistics for the past 3 years. In this regard, Mutual Fund schemes may not be mandatorily required to restate the previous years published perspective historical per unit statistics as per requirement of IND AS for the first two years from first time adoption of IND AS. However, Mutual Fund schemes shall furnish following additional information in perspective historical per unit statistics:
 - a. Label the previous Generally Accepted Accounting Principles (GAAP) information prominently as not being prepared in accordance with IND AS; and

b. Disclose the nature of the adjustments that would be required to make it comply with IND AS. Mutual Funds schemes need not quantify those adjustments.

III. The Financial Statements of the Mutual Fund Schemes shall be prepared in the Formats given at Annexure-A.

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/feb-2022/circular-on-guidelines-on-accounting-with-respect-to-indian-accounting-standards-ind-as-55919.html>

GO UP

3. SEBI comes out with new disclosure format and requirements for abridged prospectus - 04th February, 2022

SEBI, vide its Circular dated 04th February, 2022 comes out with new format for abridged prospectus in order to provide greater clarity and consistency in the disclosure on the front page of the offer document and to provide additional but critical information in the abridged prospectus, the format for disclosures in the abridged prospectus has been revised and is placed at Annexure A at this Circular.

Brief note on the background of the Circular :-

- *Clause 1(a) of Part A -Schedule VI of the ICDR Regulations, specifies information to be disclosed on the front outside cover page of offer document.*
- Upon review of the aforesaid disclosure requirement, the look and text on the front page appears to be crowded.
- With regard to above, a format for disclosure on front outside cover page shall be as per the format placed at Annexure B of this Circular.

Key Highlights of the Circular :-

- This Circular shall be applicable for all issues opening after the date of this Circular i.e. 04th February, 2022. While the disclosures in the abridged prospectus shall be as per Annexure A of this Circular.
- A copy of the abridged prospectus must be made available on the website of issuer company, lead managers, registrar to an issuers.

- The Issuer Company / Merchant Bankers (MBs) shall ensure that the disclosures in the abridged prospectus are adequate, accurate and does not contain any misleading or mis-statement.
- Furthermore, the Issuer Company/MBs shall ensure that the qualitative statements in the abridged prospectus shall be substantiated with Key Performance Indicators (KPIs) and other quantitative factors. Also, no qualitative statement shall be made which cannot be substantiated with KPIs.
- Further, the issuer company/ MBs shall insert a Quick Response (QR) code on the front page of the documents such as front outside cover page, abridged prospectus, price band advertisement, etc.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/feb-2022/disclosures-in-the-abridged-prospectus-and-front-cover-page-of-the-offer-document_55920.html

GO UP

4. SEBI Circular on Framework for conversion of Private Listed InvIT into Public InvIT - 09th February, 2022

SEBI vide its Circular dated 09th February, 2022 came out with a framework for conversion of a private listed Infrastructure Investment Trust (InvIT) into a public InvIT on making a public issue of units through a fresh issue and/or an offer for sale. SEBI also issued guidelines on the same.

Key highlights on the Circular :-

A listed private InvIT should have atleast 5 investors other than its sponsor(s), its related parties and its associates.

A private listed InvIT will have to obtain approval from 75 per cent of the unit holders by value for such public issue of units.

A private listed InvIT need to be compliant with all the applicable listing obligations and disclosure requirements and should not have defaulted in making any distribution since the date of its listing or preceding three years, whichever is less.

Other than that, minimum sponsor(s) contribution will be either to the extent of 15 per cent of the units issued through the public issue or 15 per cent of the post-issue capital. And those units will be locked-in for 18 months. Also, maximum subscription should not be more than 25 per cent of total unit post-issue from any investor other than sponsor(s).

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/feb-2022/framework-for-conversion-of-private-listed-into-public-into-55971.html>

GO UP

5. SEBI directs Asset management companies to form audit committee – 09th February, 2022

SEBI, vide its Circular dated 09th February, 2022 directs Asset management companies to form an Audit Committee. This circular shall come into force with effect from 01st August, 2022. Currently, Audit Committee exist at the level of trustees of Mutual funds.

Key Highlights of the Circular :-

- The Audit Committee of the AMC shall be responsible for oversight of financial reporting process, audit process, company's system of internal controls, compliance to laws and regulations and other related process.
- The Audit Committee of AMC shall have minimum three directors as Members and out of which atleast two-third of the members shall be independent directors. All the members of the Audit Committee will be appointed by the Board of directors of AMC. The Chairperson of the Committee shall be an independent director.
- The Audit Committee of AMC shall have atleast four meetings in a financial year and not more than one hundred and twenty days shall elapse between two meetings. Other than that, the Chairperson has authority to call Audit Committee meeting as and when required.
- The quorum for meeting shall either be two members or one third of the members of the Audit Committee, whichever is greater, with at least two independent director.

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/feb-2022/circular-on-audit-committee-of-asset-management-companies-amcs-55987.html>

GO UP

6. SEBI Consultation Paper on new disclosure requirements for loss making companies going for IPO- 18th February, 2022

SEBI, vide, its Consultation Paper dated 18th February, 2022 proposes new disclosure requirements for loss making companies that are going for Initial Public offer. SEBI observed that currently the disclosure requirements are of critical accounting ratios viz. earnings per share (EPS), price to earnings (P/E), return on net worth (RoNW) and net

asset value (NAV) of the Company. These parameters are typically descriptive of companies / issuers which are profit making and do not relate to a company / issuer that is loss making. Thus, these traditional parameters may not aid investors in taking investment decision w.r.t. loss making issuers.

Therefore, with an increase in filing of offer documents for IPOs under Regulation 6(2) of ICDR Regulations i.e. companies not having track record / not having operating profit in preceding three years, SEBI proposed new disclosure requirements for companies which are loss making / new age technology companies (NATCs).

Additional Disclosure requirements for 'Basis of Issue Price' section in offer document for loss making companies are as mentioned below :-

- i. The Issuer Company needs to disclose their Key Performance Indicators (KPIs) which have been considered for arriving at the basis of issue price.
- ii. The Issuer Company shall also disclose all material KPIs that have been shared with any pre-IPO investor at any point of time during the three years prior to IPO. KPIs by Issuer Company shall be defined clearly, consistently and precisely.
- iii. These KPIs should be certified / audited by statutory auditors. Other than that, these KPIs should be compared with Indian listed peer companies and/ or global listed peer companies.
- iv. The Issuer Company needs to make disclosures about their valuations based on issuance of new shares and acquisition of shares in the past 18 months before filing draft offer documents.

The above issues and additional disclosures for "Basis of Issue Price" section were examined by a sub-group of the Primary Market Advisory Committee (PMAC) of SEBI. Recommendations of sub-group were discussed in meeting of PMAC.

Link to the Circular:

https://www.sebi.gov.in/reports-and-statistics/reports/feb-2022/consultation-paper-on-disclosures-for-basis-of-issue-price-section-in-offer-document-under-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018_56218.html

GO UP

B. ORDERS/ CASE LAWS/ PRONOUNCEMENT

1. SEBI bars Anil Ambani and 3 others from markets for alleged siphoning of funds– 11th February, 2022

SEBI has barred Anil Ambani and three associates from the capital market for alleged siphoning of funds from Reliance Home Finance (RHFL). The regulator has also restrained them from associating with any listed company, stock market intermediary or any public company that intends to raise money.

SEBI alleged that the company indulged in diversion of funds and misrepresentation of books of accounts and falsification of financial statements resulting in non-disclosure of true and fair information to the public at large.

Link to the Order:

https://www.sebi.gov.in/enforcement/orders/feb-2022/interim-order-in-the-matter-of-reliance-home-finance-limited_56029.html

GO UP

2. SEBI imposed restrictions on 15 entities in Zee insider trading case – 18th February, 2022

SEBI imposed restrictions on 10 entities, including 5 individuals, in a matter pertaining to alleged insider trading in the scrip of Zee Entertainment Enterprises Ltd. SEBI said that those entities have traded while being in possession of unpublished price sensitive information (UPSI) pertaining to audited financial results of ZEEL for the quarter ended 30th June, 2020.

SEBI said that the entities have violated Insider Trading norms and had been barred from accessing Securities market till further directions.

Link to the Order:

https://www.sebi.gov.in/enforcement/orders/feb-2022/confirmatory-order-in-the-matter-of-insider-trading-in-shares-of-zee-entertainment-enterprises-ltd-_56227.html

GO UP

III. OTHER UPDATES

1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 - 15th February, 2022

BSE has issued a Notice mentioning salient features of SEBI NCS Regulations, 2021 which were effective from August 9, 2021. These salient features comes with certain clarifications from BSE on the applicability of the aforesaid regulations to the types of the issuance.

Regulation No	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022
18 - Meetings of the committee	A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights	(1) A resolution professional may convene a meeting of the committee as and when he considers necessary. (2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights. (3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights."
39A- Preservation of records.	The interim resolution professional or the resolution professional, as the case may be, shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies	(1) The interim resolution professional or the resolution professional, as the case may be, shall preserve copies of all such records which are required to give a complete account of the corporate insolvency resolution process. (2) Without prejudice to the generality of the obligations under sub-regulation (1), the interim resolution professional or the resolution professional, as the case may be, shall preserve copies of records relating to or forming the basis of: - (a) his appointment as interim resolution professional or

		<p>resolution professional, including the terms of appointment; (b) handing over / taking over of the assignment; (c) admission of corporate debtor into corporate insolvency resolution process; (d) public announcement; (e) the constitution of committee and meetings of the committee; (f) claims, verification of claims, and list of creditors; (g) engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them; (h) information memorandum; (i) all filings with the Adjudicating Authority, Appellate Authority and their orders; (j) invitation, consideration and approval of the resolution plan; (k) statutory filings with Board and insolvency professional agencies; (l) correspondence during the corporate insolvency resolution process; (m) insolvency resolution process cost; and (n) preferential, undervalued, extortionate credit transactions or fraudulent or wrongful trading.</p> <p>(3) The interim resolution professional or the resolution professional shall preserve: (a) electronic copy of all records (physical and electronic) for a minimum period of eight years; and (b) a physical copy of records for a minimum period of three years; from the date of completion of the corporate insolvency resolution process or the conclusion of any proceeding relating to the corporate insolvency resolution process, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later.</p> <p>(4) The interim resolution professional or the resolution professional shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the Regulations.</p> <p>Explanation - The records referred to in this regulation includes</p>
--	--	---

		records pertaining to the period of a corporate insolvency resolution process during which the interim resolution professional or the resolution professional acted as such, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion.”
--	--	---

GO UP

2. Bank Of Baroda v. M/s Karwa Trading Company & Anr - 10th February, 2022

Fact of the Case

Bank of Baroda, secured financial creditor preferred an appeal against the impugned judgment and order dated 20.09.2017 passed by the Division Bench of the High Court at Jaipur where in the High Court allowed the said intra-court appeal and had quashed and set aside the judgment and order dated 12.01.2017 passed by the learned Single Judge and directed that if the respondent - borrower deposits a further sum of Rs.17 lakhs to the bank, the bank shall release the property and handover possession along with the title deeds of the residential/housing property in question to the borrower.

Decision

Hon’ble court allowed the appeal with following observations:

Even otherwise on making the payment i.e. Rs.65.65 lakhs against the total dues Rs.1,85,37,218.80/- as on 07.01.2013 the entire liability outstanding against the borrower cannot be said to have been discharged. Even if the mortgaged property would have been sold in a public auction say for an amount of Rs.71 lakhs and the bank has realized Rs.71 lakhs by selling the mortgaged property, in that case also the liability of the borrower to pay the balance amount would still continue...Therefore, the Division Bench of the High Court has erred in directing to release the mortgaged property/secured property and to handover the possession along with the original title deeds to the borrower on payment of a total sum of Rs.65.65 lakhs only.

In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order dated 20.09.2017 passed by the Division Bench of the High Court in DBSAW is hereby quashed and set aside and the order passed by the learned Single Judge quashing and setting aside the order passed by the DRT dated 17.01.2014 confirmed by the DRAT is hereby restored.

3. Vivek Prakash vs Dinesh Kumar Gupta and Anr - 21st February, 2022

Fact of the Case

An appeal was filed against the judgment passed by the NCLT, New Delhi, filed by the Resolution Professional, direction was sought that suspended directors and management be directed to handover the complete books of accounts and other financial records and information to Resolution Professional and further all the fixed assets which belong to the Corporate Debtor. The Adjudicating Authority held that since both the respondents have failed to furnish the information as required under the law, therefore the RP is directed to institute a

criminal case against both the Suspended Board of Directors under Section 70 of the IBC along with the other relevant Sections of the law. The Appellant submitted that Resolution Professional is not empowered to initiate the prosecution.

Decision

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

We, thus, clarify that any prosecution under Section 70 can be initiated only in accordance with the procedure as provided under Section 236(2) and not by the Resolution Professional. However, with regard to any other offences including the offences under Indian Penal Code, if any complaint is filed by the Resolution Professional before a Police Station that is separate issue and has no concern with the offences under Section 70 and the order impugned shall have no bearing on such proceedings by a Police Station and they are independent proceedings which has to be considered and decided in accordance with law.

IV. KNOWLEDGE SHARING

1. Independent Director under Companies Act, 2013

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director.

- who is a person of integrity and possesses relevant expertise and experience.
- who is or was not a promoter of the company or its holding, subsidiary or associate company; who is not related to promoters or directors in the company, its holding, subsidiary or associate company.
- who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- none of whose relatives—
 - is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year
 - Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed
 - is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year
 - has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
 - has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. Or more of its gross turnover or total income singly or in combination with the transactions referred above.
- who, neither himself nor any of his relatives—
 - holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

- is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of--
- a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
- any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
- holds together with his relatives two per cent. or more of the total voting power of the company; or
- is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
- who possesses such other qualifications as may be prescribed.

According to Section 149 of the Companies Act, 2013 below mentioned limits are required to appoint the Independent Director :-

-Every Listed Company shall have atleast one-third of total number of directors as Independent Director.

- Every Public Company
having paid-up share capital of 10 Crore rupees or more or
having turnover of one hundred crore rupees or more or
have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

[GO UP](#)

THANKYOU
