

# VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA

MARCH 2022 | ISSUE



Knowledge is  
power. Sharing  
knowledge is the key  
to unlocking that  
power.

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## *Why Vedanam?*

We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our  
March, 2022 issue.

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*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. Limited Liability Partnership (Second Amendment) Rules, 2022 - 04<sup>th</sup> March, 2022**

MCA vide its Notification dated 04<sup>th</sup> March, 2022 has notified Limited Liability Partnership (Second Amendment) Rules, 2022 to further amend the existing Limited Liability Partnership Rules, 2009. These rules shall come into force immediately.

Sr No.	Amendment	Previous requirement	Current requirement
1.	Substitution: Rule 11(1) second proviso for the word “two” word “five” shall be substituted.	Previously under Form FiLLip, only two individuals were allotted DPIN.	Under the new amendments, now five individuals can get DPIN allotted through Form FiLLip.  This is a great step in easing the process of getting (DPIN / DIN) at the time of incorporation.
2.	Insertion: Rule 11(3) after the words and figures “Form 16” the following words shall be inserted: “and shall mention Permanent Account Number and Tax Deduction Account Number issued by the Income Tax Department.”	Previously Limited Liability Partnerships, had to apply separately for PAN and TAN after Certificate of Incorporation issued under Form 16.	With the insertion under Rule 11 (3), now Certificate of Incorporation issued under Form 16 will also mention PAN and TAN details.
3.	Substitution: Rule 19(4) The person making the application shall attach a copy of the incorporation certificate of the limited liability partnership or the company or the registration certificate of the entity, as the case may be.	A limited liability partnership which already has a name which is similar to the name of a limited liability partnership, may apply to the Registrar in Form 23 to give a direction to that limited Liability partnership to change its name. Under that rule, the person making the application had to	With the new amendment under Rule 19(4), the requirement to attach authority details and Certificate of Incorporation has been taken down.

		attach authority under which he is making an application as well Certificate of Incorporation.	
5.	Insertion: Rule 25(2) proviso	-----	Provided that where the Corporate Insolvency Resolution Process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 the said annual return may be signed on behalf of the limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator and no certification by a designated partner shall be required.
6.	Substitution: Rule 34(3)(ii)(c) for the words and figures "Form 29", the words and figures "Form 28" shall be substituted.	Previously in order to, (A) To alter Certificate of Incorporation or registration; (B) To alter in the names and addresses of any of the persons to accept on behalf of a foreign limited liability partnership;	Now with the new amendments, for the mentioned purposes Form 28 will be filed. Therefore, Form 29 got merged with Form 28.
7.	Substitution: Rule 34(8) for the words and figures "Form 29", the words and figures "Form 28" shall be substituted.	(C) To alter principal place of business in India; (D) To cease to have a place of business in India;	
8.	Insertion: Rule 36(6) after the word, bracket and figure "sub- rule (7)", the words and figures "in form 32" shall be inserted.	Where the Registrar, on examining any application or e-Form or document referred to in sub-rule (5), finds it necessary to call further information.	Now with the new amendments, such information shall be filed in Form 32.

9.	Substitution: Rule 37(1A)(II) for the words and figures “enclose along with Form 24”, the words and figures “furnish in Form 24” shall be substituted.	Where a Limited Liability Partnership is not carrying on any business or operation for a period of two years or more, it can apply for strike off under Form 24.	Self Explanatory,
10.	Apart from the above, MCA amended following form for Limited Liability Partnership, RUN LLP, FiLLiP, Form 3, Form 4, Form 5, Form 8, Form 9, Form 11, Form 12, Form 15, Form 16, Form 17, Form 18, Form 22, Form 23, Form 24, Form 25, Form 27, Form 28, Form 31, Form 32.		

**[Link to the Circular:](#)**

<https://www.mca.gov.in/bin/dms/getdocument?mds=iorXjBHYBr94XltGw2NNBA%253D%253D&type=open>

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**2. MCA extends CSR - 2 and Audit Trail dates - 31<sup>st</sup> March, 2022**

MCA vide its notification dated 31<sup>st</sup> March, 2022 extends due date for filing Form CSR - 2 till 31<sup>st</sup> May, 2022 and implementation of Audit Trail software to on or before 01<sup>st</sup> April, 2023.

It is to be noted that, due to technical difficulties faced by stakeholders, MCA extended due date for CSR - 2 by 2 months.

**[Link to the Circular:](#)**

<https://www.mca.gov.in/bin/dms/getdocument?mds=IzVV7fqstVJYuFz6gHMSkKw%253D%253D&type=open>

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## II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

### A. SEBI CIRCULARS AND NOTIFICATION

#### 1. SEBI Circular on Automation of disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - 07<sup>th</sup> March, 2022

- SEBI vide its Circular dated 13<sup>th</sup> August, 2021 amended SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 doing away with manual filing for most of the transactions w.e.f. 01<sup>st</sup> April, 2022. Thus, transactions undertaken in the depository system under Regulation 29 and Regulation 31 of Takeover Regulations do not require manual filing except for the following transactions where disclosure shall continue to be filed :-
  - Triggering disclosure requirement due to acquisition or disposal of Shares;
  - Triggering disclosure requirement in case of Shares held in physical form;
  - Listed Companies who have not provided PAN of Promoters or who have not appointed depository;
- Other than that, promoters are required to file disclosures on reasons for encumbered shares manually to the Stock exchanges.
- In order to streamline the capture and dissemination of the information related to “encumbrances” and thus bring in more transparency, in consultation with the stock exchanges and depositories, it has been decided that:
  - i. All types of encumbrances as defined under Regulation 28(3) of Takeover Regulations shall necessarily be recorded in the depository system.
  - ii. The depositories shall capture details of the ultimate lender along with name of the trustee acting on behalf of such ultimate lender such as banks, NBFCs, etc. In case of issuance of debentures, name of the debenture issuer shall be captured in the depository system.
  - iii. The depositories shall now capture the reasons for encumbrances in the depository system.
- The depositories shall also devise an appropriate mechanism to record all types of outstanding encumbrances in the depository system by 30<sup>th</sup> June, 2022.

#### Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/mar-2022/automation-of-disclosure-requirements-under-sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011-system-driven-disclosures-ease-of-doing-business-56655.html>

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**2. SEBI increased the limit for investment through UPI mechanism to Rs. 5 lakh.- 08<sup>th</sup> March, 2022**

SEBI, vide its Circular dated 08<sup>th</sup> March, 2022 increased the limit for investment through UPI mechanism to Rs. 5 lakh. The released Circular is a revision to Operational Circular dated 10<sup>th</sup> August, 2021 issued by SEBI pertaining to issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper.

The previous Circular provided an option to investors to apply in public issues of debt securities with the facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto Rs.2 lakh.

While, National Payments Corporation of India released a Circular dated 09<sup>th</sup> December, 2021 enhancing the per transaction limit in UPI from Rs. 2 lakh to Rs. 5 lakh for UPI based Application Supported by Blocked Amount (ASBA) Initial Public Offer(IPO).

In view of the above, based on discussions with market participants, in order to bring about uniformity in the requirements and for ease of investment for investors, it has been decided to increase the limit for investment through UPI mechanism to Rs. 5 lakh.

The provisions of this circular shall be applicable to public issues of debt securities which open on or after 01<sup>st</sup> May, 2022.

**Link to the Circular:**

<https://www.sebi.gov.in/legal/circulars/mar-2022/change-in-upi-limits-revision-to-operational-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-p-56665.html>

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**3. SEBI revised Orders per Second limit for algorithm trading in Commodity Derivatives Segment of the Stock Exchange - 17<sup>th</sup> March, 2022**

SEBI, vide its Circular dated 17<sup>th</sup> March, 2022 revised Orders Per Second limit for algorithm trading in Commodity Derivatives Segment of the Stock Exchange. The released Circular is a revision to SEBI Circular dated 27<sup>th</sup> September, 2016 which required Stock exchange to place a limit on the number of orders per second (OPS) from a particular User-ID to twenty (20) OPS. The above limit was relaxed upto hundred (100) OPS through SEBI Circular dated 03<sup>rd</sup> April, 2018.

Further based on representations received from Stock Exchanges and discussions in the Technical Advisory Committee of SEBI, it has been decided to permit Stock Exchanges to further relax the aforesaid limit upto one hundred and twenty (120) OPS, as against the present hundred (100). Thus, Clause '3' of SEBI Circular dated 03<sup>rd</sup> April, 2018 stands revised.

Circular further stated that, the limit on OPS may be further relaxed by the Stock Exchanges based on the increased peak order load observed and corresponding



upgrade of infrastructure capacity to ensure that the capacity of trading system of the Stock Exchange remains at least four times the peak order load. The relaxation in limit shall be subject to approval of SEBI.

The provisions of this circular shall be effective from 01<sup>st</sup> April, 2022.

**[Link to the Circular:](#)**

[https://www.sebi.gov.in/legal/circulars/mar-2022/revision-in-orders-per-second-limit-for-algorithmic-trading-in-commodity-derivatives-segment-of-the-stock-exchange\\_56977.html](https://www.sebi.gov.in/legal/circulars/mar-2022/revision-in-orders-per-second-limit-for-algorithmic-trading-in-commodity-derivatives-segment-of-the-stock-exchange_56977.html)

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**4. SEBI revised Chapter XIV of Operational Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper – 24<sup>th</sup> March, 2022**

SEBI, vide its Circular dated 24<sup>th</sup> March, 2022 revised Chapter - XIV of the Operational Circular dated 10<sup>th</sup> August, 2021 stipulating provisions mandating stock exchanges and depositories to jointly create, host and maintain a Centralized Database of corporate bonds, held in demat form.

- The Market Data Advisory Committee (MDAC) developed a revised harmonised four level industry classification framework for adoption for all relevant processes/ purposes in Indian securities market. A standardised framework will help bring about uniformity in the classifications.
- Accordingly, the following amendments are being made to Chapter - XIV of the Operational Circular and annexures thereof:
  - Paragraph 2.2 b) shall stand modified as follows:
    - *“Post listing of securities, issuer shall submit information in the requisite fields as provided in Annex -XIV-B to any of the stock exchanges where their securities are listed on a periodical basis (within 30 days from the end of the financial year) and/or ‘as and when’ basis (event based), as applicable. The stock exchange shall indicate the format of filing to the issuers in this regard.”*
  - Clause 8. of paragraph B. of Annex-XIV-A shall be deleted.
  - Clause 9 of Annex-XIV-A shall be replaced with the table given in the Annex to this circular.
- The provisions of this circular shall be applicable to all issuances of debt securities, which open, on or after 01<sup>st</sup> April, 2022.

[Link to the Circular:](#)

<https://www.sebi.gov.in/legal/circulars/mar-2022/standardisation-of-industry-classification-revision-in-chapter-xiv-of-operational-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-mun-57060.html>

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5. **SEBI permitted Stock exchanges having a Commodity Derivative segment to introduce options on commodity indices – 24<sup>th</sup> March, 2022**

SEBI, vide, its Circular dated 24<sup>th</sup> March, 2022 permitted Stock exchanges having a Commodity Derivative segment to introduce options on commodity indices. SEBI said the permission was granted based on the recommendation of Commodity Derivatives Advisory Committee (CDAC) and proposal from Stock exchanges.

SEBI further in Circular added that, Product design and risk management framework should be in conformity with the guidelines prescribed in the Annexure attached with this Circular.

The Stock Exchanges willing to introduce trading in options on commodity indices shall take prior approval of SEBI for the same. Other than that, Stock Exchanges shall submit at-least past three years data of the index constructed along with data on monthly volatility, roll over yield for the month and monthly return while seeking approval from SEBI.

SEBI further added that, Stock exchanges shall put in place adequate monitoring and surveillance capacity for the options on indices contracts. The provisions of this circular shall be effective from date of this circular.

[Link to the Circular:](#)

[https://www.sebi.gov.in/legal/circulars/mar-2022/introduction-of-options-on-commodity-indices-product-design-and-risk-management-framework\\_57122.html](https://www.sebi.gov.in/legal/circulars/mar-2022/introduction-of-options-on-commodity-indices-product-design-and-risk-management-framework_57122.html)

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6. **SEBI Circular on Clarification on applicability of regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions – 30<sup>th</sup> March, 2022**

SEBI vide its Circular dated March 30, 2022, has provided clarification on requirement of shareholders' approval for related party transactions as per the revised materiality threshold under the recent amendment in SEBI LODR Regulations, 2015.

Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 was amended vide notification dated November 9, 2021, inter-alia, enhancing the scope of related party, related party transactions (RPTs), and the materiality threshold for seeking shareholder approval.

Based on the representations received from listed entities and industry bodies, it has been decided to provide the following clarifications and guidance for smooth implementation of the amended Regulation 23 of the LODR Regulations:-

i. For an RPT that has been approved by the audit committee and shareholders prior to April 1, 2022, there shall be no requirement to seek fresh approval from the shareholders.

ii. Regulation 23(8) of the LODR Regulations specifies that all existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

In accordance with the said regulation, an RPT that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held after April 1, 2022.

iii. It is reiterated that an RPT for which the audit committee has granted omnibus approval, shall continue to be placed before the shareholders if it is material in terms of Regulation 23(1) of the LODR Regulations.

This Circular shall come into force with effect from April 1, 2022.

***Link to the Circular:***

[https://www.sebi.gov.in/legal/circulars/mar-2022/introduction-of-options-on-commodity-indices-product-design-and-risk-management-framework\\_57122.html](https://www.sebi.gov.in/legal/circulars/mar-2022/introduction-of-options-on-commodity-indices-product-design-and-risk-management-framework_57122.html)

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## **B. ORDERS/ CASE LAWS/ ANNOUNCEMENT**

### **1. SEBI directed Dish TV to disclose AGM results within 24 hours - 07<sup>th</sup> March, 2022**

SEBI, vide its order dated 07<sup>th</sup> March, 2022 directed Dish TV Ltd to disclose the result of its annual general meeting held on 30<sup>th</sup> December, 2021 within 24 hours. In addition, SEBI directed depositories to freeze the demat accounts of Dish TV's directors and compliance officer directors and compliance officer till further order or after disclosure whichever is earlier.

SEBI came out with the disclosure order after receiving complaints from Yes Bank Ltd holding 24.78 per cent and IndusInd Bank 3.78 per cent of the equity share capital alleging that Dish TV has wrongfully withheld the results of voting on various proposals put forth in the AGM.

It was further noted with the disclosure provided to the stock exchanges that shareholders have rejected all the three resolutions proposed in AGM, which were adoption of the audited standalone and consolidated financial statements and report of Board and auditors, reappointment of AM Kurien as director of the Company and ratification of auditor remuneration.

*Link to the Order:*

*[https://www.sebi.gov.in/enforcement/orders/mar-2022/interim-order-in-the-matter-of-dish-to-india-limited\\_56653.html](https://www.sebi.gov.in/enforcement/orders/mar-2022/interim-order-in-the-matter-of-dish-to-india-limited_56653.html)*

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### **2. SEBI imposed penalty on Future Group for disclosure lapses in Amazon arbitration case - 14<sup>th</sup> March, 2022**

SEBI, vide its order dated 14<sup>th</sup> March, 2022 imposed penalty of Rupees 5 Lakh on Future Enterprises for non-disclosure of material information to Stock exchanges regarding arbitration proceedings against Amazon before Singapore International Arbitration Centre (SIAC) and also for non-disclosure of order dated 25<sup>th</sup> October, 2020, in favour of Amazon.

The arbitration proceedings before Singapore International Arbitration Centre (SIAC) were related to the composite scheme of arrangement between Future Group and Reliance Industries.

SEBI further stated that, Future Group had only disclosed the initiation of Arbitration proceedings and information with respect to interim relief granted to Amazon on 01<sup>st</sup> November, 2020 with a delay of 26 days with respect to initiation of the arbitration proceedings and a delay of 6 days with respect to passing of order by Singapore arbitration council.

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3. **SEBI imposed fine on Axis Bank for violation of merchant bankers regulations – 24<sup>th</sup> March, 2022**

SEBI, vide its Adjudication order dated 24<sup>th</sup> March, 2022 imposed fine of Rupees 5 Lakh on Axis Bank for violation of merchant bankers regulations. SEBI had conducted an examination of the debt capital market operations of Axis Bank during the period August, 2016 to August, 2019.

During the course of examination by SEBI, it was observed that Axis Bank had acted as the Merchant Banker in respect of 22 public issuances of debt of various companies. Further during the same period, Axis Bank had also acquired the securities in respect of 9 public issues of debt made by the said companies.

Further, it was observed that Axis Bank had failed to submit the details / information of the transactions relating to its acquisition of the securities to SEBI in respect of the aforesaid 9 public issuances of debt.

Further order mentioned that, In terms of the requirements stipulated under the provisions of Regulation 27 of SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as 'MB Regulations'), every Merchant Banker shall submit to SEBI complete particulars of the transactions relating to the acquisition of securities of the body corporate whose securities are managed by the Merchant Banker within 15 days from the date of entering into such transactions.

However, Axis Bank failed to make the requisite disclosures under the merchant bankers regulations which led to violation of provisions of Regulation 27 of the Merchant Banker Regulations and therefore the fine had been imposed on Axis Bank.

*Link to the Order:*

[https://www.sebi.gov.in/enforcement/orders/mar-2022/adjudication-order-in-respect-of-axis-bank-ltd-merchant-banker\\_57119.html](https://www.sebi.gov.in/enforcement/orders/mar-2022/adjudication-order-in-respect-of-axis-bank-ltd-merchant-banker_57119.html)

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4. **PVR and Inox Leisure mega merger**

PVR and Inox Leisure two largest multiplex chain in the country have announced the merger recently which created a sharp surge in shares of both PVR and Inox Leisure. The combined entity will be named PVR INOX Ltd but the branding of existing screens to be continued as PVR and INOX, respectively. New cinemas opened post the merger will be branded as PVR INOX.

The merged entity will result into increase in bargaining power, free cash flow and cost synergies. PVR and Inox merger will also create a multiplex network with 1500+ screens in combine across India. This will result in 16-17% share in total screens and 44-50% share in multiplex screens in India

### **Share swap ratio :-**

As per the agreement, the share swap ratio is 3:10, investors will get three shares of PVR for every 10 shares of INOX Leisure.

This was clearly visible when shares of INOX surged over 20 per cent compared to 10 per cent surge in PVR shares.

Based on the swap ratio, INOX is valued at 17 times at Rs 6,400 Crore ( EV per screen of Rs 10 Crore ), which is 15 per cent higher than its current price, but 18 per cent below PVR which is valued at Rs 11,000 Crore ( EV per screen of Rs 12 Crore ).

### **Promoter holding and Board composition :-**

After the merger, INOX promoters will own a 16.7 per cent stake, while PVR promoters will own 10.6 per cent stake.

Post merger, the board will be reconstituted and will have 10 members. Both promoter families will have equal representation on board with 2 seats each. The promoters of INOX will become co-promoters in the merged entity along with the existing promoters of PVR.

Ajay Bijli would be appointed the managing director and Sanjeev Kumar the executive director. Pavan Kumar Jain would be named the non-executive chairman of the Board. Siddharth Jain would be appointed as non-executive non-independent director in the combined entity.

### **Risks from CCI :-**

The merger in order to be finalized needs approval of Competition Commission of India. Both of the entities are the leading multiplexes in India. Therefore, the merger would also create monopoly factor and would eliminate competition.

It is also to be noted that, the merger will likely not require CCI approval as the threshold of Rs 1000 Crore won't be exceeded, given the damage to the sector caused by Covid - 19, which closed theatres for months.

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### III. OTHER UPDATES

#### 1. **RBI Updates : Bank Finance to Non-Banking Financial Companies (NBFCs)**

RBI vide Master Circular dated 1st April 2022 give details regarding Bank finance to non - banking Financial Companies (NBFCs)

##### **Purpose**

To lay down the Reserve Bank of India's regulatory policy regarding financing of NBFCs by banks.

##### **Applicability**

To all Scheduled Commercial Banks (excluding Regional Rural Banks).

The circular include

Bank finance to NBFC registered with RBI

Bank finance to NBFC not requiring Registration

Activities not eligible for bank credit

Bank Finance to Factoring Companies

Other Prohibitions on Bank Finance to NBFCs

Prudential ceilings for exposure of banks to NBFCs

Restrictions regarding investments made by banks in securities / instruments issued by NBFCs

##### **Link to the Order:**

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/14MCBANKFINANCENBFCs26B13292BD264D288A08CA302FE854E1.PDF>

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#### 2. **Amit Katyal Vs. Meera Ahuja and others - 10<sup>th</sup> February, 2022**

The IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern: Supreme Court

Date of Order- 3rd March 2022.

Case Title - Amit Katyal Vs. Meera Ahuja and others.

Fact of the Case

The Interlocutory Application was filed by the Appellant- Promoter/Majority Shareholder of the Corporate Debtor – Jasmine Buildmart Pvt. Ltd., feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.11.2020 passed by the National Company Law Appellate Tribunal, New Delhi by which the Appellate Authority dismissed the appeal preferred by the appellant and confirmed the order passed by the National Company Law Tribunal, New Delhi in admitting the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016. It was requested to record the settlement and permit the original applicants to withdraw CIRP proceedings pending before the NCLT/Adjudicating Authority.

In this matter, the Corporate Debtor- Jasmine Buidmart Pvt. Ltd. could not complete the project even after a period of eight years. Three home buyers filed section 7 application due to inordinate delay in completion of project. NCLT directed CIRP proceeding. NCLAT upheld the order.

Decision

Hon'ble court allowed the application with following observations:

“12. In the present case, as observed hereinabove, out of the total 128 home buyers of 176 units, 82 homebuyers are against the insolvency proceedings and the original applicants have also settled their dispute with the appellant and corporate debtor. Even the object and purpose of the IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern.

13... we are of the opinion that this is a fit case to exercise powers under Article 142 of the Constitution of India as the settlement arrived at between the home buyers and the appellant and corporate debtor – company shall be in the larger interest of the home buyers and under the settlement and as undertaken by the appellant/corporate debtor, out of 128 home buyers, 82 home buyers are likely to get possession within a period of one year, for which they are waiting since last more than eight years after they have invested their hard earned money. This shall be in furtherance of the object and purpose of IBC”

### **3. Prakash K. Pandya VS National Company Law Tribunal( Mumbai Branch)**

Counsels being Officer of the Court have to maintain decorum all time and Adjudicating Authority has ampl jurisdiction under Section 425 of the Companies Act to deal with.

Date of Order – 21st March 2022

Case Title - Prakash K. Pandya VS National Company Law Tribunal( Mumbai Branch).

Fact of the Case

An appeal was filed against the order dated 09th February, 2022 passed by the National Company Law Tribunal, Mumbai Bench, wherein the Adjudicating Authority directed the matter to be listed on 04th April, 2022 due to certain events which happened on the date of hearing including the Counsels arguing among



themselves, the Court was not inclined to hear the matter and adjourned the Application.

The Appellant submitted that the Corporate Insolvency Resolution Process is in 05th Year and Resolution Plan has already been approved by the Committee of Creditors and pending consideration.

Decision

Hon'ble court dismissed the appeal with following observations:

"3. The Impugned Order does not indicate any such recording, we however are of the view that the Adjudicating Authority is clothed with ample power to deal with clients or counsels who appear in the Court. Counsels being Officer of the Court have to maintain decorum all time and Adjudicating Authority has ample jurisdiction under Section 425 of the Companies Act to deal with.

The Impugned Order being only of fixing a date, we are not inclined to entertain this Appeal at this stage. We however observe that the Adjudicating Authority on the date fixed shall endeavor to dispose of the matter and As pending for last several years."

The failure of NCLAT to look into a very vital aspect on NCLT's specific finding, vitiates NCLAT's order: Supreme Court

Date of Order - 29th March 2022

Case Title - SVG Fashions Pvt. Ltd. (Earlier Known as SVG Fashions Ltd.) Vs. Ritu Murli Manohar Goyal & Anr.

Fact of the Case

The appellant filed an application under Section 9 of the Code against M/S Arpita Filaments Private Limited, contending inter alia: that the corporate debtor started having business dealings with them from 2013; that they sold and delivered various fabrics to the corporate debtor; that the corporate debtor was irregular in making payments as per the bills; and that the demand notice issued by them under Section 8 of the Code read with Rule 5 did not invoke any response. Aggrieved by the order of the National Company Law Appellate Tribunal, reversing the order of 'Admission' passed by the National Company Law Tribunal and holding that their application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was barred by limitation.

Decision

Hon'ble court found from the order of NCLAT that there was no discussion at all about the letter dated Sep 28, 2015, whereas, according to the operational creditor, the six cheques in question were handed over along with the letter dated September 28, 2015., therefore allowed the appeal with following observations:

"The failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact on this.

## IV. KNOWLEDGE SHARING

### Procedure to change name of the Company under Companies Act, 2013

#### A Company can change its name at anytime under following circumstances :-

- On Conversion from Private to Public, or
- On Conversion from Private to Public, or
- Any other reason

#### Change of name is governed under Section 13 of Companies Act, 2013 read with Rule 29 of Companies Rules, 2014 :-

##### **Under Section 13:**

Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 13 and shall not have effect except with the approval of the Central Government in writing.

##### **Under Rule 29:**

(1) Change of name shall not be allowed to a company which has defaulted in filing its Annual Returns or Financial Statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures;

(2) For the purposes of sub-section (3) of section 13, an application shall be filed in Form INC-24 along with the fee for change in the name of the company and a new certificate of incorporation shall be issued to the company consequent upon change of name.

#### Procedure to Change name of the Company :-

- A **meeting of Board of Directors** to be convened and following resolutions to be passed for following items with requisite majority :-
  1. To approve change of name of Company.
  2. To authorize a Director or Company Secretary to make MCA RUN Application for reservation of name for availability of proposed name.
  3. To conduct Extra Ordinary General Meeting of the Company.
  4. For Alteration of Memorandum of Association and Articles of Association.
- **MCA RUN Application** - Reserve Unique Name application to be made to ROC for approval of proposed name with Copy of Board resolution attached.  
*Note :- Proposed new name shall be valid for 60 days.*

- A **General meeting** to be convened to pass a Special Resolution for consequential changes to the Memorandum of Association and Articles of Association.
- On processing of requisite approvals, the company shall file **form MGT-14** (for filing of special resolution on alteration of Memorandum of Association) and **form INC-24** (Application to Registrar of Companies for approval of name under Memorandum of Association and issue of new Certificate of Incorporation) within a period of 30 days from the date of EGM.

Attachments to MGT - 14 :-

1. Notice of Extra Ordinary General Meeting
2. Copy of special resolution passed in the EGM and
3. Copy of altered Memorandum of Association and Article of Association of the company

Attachments to INC - 24 :-

1. Notice of Extra Ordinary General Meeting
  2. Copy of special resolution passed in the EGM and
  3. Copy of altered Memorandum of Association and Article of Association of the company
  4. Minutes of extra ordinary general meeting
- After completing above procedure ROC shall issue a **New Certificate of Incorporation** with new name of the Company.

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[GO UP](#)

THANKYOU

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