VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA

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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 April, 2022 issue.

Knowledge is power. Knowledge shared is power multiplied.

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I. MINISTRY OF CORPORATE AFFAIRS ("MCA") UPDATES:

A. MCA CIRCULARS AND NOTIFICATIONS:

1. Central Government makes it mandatorily for Nidhi Companies to get declaration before commencing business – 08th April, 2022

- Central Government vide MCA Notification dated 08th April, 2022 amends Companies (Incorporation) Rules, 2014. These rules may be called as Companies (Incorporation) Amendment Rules, 2022. These rules are applicable from the date of their publication w.e.f 08th April, 2022.

- Under rule 12, A new requirement has been availed on Nidhi Companies to obtain declaration by the Central Government before commencing business under Section 406 of the Act.

- The declaration shall be submitted at the stage of incorporation by the Company in Form INC.20A as circulated on MCA official site. The Form INC.20A shall be inserted in Part-B of Form INC-32 (SPICE) at the end.

Link to the Circular:
https://www.mca.gov.in/bin/dms/getdocument?mds=7uYIYG3bvQXOatZpmzBnww%253D%253D&type=open

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2. Report on the Company Law Committee– 13th April, 2022

Ministry of Corporate Affairs constituted Company Law Committee in 2019 to make recommendations to the Government inter alia on changes aimed at facilitating and promoting greater ease of doing business in India and effective implementation of the Companies Act, 2013, the Limited Liability Partnership Act, 2008 and the Rules made thereunder.

Company Law Committee recently through MCA came out with its report for the year 2022 recommending changes and amendments needed to be adopted in the Companies Act, 2013 to bring Indian company law in tune with globally recognised best practices and improve ease of living for corporates and stakeholders. During its detailed discussions and analysis, the Committee also sought to streamline the operation of certain provisions of the Companies Act, 2013 through clarificatory amendments and other drafting changes.

Main recommendations of the Committee regarding the Companies Act, 2013, as included in Chapter I of the Report, are as follows:

Sr. No	Subject	Observations and recommendations	Proposed amendments to Companies Act, 2013
1.	Allowing certain companies to revert to the financial year followed in India	Companies Act, 2013 contains no provision which allows the company or body-corporate which ceases to be a holding, subsidiary or associate company of the foreign entity to revert to FY required to be followed under Companies Act, 2013.	Committee proposed amendment that, companies, which cease to be associated with a foreign entity, should be allowed to file a fresh application with the Central Government in a prescribed form to allow them to revert back to the FY followed under Companies Act, 2013.
2.	Facilitating Communication in Electronic Form	Section 20 of the Companies Act, 2013 stipulates the mode by which a document may be delivered to the ROC.	Committee proposed amendment enabling certain class or classes of companies to server documents to their members in electronic mode only.
3.	Recognizing issuance and holding of Fractional Shares, RSUS and SARS	Fractional Share :- Section 24 of the Companies Act, 2013 issuance and holding of Fractional share is restricted. *Fractional share refers to a portion of a share less than one share unit.*	Committee proposed amendment to permit issuance, holding and transfer of fractional shares for a class or classes of companies, in such manner as may be prescribed. Such shares should only be issued in dematerialised form. For listed companies, such prescriptions may be made in consultation with SEBI. It is also clarified that this recommendation only pertains to cases that would involve a fresh issue of fractional shares by the company and not to those cases where fractional shares get created for the time being on account of any corporate action.
		Under Companies Act, 2013, issuance of only employees' Stock Options ("ESOPs") and Sweat Equity Shares to the employees are recognized.	Committee proposed amendment to permit issuance and recognization of Restricted Stock Units (RSUs) and Stock Appreciation Rights (SARs) under the Companies Act, 2013.

4.	Easing the requirement of raising capital in distressed companies	Under Section 53 Companies Act, 2013, Issuing shares at a discount refers to an issue at less than the nominal value or face value of the share. The CLC 2016 had considered including an exception to the prohibition and allowing distressed companies to issue shares at a discount to their creditors. The Committee observed that it might become hard to distressed companies where the market value of the shares becomes less than the nominal value.	Committee proposed amendment to Section 53 to permit distressed companies to issue shares at a discount.
5.	Replacing affidavits with Self-Declaration	Committee observed that requirement of furnishing affidavits should be replaced by self-declaration except for filing an affidavit in a judicial or quasi-judicial proceeding before the NCLT, the NCLAT, or the RD	Committee proposed amendment to Section 68 and Section 374 to permit self-declaration in place of affidavit during buyback and when seeking registration under Part I of Chapter XXI.
6.	Clarifying provisions on Buy-Back of Securities	Section 68 of Companies Act 2013, procedure for Buy-back is being governed. It has been observed that section 68 does not provide any clarity as and whether free reserves will be included for the purpose of calculation of threshold limit for buy-back.	Committee proposed amendment to Section 68 that free reserves should be included in the calculation of buy-back. Further, the committee has also proposed that only those shares will be allowed to buy-back on which shareholders have exercised the stock option.
7.	Specific prohibition on the inclusion of trusts on the register of members	The Committee noted that there are no provisions corresponding to Section 153 of Companies Act, 1956 in Companies Act, 2013. However, Para 4, Table F-Schedule I of Companies Act, 2013 currently prohibits a company from recognising a person holding any share upon a trust. The Committee agreed that the provision akin to Section 153 of Companies Act, 1956 would provide further clarity on this issue.	The Committee proposed insertion of a provision corresponding to Section 153 of Companies Act, 1956 in Companies Act, 2013 that expressly prohibits companies from entering notice of any trust, express, implied, or constructive on their register of members or of debenture holders.
8.	Holding General Meetings	The Committee noted that owing to the COVID – 19	The Committee proposed amendment to Section 96,

	through the use of Technology	pandemic and the social distancing norms. MCA had allowed EGMs to be convened through Video-Conferencing ("VC") or Other Audio-Visual Means ("OAVM"), vide its circulars dated 8th April 2020 and 13th April 2020.	100 and 101 to hold AGMs and EGMs in electronic mode as may be prescribed. The Committee also suggested to reduce notice period as prescribed by the Central Government.
9.	Maintaining Statutory Registers through an Electronic Platform	The Committee observed that Companies are mandated to keep statutory registers in physical form which leads to compliance cost. Committee recommended that certain class or classes of companies, as may be prescribed, should be required to compulsorily maintain their registers on an electronic platform in such form and manner as may be prescribed by the Central Government.	For this purpose, the Committee recommended that the Central Government may set up an electronic platform for such registers to be maintained, stored and periodically updated. Additionally, the requirement to include past records pertaining to statutory registers on the electronic platform should also be provided with adequate transitional period.
10.	IEPF related changes in Sections 124 and 125 of Companies Act, 2013	Section 125 (1) of Companies Act, 2013 pertains to IEPF to promote investor welfare through investors' education, awareness and protection. The Committee observed that there exist certain ambiguities. Further, Committee recommended that In Section 124(5) concerning the transfer of money transferred to the Unpaid Dividend Account, after the words "such transfer", the words "or any dividend, which has not been paid or claimed in respect of securities transferred by the company under sub-section (6)" should be inserted. In Section 125(3)(a), which provides the purposes for which the fund may be utilised, after the words "matured debentures", the words "redemption amount	Amendments should be made to Section 124(5) to mandate the transfer of all unclaimed dividends in respect of shares at the time of transfer of shares by the company under Section 124(6). Amendment should be made to Section 125(3) to include "redemption amount of preference shares remaining unpaid or unclaimed for seven or more years". Amendment should be made in Section 125(11) that IEPF authority may delegate its powers to any member or office in the Authority subject to conditions specified to ease its administration. Amendment should be made in Section 125 (2) & (3) for unclaimed amounts

		towards unpaid or unclaimed preference shares" should be inserted. After Section 125(11), the following sub-section should be inserted: "(12) The authority may, by general or special order in writing, delegate to any member, officer or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it deems necessary.", Amendment to enable monies that remain unclaimed for seven years or more in respect of shares/securities that have either been bought back or cancelled, to be transferred to IEPF	to be transferred to the IEPF.
11.	Strengthening the National Financial Reporting Authority	Under Section 132(1) of Companies Act, 2013 empowers Central Government to constitute National Financial Reporting Authority. Currently, NFRA has power to take action against "Professional or other misconduct" committed by any member or firm of chartered accountants. Further, NFRA receives its entire funding from Central Government. Committee observed that NFRA fund should be made similar to the Board Fund under the IBBI.	Amendment should be made to Section 132 to provide NFRA Chairperson shall have the powers of general superintendence and control. Further, Committee recommended for NFRA to have authority to take action against the auditor for non-compliance pertaining to Companies Act, 2013. Further, Committee recommended to constitute a separate fund for NFRA.
12.	Strengthening the Audit Framework	Section 144 of Companies Act, 2013 list certain services that an auditor is prohibited from rendering. The Committee observed that differing classes of companies may be permitted to avail differing non-audit services from their auditors.	Amendment should be made to Section 144 of Companies Act, 2013 to enable the Central Government to prescribe a differential list of prohibitions on availing non-audit services or total prohibition of the same for such class or classes of companies where public

			interest is inherent, as may be prescribed.
13.	Standardising qualifications by Auditors	Section 143 of Companies Act, 2013 obligate the auditor to provide observation on comments on financial statements of the Company and to provide qualification or remark.	Amendment should be made in Section 143, to ensure greater clarity, disclosure and standardisation, the Committee proposed that an enabling provision be inserted in Companies Act, 2013 to allow the Central Government to introduce a format for auditors that would enable them to state the impact of every qualification or adverse remark on the financial statements of the company for circulation to the Board before the same is passed on to shareholders.
14.	Setting up of Risk Management Committees	Currently, Companies Act, 2013 contains no provision relation to the formation of Risk Management Committee. The Committee recommended that there shall be requirement be mandated for constitution of Risk Management Committee.	Amendment should be made in Companies Act, 2013 for insertion of provision for the constitution of an RMC for such class or classes of companies, as may be prescribed by the Central Government.
15.	Clarifying the tenure of an Independent Director	Under Section 149 of Companies Act, 2013 an independent director can hold an office for maximum tenure of 5 years with the approval of shareholders. Further Section 149 states that an Independent Director shall not hold office beyond two consecutive terms of 5 years. The Committee observed that there was a confusion on term of Independent Director term when being appointed as an Additional Director.	Further, The Committee clarifies that the period of 5 years of Independent Director commences from the date of appointment of Director as an additional director.
16.	Reviewing provisions on Merger and Amalgamation	At present, the scheme of merger needs to be approved by the 90% of total share capital of the Company. The Committee observed that due to high requirement percentage of approval, the	Therefore, the Committee recommended a modified twin test requiring approval by :- - 75% of shareholders present and voting at the meeting.

		threshold gets difficult to achieve by listed companies but due to high threshold merger process gets significantly delayed.	- Representating more than 50% in value of total number of shares. Amendment should also be held under Section 233 to permit fast track mergers between a holding company and its subsidiary company if such companies are not listed.
17.	Easing restoration of struck off companies	The Committee said that in case of struck off companies, if specified person apply for restoration within three years under section 252(1) should be filed to the Regional Director.	Amendment should be made to Section 252 to provide for appeal of striking off company for restoration within period of 3 years to Regional Director instead of NCLT

Link to the Circular:
https://www.mca.gov.in/bin/dms/getdocument?mds=bwsK%252FBEAFTVdpdKuv5IR5w%253D%253D&type=open

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II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

A. SEBI CIRCULARS AND NOTIFICATION

1. SEBI ask for feedback in harmonized industry classification from Credit rating agencies – 01st April, 2022

- SEBI, vide its Circular dated 22nd March, 2022 circulated a harmonized four level industry classification for adoption by all stakeholders and for all relevant processes/ purposes in Indian securities market. Now further, SEBI vide its circular dated 01st April, 2022 have shared a format for classification for the purpose of rating exercise in the form of Annexure A of this circular.

- SEBI further added that, standardized framework will help bring about uniformity in the classifications being used across sectors and in securities market. Therefore, credit rating agencies are advised to use this standardized industry classification for the purpose of rating exercise, peer benchmarking, research activities including research for Economy, Industries and Companies etc.

- Therefore, SEBI vide this circular invited credit rating agencies for feedback or any suggested changes. The industry classification will be applicable to credit rating agencies w.e.f. 01st October, 2022.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/standardization-of-industry-classification-applicability-to-credit-rating-agencies-cras-_57531.html

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2. SEBI extends timelines for implementation to standardize the rating scales for Credit rating agencies – 01st April, 2022

- SEBI, vide its Circular dated 16th July, 2021 advised the credit rating agencies to either align their rating scales with the rating scales prescribed under the guidelines of respective financial sector regulator or authority in terms of Regulation 9(f) of SEBI (Credit Rating Agencies) Regulations, 1999, or in absence of the same, follow rating scales prescribed by the Board by 31st March, 2022.

- SEBI, further added that various representation has been received from credit rating agencies requesting for extension of the date of applicability of the provisions of the section B of the aforesaid circular.

- In view of representation, SEBI vide its Circular dated 01st April, 2022 have extended the applicability of the section B and asked credit rating agencies to comply with the requirements/ provisions on or before 30th June, 2022.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/standardisation-of-ratings-scales-used-by-credit-rating-agencies-extension-of-timeline-for-implementation_57529.html

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3. SEBI revises UPI limits in Public Issue of Equity Shares and convertibles– 05th April, 2022

- SEBI, vide its Circular dated revised UPI limits in Public Issue of Equity Shares and convertibles. The released circular is in reference to SEBI Circular dated 01st November, 2018 where SEBI introduced the use of Unified Payment Interface as an additional payment mechanism with Application Supported by Blocked Amount (ASBA) for Retail Individual Investors. Further, the same was mandated w.e.f 01st July, 2019 vide SEBI Circular dated 28th June, 2019.

- It is further noted that NPCI, vide its circular dated 09th December, 2021, inter alia, has enhanced the per transaction limit in UPI from Rs. 2 lakh to Rs. 5 lakh for UPI based Application Supported by Blocked Amount (ASBA) in Initial Public Offers(IPOs).

- Further, NPCI reviewed the systemic readiness required at various intermediaries to facilitate the processing of applications with increased UPI limits and confirmed that as on 30th March, 2022, more than 80% of SCSBs/Sponsor Banks/UPI Apps have conducted the system changes and have complied with the NPCI provisions.

- Accordingly, it has been decided that all Individual Investors applying in Public Issues where the application amount is upto 5 Lakhs shall use UPI and shall also provide their UPI ID in the bid-cum-application form submitted with any of the entities mentioned herein below:

  i. a syndicate member
  ii. a stock broker registered with a recognised stock exchange (and whose name is mentioned on the website of the stock exchange as eligible for this activity) ('broker')
  iii. a depository participant ('DP') (whose name is mentioned on the website of thestock exchange as eligible for this activity)
  iv. a registrar to an issue and share transfer agent ('RTA') (whose name is mentioned on the website of the stock exchange as eligible for this activity)

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/revision-of-upi-limits-in-public-issue-of-equity-shares-and-convertibles_57589.html

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4. SEBI advises Stock exchanges to put Standard Operating Procedures (SOP) for dispute resolution available under the stock exchange arbitration mechanism for disputes between a listed company and its shareholder(s) / investor(s)– 08th April, 2022

- SEBI, vide its Circular dated 08th April, 2022 advised Stock exchanges to put Standard Operating Procedures (SOP) for dispute resolution available under the stock exchange arbitration mechanism for disputes between a listed company and its shareholder(s) / investor(s). Regulation 40 of SEBI LODR Regulations, 2015 provides stock exchanges provide for dispute resolution under the stock exchange arbitration mechanism for disputes between a listed company and its shareholder(s)/ investor(s).

- In this Regards, Stock exchanges are advised to put in place by 01st June, 2022, Standard Operating Procedures (SOP) for operationalizing the resolution of all disputes pertaining to or emanating from investor services such as transfer/transmission of shares, demat/remat, issue of duplicate shares, transposition of holders, etc. and investor entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest /coupon payments on securities, etc.

- Further, in respect of disputes in above matters where Registrar and Share Transfer Agents (RTA) are offering services to shareholder(s)/ investor(s) on behalf of listed companies, the RTAs shall continue to be subjected to the stock exchange arbitration mechanism

- The recognized stock exchanges are directed to bring the provisions of this circular and the SOP put in place in this regard to the notice of listed companies and also to disseminate the same on their website.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/standard-operating-procedures-sop-for-dispute-resolution-available-under-the-stock-exchange-arbitration-mechanism-for-disputes-between-a-listed-company-and-its-shareholder-s-investor-s-_57805.html

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5. SEBI Clarification on applicability of Regulation 23(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions – 08th April, 2022

- SEBI vide circular dated 08th April, 2022, has specified clarification on applicability of Regulation 23(4) read with Regulation 23(3)(e) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions.

- Regulation 23(3)(e) of the SEBI LODR Regulations specifies that omnibus approval granted by the audit committee shall be valid for a period not exceeding one year

and shall require fresh approvals after the expiry of one year. Regulation 23(4) of the SEBI LODR Regulations requires shareholder approval for material-related party transactions (RPTs).

- Representations have been received seeking clarity on the period of validity of the omnibus approval where the transactions are material and shareholders' approval is also required. In order to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs,

- It has been decided to specify that the shareholders' approval of omnibus RPTs approved in an AGM shall be valid up to the date of the next AGM for a period not exceeding fifteen months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year.

- The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/clarification-on-applicability-of-regulation-23-4-read-with-regulation-23-3-e-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to-related-party-transactio-_57807.html

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6. SEBI Circular on Risk value of commodities for risk-o-meter– 11th April, 2022

SEBI, vide circular on 'Product Labeling in Mutual Fund schemes – Risk-o-meter' dated October 5, 2020, issued detailed guidelines for evaluation of risk levels of scheme for the purpose of risk-o-meter.

For evaluation of risk value of commodities in which mutual funds are permitted to invest, in terms of para 2(d) of SEBI circular on 'Product Labeling in Mutual Fund schemes – Risk-o-meter', it has been decided that investment in commodities by mutual fund schemes shall be assigned a risk score corresponding to the annualized volatility of the price of the said commodity. The annualized volatility shall be computed quarterly based on past 15 years' prices of benchmark index of the said commodity and risk score for the commodity shall be in terms of the following table:-

Annualized volatility	**Risk value on risk-o-meter (Risk)**
<10%	3 (Moderate)
10-15%	14 (Moderately High)
15-20%	5 (High)
>20%	6 (Very High)

Illustration: If price of gold has annualized volatility of 18% based on price of gold of past 15 years, then Gold and gold related instruments will have risk value of 5 (High) on risk-o-meter.

Therefore, accordingly, para 3(viii) of Annexure A to the circular pertaining to risk value of gold and gold related instruments stands modified as above.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/circular-on-risk-value-of-commodities-for-risk-o-meter_57913.html

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7. SEBI modifies Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors – 29th April, 2022

- SEBI, vide circular dated 29th April, 2022 modified Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors. This Circular is in reference to SEBI Circular dated 14th January, 2022 where SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 was notified on January 14, 2022 for generation of Foreign Portfolio Investor (FPI) registration number.

- Subsequently, the Department of Economic Affairs, Ministry of Finance, Government of India, vide Notification dated 29th March, 2022, amended the Common Application Form (CAF), wherein both the Depositories, viz., NSDL and CDSL have been allowed to host the CAF for FPI registration.

- In order to operationalize the same, it has been decided to modify the 'Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors', issued vide SEBI dated 05th November, 2019 (hereinafter referred to as 'the Operational Guidelines'), as under:

- In Paragraph 6 of Part A of the Operational Guidelines, pertaining to the Certificate of Registration, shall be read as follows:

  "The designated depository participant shall grant the certificate of registration, bearing registration number generated by SEBI"

- In Paragraph 10(iii) of Part A of the Operational Guidelines, pertaining to Name change, shall be read as follows:

  "Upon receipt of the request for name change along with abovementioned documents, the DDP shall effect the change in name in the certificate. The DDP shall issue a letter and fresh registration certificate to such applicant acknowledging the change in name. Respective Depositories shall make necessary arrangements for DDPs to provide fresh registration certificate as an acknowledgement from its database including a statement that the name change has been granted without prejudice to any tax liability/ implication in India."

- The provisions of this circular shall be applicable with effect from 09th May, 2022. Further, all other provisions of the Operational Guidelines shall remain unchanged.

Link to the Circular:
https://www.sebi.gov.in/legal/circulars/apr-2022/modification-in-the-operational-guidelines-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors-sebi-to-generate-fpi-registration-number-and-both-the-de-_58587.html

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B. ORDERS/ CASE LAWS/ ANNOUNCEMENT

1. SEBI imposes penalty worth Rs. 50 Lakhs on 23 entities for violating securities market norms while dealing in the scrip of Unisys Softwares and Holding Industries Limited – 13th April, 2022

SEBI, vide its order dated 13th April, 2022 imposed penalty worth Rs. 50 Lakhs on 23 entities for violating securities market norms while dealing in the scrip of Unisys Softwares and Holding Industries Limited. The case pertains to Unisys providing financial assistance to preferential allottees and enabling those allottees to subscribe to and buy its own shares allotted to them on a preferential basis in March 2011.

The order came out of an investigation SEBI conducted into the scrip of Unisys during January, 2010 to November, 2014 period. It was discovered during the investigation that the Company and its promoters had played an integrated role in creating a fraudulent scheme, where allottees were provided funding for subscribing to the preferential issue of Unisys.

The Company and promoters pursued fraud on investors by giving an impression of capital infusion in the Company which lead to violation of Prohibition of Fraudulent and Unfair Trade Practices.

It was further noted in the order that, Unisys repetitively gave wrong quarterly shareholding pattern disclosures to Stock exchanges. Therefore, SEBI levied fine of Rs. 4 Lakh on Unisys and a collective fine of Rs. 46 Lakhs on Unisys and other 22 entities.

Meanwhile, in nine separate orders, SEBI imposed penalties amounting to Rs 46.5 lakh on seven entities over non-genuine trades in illiquid stock options segment of BSE.

The regulator slapped a fine of Rs 5 lakh each on Nasik Entertainment World Developers, Priti Raika, Dhanvat Rai Shah HUF, Vinod Kumar Kothari and Sons HUF, Sourabh Agarwal HUF, Kamal Kishor Maloo HUF, Om Prakash Banka HUF, Bina Gupta and Bina Kedia. A penalty of Rs 1.5 lakh was imposed on Ashok Kumar Rajgaria HUF.

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2. SEBI declares to auction 15 properties on 11th May, 2022 to recover investors' money – 13th April, 2022

SEBI on 13th April, 2022 said it will auction the properties of Sun Plant Agro, Sun Plant Business and Remac Realty on May 11 to recover money that was illegally raised from the public. The said properties are worth from Rs. 19 Lakhs to Rs. 1.7 Crore.

SEBI further said that, out of 15 properties, nine properties belong to Sun Plant Business, four relate to Sun Plant Agro and the remaining two belong to Remac Realty. These properties include land parcels and flats spread across West Bengal.

SEBI said that bids for the sale of assets under the recovery proceedings are against the three firms and their directors, The auction will be conducted online on 11th May, 2022 from 10:30 am to 12:30 pm. Adroit Technical Services has been appointed as the e-

auction service provider. SEBI further added that bidders should make their own independent enquiries regarding the encumbrances, title of properties put on auction and claims.

SEBI earlier attached some of the properties of Sun Plant Agro after its directives to refund investors money along with the interest which did not materialize. In December, 2014, attachment proceedings were initiated against Sun Plant Agro to recover Rs 69.34 crore and a separate attachment order came in December 2015 against Sun Plant Business to recover a sum of Rs 5.76 crore.

Between the period 2005 to 2008, Sun Plant Business had collected Rs. 4.17 crore from 470 investors by issuing redeemable preference shares (RPS) without complying with the public issue norms. Other than that, Sun Plant Agro was running a collective investment scheme (CIS) without requisite approvals and registration. The firm was alleged to have mobilised funds from the public with a promise of high returns under its sale of plants scheme

Further in March, 2020 SEBI prohibited Remac Realty and its directors from the securities market for at least four years for illegal fund raising activities allegedly through CIS without required clearances from the regulator and had directed them to refund investors money.

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III. INSOLVENCY LAW UPDATES/ CASE LAWS

1. Rajesh Kedia Ex-Director of Ajanta Paper and General Products Ltd. v. Phoenix ARC Private Limited and Ors. – 11th April, 2022

At the stage of admission of CIRP application, the quantum of payment of debt does not fall for consideration for the Adjudicating Authority. The actual amount of debt is ascertained by the Resolution professional.

Case Title- Rajesh Kedia Ex-Director of Ajanta Paper and General Products Ltd. v. Phoenix ARC Private Limited and Ors.

Date of Order – 11th April 2022

Fact of the Case
NCLT, Mumbai had admitted the Application filed under Section 7 of the Code observing that in the Balance Sheet for the year ending 31/03/2017, there was a mention of outstanding Non-Convertible Debentures of ₹ 5,00,000/- having a face value of ₹ 100/- each; that the FY ending 31/03/2019 specified the details of debentures issued by UTI along with the fact that the same was recalled in the FY 2002-03. It was contended that AA had failed to consider that the only 'acknowledgement of debt' by the CD is to the tune of ₹ 10,62,92,521/-, as per the Balance Sheet for the year ending 2017 and ₹ 7,77,39,275/- as per the Balance Sheet for the year ending 2021. Appellant contended that there being no acknowledgement of any 'interest' as claimed from 2002, the claim for the 'interest' is completely time barred and the AA has failed to consider that the first Respondent has approached the Tribunal with an exaggerated claim which is completely 'barred by Limitation'.

Decision
Hon'ble NCLAT dismissed the appeal and held that,

"In so far as the contention of the Appellant qua the quantum of payment of debt is considered, we are of the earnest view that the same does not fall for consideration before the Adjudicating Authority at the stage of 'admission' of the Application under Section 7 of the Code. The only requirement is that the minimum outstanding debt should be more than the threshold amount provided for under the Code. The actual amount of 'Claim' is to be ascertained by the Resolution Professional after collating the 'Claims' and their verification which comes at a later stage. Keeping in view all the aforenoted reasons, this Tribunal is satisfied that there is an admission of 'debt' and 'default' as defined under the Code and we do not find any illegality or infirmity in the Impugned Order dated 07/10/2021, passed by the Learned Adjudicating Authority."

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2. Sunil Kumar Jain and others Vs. Sundaresh Bhatt and others– 19th April, 2022

Wages/salaries of those workmen/employees who actually worked during the CIRP period when the corporate debtor as a going concern, shall be paid, considering it as part of CIRP costs.

Case Title- Sunil Kumar Jain and others Vs. Sundaresh Bhatt and others

Date of Order - 19th April 2022

Fact of the Case
Workers/employees of Corporate Debtor/M/s ABG Shipyard Limited preferred an appeal being aggrieved and dissatisfied with the impugned order passed by the National Company Law Appellate Tribunal, New Delhi by which the Appellate Tribunal dismissed the appeal preferred by the workmen/employees working at Dahej and Mumbai, which was filed against the order passed by the National Company Law Tribunal, Ahmedabad Bench, dated 25.04.2019 for not granting any relief to them with regard to their claim relating to salary, which they claimed for the period involving 'Corporate Insolvency Resolution Process' and the prior period. It was submitted that the Corporate Debtor was managed as a going concern in accordance with Section 21 of the I&B Code.

Decision
Hon'ble court partially allowed the appeal with following observations:

"that the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) of the IB Code;

therefore it is directed that let the appellants submit their claims before the Liquidator and establish and prove that during CIRP, IRP/RP managed the operations of the corporate debtor as a going concern and that they actually worked during the CIRP and the Liquidator is directed to adjudicate such claims in accordance with law ....and salaries be considered and included in CIRP costs and they will have to be paid as per Section 53(1)(a) of the IB Code in full before distributing the amount in the priorities as mentioned in Section 53 of the IB Code."

GO UP

3. Vishal Harish Choudhary (Suspended Director of Corporate Debtor) Vs. Arihant Nenawati Liquidator of M/s Royal Refinery Private Ltd. – 12th April, 2022

Liquidation order cannot be challenged on the ground that CoC is constituent of only one Financial Creditor which has 100% voting share.

Case Title- Vishal Harish Choudhary (Suspended Director of Corporate Debtor) Vs. Arihant Nenawati Liquidator of M/s Royal Refinery Private Ltd.

Date of Order - 12th April 2022

Fact of the Case

This appeal has been filed by suspended directors against the order of NCLT by which NCLT allowed the application filed by the Resolution Professional for liquidation of the corporate debtor. Learned counsel for the appellant challenging the order contends that appellant was prejudiced since there was only one financial creditor in the CoC having 100% voting share, hence, the entire CoC is controlled by one financial creditor.

In the ongoing CIRP, CoC took view that sale of the Corporate Debtor was not possible as it is not a going concern and decided that sale of Corporate Debtor cannot be done as a going concern and by 100% voting share of the CoC resolution for liquidation was approved.

Decision

Hon'ble NCLAT dismissed the appeal and held that,

The mere fact that CoC is constituent of only one Financial Creditor which has 100% voting share cannot be said to be a ground on which the Appellant can question order of liquidation. Decision for liquidation has been taken with 100% voting share of the Financial Creditor as has been noted by the Adjudicating Authority. Further, the submission of the Appellant that the Suspended Directors were entitled to given opportunity by the Adjudicating Authority before passing the order of liquidation has also no substance. The Adjudicating Authority passed the order on the Application of the Resolution Professional after hearing the Financial Creditor. We do not find any error in the order of the Adjudicating Authority directing for liquidation of the Corporate Debtor.

GO UP

4. IBBI Updates

Regulation No	(Voluntary Liquidation Process) Regulations, 2017.	(Voluntary Liquidation Process) Regulations, 2022.	Comments
In regulation 2, in sub-regulation (1), in clause (c)	liquidation commencement date" means the date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3 [3(4)];	liquidation commencement date" means the date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3 [3(3)];	

In regulation 10, in sub-regulation (2) and clause (r) of sub-regulation (2)	such other books or registers as may be necessary to account for transactions entered into by him in relation to the [corporate debtor]	such other books or registers as may be necessary to account for transactions entered into by him in relation to the [corporate person]	For the words —corporate debtor‖, the words —corporate person‖ shall be substituted.
In Reg 30 after sub-regulation (2) Proviso inserted		Provided that where no claim from creditors has been received till the last date for receipt of claims, the liquidator shall prepare the list of stakeholders within fifteen days from the last date for receipt of claims	The liquidator shall prepare the list of stakeholders within fifteen days from the last date for receipt of claims, where no claim from creditors has been received till the last date for receipt of claims.
In Reg 35 in sub-regulation (1),	The liquidator shall distribute the proceeds from realization within [six months] from the receipt of the amount to the stakeholders The liquidator shall endeavor to	The liquidator shall distribute the proceeds from realization within [thirty days] from the receipt of the amount to the stakeholder The liquidator shall endeavour	The liquidator shall distribute the proceeds from realization within thirty days (against the previously stipulated six months) from the receipt of the amount to the stakeholders The liquidator shall endeavour to complete the liquidation process of the corporate person within two hundred and seventy days from the liquidation commencement date, where the creditors

In regulation 37, for sub-regulation (1)	complete the liquidation process of the corporate person within twelve months from the liquidation commencement date".	to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within: - (a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of subsection (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and (b) ninety days from the liquidation commencement date in all other cases.]	have approved the resolution under section 59(3)(c) or regulation 3(1)(c), and ninety days from the liquidation commencement date in all other cases
In regulation 38, for the sub-regulation (3)	The liquidator shall submit the Final Report to the Adjudicating Authority along with the application under section 59(7)	The liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under sub-section (7) of section 59 to the Adjudicating Authority.	The liquidator shall file final report and compliance report along with application to the Adjudicating Authority

In regulation 39, in sub-regulation (7)	A stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in [Form-H] for an order for withdrawal of the amount	A stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in [Form-I] for an order for withdrawal of the amount	To withdraw the amount from the liquidation account stakeholder may apply to Board in Form-I instead of Form H

In Schedule I, for the word and letter —Form-H, the word and letter —Form-I shall be substituted

These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2022.

They shall come into force on the date of their publication in the Official Gazette

In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the principal regulations"), after regulations

2A - Contribution of liquidation asset

21A- Presumption of security interest

31A- Stakeholder Consultation Committee

44- Completion of Liquidation

The following Explanation shall be inserted, namely: -

"Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2

GO UP

5. Legal Entity Identiier (LEI)

RBI on 21.04.2022 extended the guidelines on Legal Entity Identifier (LEI) to Primary (Urban) Co-operative Banks (UCBs) and Non-Banking Financial Companies (NBFCs). (Image source: website) According to RBI's circular 'Non-individual borrowers enjoying aggregate exposure of Rs 5 crore and above from banks (excluding RRBs) and financial institutions (FIs), who fail to obtain LEI codes from an authorized Local Operating Unit (LOU) within the timeline given below shall not be sanctioned any new exposure nor shall they be granted renewal/enhancement of any existing exposure. However, departments/Agencies of Central and State Governments (not Public Sector Undertakings registered under Companies Act or established as Corporation under the relevant statute) shall be exempted from this provision, it said. Timeline for obtaining LEI by borrowers

Total exposure	LEI to be obtained on or before
Above Rs 25 crore	April 30, 2023
Above Rs.10 Crore up to Rs.25 Crore	April 30, 2024
Rs.5 Core and above, up to Rs.10 Crore	April 30, 2025

"Exposure for this purpose shall include all fund based and non-fund based (credit as well as an investment) exposure of banks/FIs to the borrower. Aggregate sanctioned limit or outstanding balance, whichever is higher, shall be reckoned for the purpose. Lenders may ascertain the position of aggregate exposure based on information available either with them or Central Repository of Information on Large Credits (CRILC) database or declaration obtained from the borrower", RBI said.

GO UP

6. The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022

The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 was introduced in parliament in December 2021 and was subsequently referred to a parliamentary committee headed by Member of Parliament Mr. Jayant Sinha. The committee has not only endorsed all the changes in the bill, but also underscored the need for competition in the profession by allowing multiple authorities for the qualification and licensing of accountants besides setting up Institutes of Accounting, like IITs and IIMs, to raise standards of accounting education. The Bill was passed by both the Houses of Parliament and after receiving the assent of the President, it was notified in the Gazette on 18th April 2022. The Amendment Act amends the following principal Acts:

- The Chartered Accountants Act, 1949
- The Cost and Works Accountants Act, 1959 and
- The Company Secretaries Act, 1980

Important changes brought in by the Amendment Act are:

a) Setting up of a Coordination Committee consisting of the President, Vice President and the Secretary of the Council of each of the three professional institutes for the development and harmonisation of the three professions.

b) Establishment of Disciplinary Directorate and constitution of Boards of Discipline which will consist of person, not being member of the Institute, to be nominated by the Central Government from the panel to be provided by the institutes, to act as Presiding Officer.
c) The disciplinary proceedings to be made faceless and virtual hearings also may be specified.
d) Huge increase in the penalty amounts have been specified (example: fine of rupees one thousand earlier has now been made as rupees one lakh) including providing for imprisonment for a longer term. In addition, the amendment splits the role of the president as the head of the council and secretary, who will carry out administrative functions as its chief executive officer. Interestingly, the amendment drops the word "Works" and states "Cost Accountants" as against the earlier term of "Cost and Works Accountants".

Reasons for the resistance to the amendment :-

There were reports of the proposed amendments facing resistance from the professional institutes. Apparently, the professional institutes have been enjoying unfettered powers regarding disciplinary proceedings against professional and other misconduct of their members. The Central Government has tightened the disciplinary proceedings by bringing a non-member as presiding officer of the disciplinary committee as well as board of discipline. The objection by the chartered accountants is that the presiding officer should have in depth knowledge in the respective profession. A nonCA member in the disciplinary committee or Board of Discipline would not have "in-depth knowledge" of accounting and audit.

There are two Schedules to the respective Acts of the professional institutes which describe the instances of professional and other misconduct. The First Schedule lists the professional and other misconduct of serious nature, of members in practice, members in service and in general. The Second Schedule lists other professional instances of misconduct. The matters listed under Second Schedule are handled by the Disciplinary Committee while those listed in First Schedule will be escalated to Boards of Discipline.

In all these committees, only members of the respective institute held the presiding officer position. News reports of professionals colluding with unscrupulous borrowers to cause huge losses to the banking industry were time and again referred to the professional institutes, but the disciplinary proceedings were seen to be ineffective. Whereas the government wanted the punitive measures to be strong so as to be a deterrent for any such fraudulent activities.

Coordination Committee

Further, the respective institutes had their own agenda to pursue their objectives though there were a few overlapping areas with the other institutes. The Government has proposed to make effective coordination amongst them by inserting a new Sec.9A in the Chartered Accountants Act, 1949 the provisions of which would apply to the other institutes as well.

The meetings of the Coordination Committee shall be chaired by the Secretary of the Ministry for Corporate Affairs. The presidents, vice presidents and secretaries of the three institutes shall participate in these meetings which will be held once in every quarter of the year.

Comments by the finance minister

The Finance Minister Ms. Nirmala Sitharaman has gone on record saying that the amendment will not dilute the autonomy of the audit and accountancy bodies but will strengthen corporate governance. Regarding the need to set up a coordination committee headed by the Secretary of the Ministry of Corporate Affairs which has sparked a debate in and outside the Parliament, the FM said that while a coordination committee already existed, as pointed out by certain Opposition MPs, "it has not even taken off". "The proposed amendments are very much in line with the core principles which have been given by the independent audit regulators…" she said.

The Finance Minister who also holds the corporate affairs portfolio, said questions have been raised over transparency in auditing ever since the Satyam and the ILFS scandals broke. "We have repeatedly been questioned about the number of failings of the CAs. She also added that "If the corporate governance structure has really got to be robust to meet with the global investment expectations about our standards of audit, our standards of investment policy, about how auditing certificates are being given, we need to have greater robustness and also a level of accountability brought in".

GO UP

IV. KNOWLEDGE SHARING

Bonus Issue of Shares under Companies Act, 2013

Bonus Issue of shares is governed under Section 63 of Companies Act, 2013. Bonus Shares are additional shares given in proportion to existing holders of the Company without any receipt of consideration.

Source for Bonus Issue

Company can issue fully paid-up bonus shares out of :

- Free Reserves
- Security Premium
- Capital Redemption Reserve Account

Approval for issue of shares under Bonus Issue

The Company intending to issue shares under bonus issue shall get approval of Board of Directors first through a Board resolution for which board meeting should be scheduled and notice of which should be sent seven days prior to the meeting.

Further, after getting Board approval, the Company needs to get Shareholders approval through ordinary resolution by convening an Extraordinary general meeting. Notice of Extraordinary general meeting shall be circulated 21 days prior to the meeting along with the Explanatory statement for considering special business.

MGT – 14 with ROC

The Company shall file MGT-14 within 30 days of passing Board resolution attaching certified true copy of Board resolution. Form MGT-14 is mandatory for all Public Companies.

Further, Company shall file MGT-14 within 30 days of passing shareholders resolution passed attaching certified true copy of shareholders resolution.

Allotment of Shares under Bonus Issue

The Company must pass a Board resolution for Allotment of Shares through Bonus Issue.

The Share certificate must be issued within 2 months if shares are being held in physical form. And if shares are being held in demat form then company must inform depository on allotment of shares.

Filing of forms with ROC

The Company is required to file the Form PAS-3 within 30 days from the allotment of shares with the Registrar of Companies along with certified true copy of Ordinary resolution passed by shareholders at EGM, Board resolution and list of allottees.

Frequently asked questions

Can a company issue preference shares under Bonus issue ?

The Companies Act, 2013 does not specify any type of shares to be issued under Bonus issue. Therefore, a company can issue equity as well as preference shares under Bonus issue.

Can a company issue Bonus Shares in different ratio to its existing shareholders ?

No, Company cannot issue bonus shares under different ratio to its existing shareholders. It is mandatory under Companies Act, 2013 to issue Bonus shares in proportion to existing shareholders.

GO UP

THANKYOU

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