

Vedanam

A Monthly Newsletter by Mehta & Mehta

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



Why Vedanam?



We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our May, 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. MCA Circular on Clarification on holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM)- 05th May, 2022

MCA, vide its Circular dated 05th May, 2022 has decided to allow the companies whose AGMs are due in the Year 2022 to conduct their AGMs on or before 31st December, 2022 through Video Conference (VC) or Other Audio Visual Means (OAVM).

The Circular is issued in reference to MCA Circular dated 05.05.2020, 13.01.2021 and 14.12.2021. Further, it is to be noted that the facility to conduct AGMs through VC can be granted only after complying with requirements laid down in Para 3 and Para 4 of the General Circular dated 05.05.2020.

Further, MCA clarified that Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ArgX2%252B%252BijiObjlpD2nMcUA%253D%253D&type=open>

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2. MCA Circular on relaxation in paying additional fees for in case of delay in filing Form 11 (Annual Return) by Limited Liability Partnerships up to 30th June, 2022 - 27th May, 2022

MCA, vide its Circular dated 27th May, 2022 has extended the timelines for filing the Annual Return (Form 11) by LLPs without paying additional fees.

MCA, further added in the Circular that in view of transition from version-2 of MCA-21 to version-3 and to promote compliance on part of LLPs, it has been decided to allow LLPs to file e-Form 11 (Annual Return of Limited Liability Partnership) for the Financial Year 2021-2022 without paying additional fees up to 30th June, 2022.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mds=bPU6zFGIKpt0gBxXLV99nw%253D%253D&type=open>

3. **MCA Circular on relaxation in paying additional fees in case of delay in filing all the event based e-forms by Limited Liability Partnerships which are due on and after 25th February, 2022 to 31st May, 2022 up to 30th June, 2022 - 31st May, 2022**

MCA, vide Circular dated 05th May, 2022, has extended the relaxations from dispatching of physical copies of financial statements for the year 2022(i.e. till December 31, 2022). In view of the same, SEBI has also been receiving multiple representations from listed companies, seeking dispensation from the requirements of sending hard copy of annual reports to shareholders.

Considering the above, it has been decided to provide relaxation up to December 31, 2022, of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015("LODR Regulations")which requires sending a hard copy of the annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses.

Further, the notice of the Annual General Meeting in terms of Regulation 47 of LODR Regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report.

It is however emphasized that in terms of Regulation 36 (1) (c) of LODR Regulations, listed entities are required to send a hard copy of the full annual report to those shareholders who request for the same.

Further, the requirement of sending proxy forms under Regulation 44 (4) of the LODR Regulations is dispensed with upto December 31, 2022, in case of general meetings held through electronic mode only.

This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and also disseminate on their websites.

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mds=xVZAKAA2Ap%252B7ha8Y%252FML4fw%253D%253D&type=open>

II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

A. SEBI CIRCULARS AND NOTIFICATION

1. SEBI Circular on System and Network Audit of Market Infrastructure Institutions (MIIs) - 03rd May, 2022

SEBI, vide its Circular dated 03rd May, 2022 revised the Circular dated 07th January, 2020 which mandated that stock exchanges, clearing corporations and depositories should conduct an Annual System Audit by a reputed independent auditor. The Circular said that, MIIs are required to conduct System and Network Audit as per the framework enclosed as **Annexure 1** of this circular and Terms of Reference (TOR) enclosed as **Annexure 2** of this circular. MIIs are also required to maintain a list of all the relevant SEBI circulars/ directions/ advices, etc. pertaining to technology and compliance thereof, as per format enclosed as **Annexure 3** of this circular and the same shall be included under the scope of System and Network Audit.

Further, MIIs are also required to submit information with regard to exceptional major Non-Compliances (NCs)/ minor NCs observed in the System and Network audit as per format enclosed as **Annexure 4** of this circular.

The Systems and Network audit Report including compliance with SEBI circulars/ guidelines and exceptional observation format along with compliance status of previous year observations shall be placed before the Governing Board of the MII and then the report along with the comments of the Management of the MII shall be communicated to SEBI within a month of completion of audit.

Further, along with the audit report, MIIs are required to submit a Joint declaration from the Managing Director(MD)/Chief Executive Officer(CEO) and Chief Technology Officer (CTO) certifying a) the security and integrity of their IT Systems. b) correctness and completeness of data provided to the Auditor c) entire network architecture, connectivity (including co-lo facility) and its linkage to the trading infrastructure are in conformity with SEBI's regulatory framework to provide fair equitable, transparent and non-discriminatory treatment to all the market participants d) internal review of Critical Systems as defined in SEBI circular dated March 22, 2021 was carried out during the Audit period, including the Failure Modes and Effects Analysis (FMEA).

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/may-2022/system-and-network-audit-of-market-infrastructure-institutions-miis-58624.html>

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2. **SEBI Circular on relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - 13th May, 2022**

MCA, vide Circular dated 5th May, 2022, has extended the relaxations from dispatching of physical copies of financial statements for the year 2022 (i.e. till 31st December, 2022). In view of the same, SEBI has also been receiving multiple representations from listed companies, seeking dispensation from the requirements of sending hard copy of annual reports to shareholders.

Considering the above, it has been decided to provide relaxation up to 31st December, 2022, of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) which requires sending a hard copy of the annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses.

Further, the notice of the Annual General Meeting in terms of Regulation 47 of LODR Regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report.

It is however emphasized that in terms of Regulation 36 (1) (c) of LODR Regulations, listed entities are required to send a hard copy of the full annual report to those shareholders who request for the same.

Further, the requirement of sending proxy forms under Regulation 44 (4) of the LODR Regulations is dispensed with upto 31st December, 2022, in case of general meetings held through electronic mode only.

This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and also disseminate on their websites.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/may-2022/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_58920.html

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3. **SEBI Circular on Simplification of procedure and standardization of formats of documents for transmission of securities pursuant to amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 - 18th May, 2022**

SEBI vide circular dated 18th May, 2022, has reviewed the process being followed by the Registrars to an Issue and Share Transfer Agents (“RTAs”) and the Depositories/ Issuer companies for effecting the transmission of securities.

This Circular is Applicable to:- All registrars to an Issue, Share Transfer Agents, Recognized Stock Exchanges, Listed Companies, Depositories, Depository Participants, Investor's Associations.

As an on going measure to enhance ease of dealing in securities markets and with a view to make the transmission process more efficient and investor-friendly, the procedure for transmission of securities has been further simplified vide the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022.

The LODR Amendment Regulations has inter alia enhanced the monetary limits for simplified documentation for transmission of securities, allowed 'Legal Heirship Certificate or equivalent certificate' as one of the acceptable documents for transmission, and provided clarification regarding the acceptability of Will as one of the valid documents for transmission of securities. Pursuant to the notification of the LODR Amendment Regulations, this Circular is being issued to specify the formats of various documents which are required to be furnished for the processing of transmission of securities.

For ease of reference, a ready reckoner listing out the documents required for transmission of securities, in case of demise of the sole holder, is provided in Annexure to this Circular. The Operational Guidelines for processing investor's service request for

The format of the form to be filed by nominee/claimant/legal heir while requesting transmission of securities is provided in Annexure C to this Circular.

[Link to the Circular:](#)

<https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-transmission-of-securities-pursuant-to-amendments-to-the-securities-and-exchange-board-of-india-listing-obligations-and-dis-59123.html>

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4. SEBI Circular on Simplification of procedure and standardization of formats of documents for issuance of duplicate securities certificates- 25th May, 2022

SEBI, vide its Circular dated 25th May, 2022 have simplified procedure and documentation requirements for issuance of duplicate securities. SEBI has reviewed the process followed by the Registrars to an Issue and Share Transfer Agents ("RTAs") and the Issuer companies for issuance of duplicate securities certificates and therefore, decided to make the process more efficient and investor friendly.

SEBI, further through this Circular provided requirements for issuance of duplicate certificates as mentioned below:

- Copy of FIR including e-FIR/Police complaint/Court injunction order/copy of plaint, necessarily having details of the securities, folio number, distinctive number range and certificate numbers to be submitted by the security holder.

- Issuance of advertisement regarding loss of securities in a widely circulated newspaper.
- Submission of Affidavit and Indemnity bond as per the format prescribed by the Board.

The Circular further said that, the above mentioned requirements are not applicable if the value of securities as on the date of submission of application, along with complete documentation as prescribed by the Board does not exceed Rs. 5 Lakhs. The value of securities shall be quantified on the basis of the closing price of such securities at any one of the recognized stock exchanges a day prior to the date of such submission in the application.

Further, for overseas securities holder, in lieu of FIR, self-declaration of the security certificates lost/misplaced/stolen which shall be duly notarized/ apostilled /attested by the Indian Consulate / Embassy in their country of residence, along with self-attested copies of valid passport and overseas address proof shall be permitted.

Further it is to be noted that in case of non-availability of Certificate Nos./Distinctive Nos./ Folio nos., the RTA shall provide the same, to the security holder only where the signature and the address of the security holder matches with the RTA / listed company's records. In case the signature and/or the address do not match, the security holder shall first comply with the KYC procedure and then only the details of the securities shall be provided to the security holder by the RTA/listed company.

Other than that, in case of any fake/forged/stolen certificates or duplicate certificates must be seized and defaced by the RTA/ listed company and disposed of in the manner as authorized by the Board of the Company.

The Circular further added that, the listed company shall take special contingency insurance policy from the insurance company towards the risk arising out of the requirements relating to issuance of duplicate securities in order to safeguard and protect the interest of the listed company.

The provisions of this Circular shall come into force with immediate effect in supersession of RTI Circular No. 1 (2000-2001) dated May 9, 2001.

[Link to the Circular:](https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-issuance-of-duplicate-securities-certificates_59173.html)

https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-issuance-of-duplicate-securities-certificates_59173.html

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5. SEBI Modifies Cyber Security and Cyber resilience framework of Qualified Registrars to an Issue and Share Transfer Agents("QRTAs") - 27th May, 2022

SEBI, vide circular dated 8th September, 2017 prescribed framework for Cyber Security and Cyber Resilience for Qualified Registrars to an Issue and Share Transfer Agents ("QRTAs").

Further, SEBI vide its circular dated 27th May, 2022 made partial modifications in the **Paragraph - 11, 41, 42 and 44 of the Annexure -A of SEBI Circular dated 8th September, 2017.**

- Further the Circular said that, the QRTAs are mandated to conduct comprehensive cyber audit at least twice in a financial year. All QRTAs shall submit a declaration from the MD/ CEO certifying compliance by the QRTAs with all SEBI Circulars and advisories related to Cyber security from time to time, along with the Cyber audit reports.
- Other than that, QRTAs are required to take necessary steps to put in place systems for implementation of the circular.
- All QRTAs are directed to communicate the status of the implementation of the provisions of this circular to SEBI within 10 days from the date of this Circular.

The provisions of the Circular shall come into force with immediate effect.

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/may-2022/modification-in-cyber-security-and-cyber-resilience-framework-of-qualified-registrars-to-an-issue-and-share-transfer-agents-qrtas-59283.html>

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6. SEBI Modifies Cyber Security and Cyber resilience framework of KYC Registration Agencies (KRAs) - 30th May, 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.

SEBI, vide circular dated 15th October, 2019 prescribed framework for Cyber Security and Cyber Resilience for KYC Registration Agencies.

Further, SEBI vide its circular dated 30th May, 2022 made partial modifications in the **Paragraph - 11, 41, 42 and 44 of the Annexure -A of SEBI Circular dated 15th October, 2019.**

Further the Circular said that, the KRAs are mandated to conduct comprehensive cyber audit at least twice a financial year. All KRAs shall submit a declaration from the MD/ CEO certifying compliance by the KRAs with all SEBI Circulars and advisories related to Cyber security from time to time, along with the cyber audit report.

Other than that, KRAs shall take necessary steps to put in place systems for implementation of the circular.

All KRAs are directed to communicate the status of the implementation of the provisions of this circular to SEBI within 10 days from the date of this Circular.

The provisions of the Circular shall come into force with immediate effect.

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/may-2022/modification-in-cyber-security-and-cyber-resilience-framework-of-kyc-registration-agencies-kras-59318.html>

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7. SEBI Circular on Processing of ASBA applications in Public Issue of Equity Shares and Convertibles - 30th May, 2022

SEBI, vide its Circular dated 30th December, 2009 has prescribed the facility of Application Supported by Blocked Amount (ASBA) in Public Issues for all categories of investors except Qualified Institutional Buyers (QIBs). Further, SEBI, vide its Circular dated 6th April, 2010 has extended the facility of ASBA to QIBs in public issues opening on or after 1st May, 2010.

SEBI, further through Circular dated 1st November, 2018, introduced the use of Unified Payment Interface (UPI) as an additional payment mechanism with ASBA for Retail Individual Investors and the same was mandated w.e.f 1st July, 2019 vide circular dated 28th June, 2019 for applications by Retail Individual Investors (RIIs) submitted through Intermediaries.

The Circular further said that, after reviewing the processing of ASBA applications in the Public Issues by market intermediaries and SCSBs and in order to further streamline the bidding process, a need has been felt to implement the ASBA process in line with the aforementioned circulars.

Further Circular said that, the ASBA applications in Public Issues shall be processed only after the application monies are blocked in the investor's bank accounts. Accordingly, all intermediaries / market infrastructure institutions are advised to ensure that appropriate systemic and procedural arrangements are made within three months from the date of issuance of this circular.

Further it is to be noted that, Stock Exchanges shall accept the ASBA applications in their electronic book building platform only with a mandatory confirmation on the application monies blocked.

Further, all stakeholders involved in the process are advised to take necessary steps to ensure compliance with this circular. Merchant Bankers shall coordinate with all stakeholders in this regard.

This circular shall be applicable for all categories of investors viz. Retail, QIB, NII and other reserved categories and also for all modes through which the applications are processed.

This circular shall be applicable for public issues opening on or after 1st September, 2022

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/may-2022/processing-of-asba-applications-in-public-issue-of-equity-shares-and-convertibles_59338.html

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B. ORDERS/ CASE LAWS/ ANNOUNCEMENT

1. SEBI modifies interim order in Lux Industries case - 27th May, 2022

SEBI, vide its order dated 27th May, 2022 modified its interim order passed in January, 2022 against 14 entities in the matter of insider trading in the Lux Industries Limited. In its interim order SEBI barred 14 entities for indulging in insider trading and ordered impounding ill-gotten gains of Rs 2.94 Crore in the matter.

SEBI, in the modification order said that, it had received frequent request by the entities expressing the urgency with respect to their request for relaxations of the directions contained in the interim order. In view of the above, SEBI lifted off the restrictions imposed in the interim order and allowed credit and debit of securities in the accounts of the entities except the securities of Lux Industries.

Further, SEBI said that the funds deposited by entities in an interest bearing escrow account will remain in the said account with lien in favour of the regulator until further orders.

Link to the Order:

<https://www.sebi.gov.in/enforcement/orders/may-2022/confirmatory-order-in-the-matter-of-insider-trading-in-the-shares-of-lux-industries-ltd-59267.html>

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2. SEBI exempts Government of India from making open offer to Vodafone Idea Limited (VIL) shareholders- 28th May, 2022

SEBI, vide its order dated 28th May, 2022 exempted the government from making an open offer to the shareholders of Vodafone Idea Ltd (VIL) pursuant to its proposed acquisition of over 33 per cent stake in the telecom operator on conversion of dues into equity. Further, SEBI order said that the acquisition of shareholding by Government of India is proposed with the sole intent of saving the larger public interest.

It is to be noted that the above acquisition was a part of bailing out the debt-burdened telecom sector. Therefore, VIL had opted for conversion of debt into equity under the Government's bailout package.

Further, SEBI said that Government of India has no intent to participate in the management or the Board of the VIL and there is going to be no change in control of the VIL. Further, such holding of Government of India shall be classified as public shareholding.

On 10th May, 2022 VIL had filed an application seeking exemption from the open offer requirement with respect to the government acquiring stake in the firm.

Post the transaction, Government of India would have 33.44 per cent stake in the Vodafone Idea Limited.

Link to the Order:

https://www.sebi.gov.in/enforcement/orders/may-2022/order-under-regulation-11-of-sebi-sast-regulations-2011-in-the-matter-of-vodafone-idea-limited_59197.html

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III. OTHER UPDATES / CASE LAWS

➤ INSOLVENCY LAW

1. Suman Chadha Vs. Kamal Aggarwal, Liquidator & Anr. – 27th May, 2022

Claim of an Operational Creditor on which the CIRP was initiated, cannot be rejected by the Liquidator on the ground that no invoices were provided at the claim filing stage - Suman Chadha Vs. Kamal Aggarwal, Liquidator & Anr. – NCLT New Delhi Bench Court-III

Case Citation - 375 NCLT

Case Name - Suman Chadha Vs. Kamal Aggarwal, Liquidator & Anr.

Date of Order - 27th May 2022

In this case, the application u/s 9 of IBC, 2016 was filed by the operational creditor on the basis of agreement/ documents which were hand written. The application u/s 9 of IBC, 2016 was admitted as the corporate debtor was found liable to pay the outstanding debt. The Hon'ble NCLAT also upheld the order passed by this Adjudicating Authority and the Hon'ble Supreme Court also confirmed the order of Hon'ble NCLAT. Thus, when the CIRP commenced, IRP had admitted the claim filed by the operational creditor in the course of CIRP, however, subsequent to change of IRP by the present RP, this claim was rejected by the current RP(as Liquidator) on the ground that no invoices were provided and other documents so provided could not substantiate the claim made by the operational creditor.

The Adjudicating Authority held that during the course of hearing, the Ld. Counsel appearing on behalf of Liquidator as well as the Liquidator in person, continued to harp upon the fact that there were no invoices, hence, the claim of the operational creditor was rightly rejected. At this stage, their attention was also invited to the provisions of Regulation 17(2)(iii) of Liquidation Process Regulations, 2016, which state that the existence of debt due to an operational creditor, may be proved on the basis of an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any and the order of admission passed by this Adjudicating Authority, being a Tribunal falls into this category. Even then, the Liquidator continued to state that the stand taken by the him was justified.

It further held that in this case, there is an adamant approach of RP who has not even bothered to take note of the fact that he is functioning as Liquidator in the present case only because of the such outstanding liability being found to be payable by the corporate debtor by an order of Adjudicating Authority, being NCLT. We further note that the Liquidator is handling many more assignments as IRP, RP as well as the liquidator, which is evident from the IBBI website, hence, such unethical/unprofessional conduct of the RP cannot be accepted at any cost.

The Adjudicating Authority directed him to accept the claim of the operational creditor. It further directed the Registry to refer this matter to IBBI for proper investigation into the conduct of RP namely Kamal Agarwal IBBI/IPA-OO 1/1P-P00868/2017- 2018/11466 in accordance with the provisions of law. Thus, this

application stands allowed and disposed of in terms indicated above. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.

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2. Aadi Buildwell Pvt. Ltd. Vs. Focus Realcon Pvt. Ltd - 26th May, 2022

Without adding the principal amount, can CIRP u/s 7 of IBC be initiated only on the defaulted amount of interest accrued on the principal amount (debentures)? - Aadi Buildwell Pvt. Ltd. Vs. Focus Realcon Pvt. Ltd. - NCLT New Delhi Bench Court-II

Case Citation - 373NCLT

Case Title- Aadi Buildwell Pvt. Ltd. Vs. Focus Realcon Pvt. Ltd

Date of order - 26th May 2022.

Facts of the case

As per the terms and conditions of the debenture certificate, the maturity date of the Debenture Certificate is on 31.03.2026, but as per the terms and conditions No. 1, debentures can be redeemed at any time, at the option of the issuer. Debentures can also be redeemed at the request of the Debenture holder, after the expiry of one year, but before 31.03.2026 (i.e. the Maturity Date). The present Debenture Certificate is issued on 13.04.2021, therefore, as per the terms and conditions No. 1, it can be redeemed after the expiry of one year i.e. from 13.04.2022.

As per the terms and conditions No. 2, debenture shall carry a coupon rate of 6% per annum payable on face value plus securities premium on quarterly rests and as per terms and conditions No. 3, debenture shall be redeemed at face value plus securities premium and accrued interest till the date of redemption. The Applicant has not claimed the principal amount which is due and payable after the expiry of one year from the date of issuance of the Debenture Certificate.

The question is without adding the principal amount, can CIRP be initiated only on the defaulted amount of interest? At this juncture, we would like to refer to definition of debt and financial debt, as defined under Sections 3(11) and 5(8) of the IBC and the same are reproduced below.

Decision of the Adjudicating Authority

The Adjudicating Authority observed that on conjoint reading of these two clauses, since there is a provision for redemption of the debenture after the expiry of one year, therefore, the Applicant is entitled to opt for redemption and get the amount at the face value, plus securities premium and accrued interest till the date of redemption.

The Adjudicating Authority held that:

- Mere perusal of the definition of debt u/s 3(11) shows that debt means a liability or obligation in respect of claim, which is due from any person and includes a financial debt and operational debt. Admittedly, the definition of debt is very wide. It includes the liability or obligation in respect of a claim as well as financial debt and operational debt. So far initiation of CIRP under Section 7 of the IBC, 2016 is concerned, the application is maintainable only when the debt is a financial debt.
- **In order to initiate a CIRP u/s 7 of the IBC, the prime consideration is that there must be existence of debt and only thereafter interest shall be added in the principal debt amount.** As we have already observed that the principal amount has not become due and payable as yet, therefore, there is no debt which is due and payable. Accordingly, there is no default in making the payment of the amount. **Therefore, only the interest amount claimed by the applicant, in our considered view, does not come under the definition of financial debt.**
- **Since the present application is filed only on the ground of interest accrued on the principal amount, and the payment of the principal amount is not due and payable as yet, therefore, the present petition filed under Section 7 of the IBC is not maintainable.**
- Accordingly, the application is dismissed.

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3. Hari Charan Gupta Vs. Mayapur Sales Pvt. Ltd. - 24th May, 2022

Adjudicating Authority is not a forum where it can ask the parties to lead evidence to assess the authenticity of their documents - Hari Charan Gupta Vs. Mayapur Sales Pvt. Ltd. - NCLT Kolkata Bench

Case Citation -363 NCLT

Case Title- Hari Charan Gupta Vs. Mayapur Sales Pvt. Ltd.

Date of Order- 24th May 2022

Brief about the decision

The Adjudicating Authority held that the default as mentioned in the petition is 25th July, 2011. No payment has been made since 25th July, 2011. The confirmation of accounts for the Financial Years 2014-15, 2015-16, 2016-17, 2017-18, whereby the Corporate Debtor has allegedly acknowledged its liability, have been denied by the Corporate Debtor. This is a case with peculiar facts. Both the parties dispute the documents filed by the other. The Financial Creditor disputes and denies having entered into any MOU, and the Corporate Debtor denies and disputes having signed or sealed any confirmation of account/balance and describes them as false and forged ones. This Adjudicating Authority is not a forum where we can ask the parties to lead evidence to assess the authenticity of their documents. These are some other facts which have not been revealed by both the parties. If there was any MOU, then where was the need for the Corporate Debtor to reflect the said loan in its Balance Sheets for

the later years, and similarly, if the amount was due, why the Financial Creditor did not initiate any action against the Corporate Debtor within 3 years. There are some gaps which cannot be filled by this Adjudicating Authority on the basis of presumptions. We, therefore, do not deem it fit to admit or entertain this petition. The petition is, therefore, rejected. The Financial Creditor can avail its remedies elsewhere if so desired. CP (IB) No.548/KB/2020, is therefore, dismissed.

GO UP

4. IBBI Updates

Withdrawal of Circular dated 26th August, 2019 regarding applicability of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 notified on 25th July, 2019

To bring more clarity, the Board has notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2022 to clarify that provisions of regulations 2A, 21A, 31A and 44 as amended / inserted by the Amendment Regulations 2019 apply only to the liquidation processes commencing on or after 25th July, 2019.

The Circular dated 26th August 2019 is withdrawn with immediate effect

Review of circulars

The Board issues Regulations in line with the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board also issues Circulars in exercise of powers under section 196 of the Insolvency and Bankruptcy Code, 2016. In line with the same, the Board conducted an exercise of review of circulars issued by the Board. It was observed that certain circulars are no longer required on account of being already provided in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or IBBI (Insolvency Professionals) Regulations, 2016 as the case may be. After reviewing the circulars, it has been decided to rescind circulars listed in the Annexure, with immediate effect.

Sl. No.	Date of Issue	Subject	Brief of Circular	Incorporation
1	23 Feb, 2018	Confidentiality of Information relating to processes under the Insolvency and Bankruptcy Code, 2016	IRP/RP/Liquidator shall keep every information related to confidential; and shall not disclose or provide access to any information to any unauthorised person	Already part of Code of Conduct specified in the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency

				Professionals) Regulations, 2016.
2	13 Jul, 2018	Appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016	Creditor in class must be represented by the AR and he shall proceed further in the manner as specified in regulation 16A of the Regulations.	Regulation 16A & 16B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
3	10 Aug, 2018	Notice for Meetings of the Committee of Creditors	Only competent and authorized person shall attend the CoC meeting so that the decision can be taken on the spot and without deferring decisions for want of any internal approval from the financial creditors.	Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

4	14 Sep, 2018	Voting in the Committee of Creditor	The creditors who is not a member of the CoC, does not have voting right in the CoC. A person, who is not a member of the CoC, cannot be regarded as one who has voted against a resolution plan or abstained from voting.	Regulation 12, 25, 25A & 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
5	06 Dec, 2019	Clarification- Voting on behalf of creditors in a class in the CIRP of Jaypee Infratech Limited	The RP/AR is duty bound to conduct the process, including voting, strictly in compliance with the Code, Regulations	Regulation 16A (9) & 25 (6) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
6	06 Jan, 2021	Circular - Retention of records relating to Corporate Insolvency Resolution Process	An IP shall preserve an electronic copy of all records for a minimum period of eight years, and a physical copy of physical records for minimum period of three years.	Regulation 18 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

7	16 Apr, 2021	Clarification - Consideration of matters/issues by the committee of creditors on request by members of the committee	RP to convene a CoC meeting on receipt of the request from the CoC having 33% voting rights and such request shall include a note proposing the matters to be discussed or issues to be voted upon.	Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
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GO UP

1. RBI Updates: Housing Finance - Loans for repairs/additions/alterations - Enhancement of limits

Para 2 of the circular dated 10th September, 2013 on the captioned subject, wherein, the ceiling on loans to individuals for carrying out repairs/additions/alterations to their dwelling units was revised upwards to ₹2 lakh in rural and semi-urban areas and ₹5 lakh in urban areas.

The ceiling on such loans is now revised to ₹10 lakh in metropolitan centres (those centres with a population of 10 lakh and above) and ₹6 lakh in other centres.

GO UP

2. RBI Updates : Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 - Reporting of reverse repos with Reserve Bank on the bank's balance sheet

In order to bring more clarity on the presentation of reverse repo on the balance sheet, it has now been decided as under:

(a) All type of reverse repos with the Reserve Bank including those under Liquidity Adjustment Facility shall be presented under sub-item (ii) 'In Other Accounts' of item (II) 'Balances with Reserve Bank of India' under Schedule 6 'Cash and balances with Reserve Bank of India'.

(b) Reverse repos with banks and other institutions having original tenors up to and inclusive of 14 days shall be classified under item (ii) 'Money at call and short notice' under Schedule 7 'Balances with banks and money at call and short notice'.

(c) Reverse repos with banks and other institutions having original tenors more than 14 days shall be classified under Schedule 9 - 'Advances' under the following heads:

A.(ii) 'Cash credits, overdrafts and loans repayable on demand'

B.(i) 'Secured by tangible assets'

C.(I).(iii) Banks (iv) 'Others' (as the case may be)

This circular is applicable to all commercial banks

In addition, certain sections in the said Directions are being updated for editorial corrections as given in the Annex below.

Sr No.	Paragraph in the existing MD	Existing Paragraph	Revised Paragraph
1	17	In terms of sections 17(1),11(1)(b)(ii) and 56 of the Banking Regulation Act, 1949 banks are required to transfer, out	In terms of sections 17(1),11(2)(b)(ii) and 56 of the Banking Regulation Act, 1949 banks are required to transfer, out of the balance of profit as disclosed in the profit and loss

		of the balance of profit as disclosed in the profit and loss account, a sum equivalent to not less than 20 per cent of such profit to Reserve Fund.....	account, a sum equivalent to not less than 20 per cent of such profit to Reserve Fund.....
2	Annexure II	The Bank shall specifically indicate that advances secured by tangible assets includes advances against book debts as shown below: "B(i) Secured by tangible assets * (* includes advances against Book Debt: ₹.... ,(previous year: ₹....)"	The Bank shall specify that advances secured by tangible assets includes advances against book debts.
3	Annexure V	-	Following circulars have been added to the list of circulars repealed at Annexure V: i. UBD.BPD.PCB.Cir.7/09.50.00/2003-04 dated August 5, 2003. ii. U.BD.BPD.PCB.Cir.No.28/12.05.001/2005-06 dated January 24, 2006
4	Annexure V	At Sr. No. 43	Paragraphs 2(a) and 4 to 17 of circular dated February 25, 2003, which have been repealed have been specified clearly in the Annexure V.
5	Annexure V	At Sr. No. 97	Paragraphs 1, 2 and 3 of circular dated May 30, 2014, which have been repealed have been specified clearly in the Annexure V.

GO UP

3. **RBI Updates : Interoperable Card-less Cash Withdrawal (ICCW) at ATMs**

All banks, ATM networks and WLAOs may provide the option of ICCW at their ATMs. NPCI has been advised to facilitate Unified Payments Interface (UPI) integration with all banks and ATM networks. While UPI would be used for customer authorisation in such transactions, settlement would be through the National Financial Switch (NFS) / ATM networks. The on-us / off-us ICCW transactions shall be processed without levy of any charges other than those prescribed under the circular on Interchange Fee and Customer Charges.

Withdrawal limits for ICCW transactions shall be in-line with the limits for regular on-us / off-us ATM withdrawals. All other instructions related to Harmonisation of Turn Around Time (TAT) and customer compensation for failed transactions shall continue to be applicable.

GO UP

4. **RBI Updates : Government of India guaranteed term loan extended by SBI to the Government of Sri Lanka- Settlement in INR**

Attention of Authorised Dealer Category - I (AD Category-I) banks is invited to Regulations 3 and 5 of Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 in terms of which export / import transactions between ACU member countries are to be routed through the ACU mechanism.

The difficulties being experienced by exporters in receipt of export proceeds from Sri Lanka and State Bank of India's credit facility agreement dated March 17, 2022 with the Government of Sri Lanka for sanction of Government of India guaranteed USD 1000 million term loan to the latter for financing purchase of essential goods by Sri Lanka from India, it has been decided that such trade transactions with Sri Lanka, falling under the said arrangement, may be settled in INR outside the ACU mechanism.

Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by SBI under this agreement.

This shall come into force with immediate effect.

GO UP

5. **RBI Updates : New Definition of Micro, Small and Medium Enterprises - Clarification**

It is clarified that the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAM) of the MSMEs obtained till 30th June, 2020 shall remain valid till 30th June, 2022 for classification as MSMEs; and the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated 8th March, 2017 (RBI Circular dated 13th July, 2017), for classification of MSMEs upto 30th June, 2020, has been extended upto 30th June, 2022.

GO UP

6. **RBI Updates : Kisan Credit Card Scheme - Eligibility criteria for farmers engaged in fisheries/aquaculture**

Para 3.1.1.2 of our circular dated February 04, 2019 on Kisan Credit Card (KCC) Scheme: Working Capital for Animal Husbandry and Fisheries. It has been brought to our notice that licensing/authorisation related requirements pertaining to fishing/aquaculture in inland

water bodies vary across states. Accordingly, the eligibility criteria for inland fisheries and aquaculture under Para 3.1.1.2 of the circular stand modified as follows:

The beneficiaries must own or lease any fisheries related assets such as ponds, tanks, open water bodies, raceways, hatcheries, rearing units, boats, nets and such other fishing gear as the case may be and possess necessary authorisation/certification as may be applicable in respective states for fish farming and fishing related activities and for any other state specific fisheries and allied activities.

GO UP

7. **RBI Updates : Lending by Commercial Banks to NBFCs and Small Finance Banks (SFBs) to NBFC-MFIs, for the purpose of on-lending to priority sectors**

The lending by commercial banks to NBFCs and lending by Small Finance Banks (SFBs) to NBFC-MFIs, for the purpose of on-lending to certain priority sectors, was permitted up to March 31, 2022.

To ensure continuation of the synergies that have been developed between banks and NBFCs in delivering credit to the specified priority sectors, it has been decided to allow the above facility on an on-going basis.

Bank credit to NBFCs (including HFCs) for on-lending will be allowed up to an overall limit of 5 percent of an individual bank's total priority sector lending in case of commercial banks. In case of SFBs, credit to NBFC-MFIs and other MFIs (Societies, Trusts, etc.) which are members of RBI recognized 'Self-Regulatory Organisation' of the sector, will be allowed up to an overall limit of 10 percent of an individual bank's total priority sector lending. These limits shall be computed by averaging across four quarters of the financial year, to determine adherence to the prescribed cap.

SFBs are allowed to lend to registered NBFC-MFIs and other MFIs which have a 'gross loan portfolio' (GLP) of up to ₹500 crore as on 31st March of the previous financial year, for the purpose of on-lending to priority sector.

In case the GLP of the NBFC-MFIs/other MFIs exceeds the stipulated limit at a later date, all priority sector loans created prior to exceeding the GLP limit will continue to be classified by the SFBs as PSL till repayment/maturity, whichever is earlier.

GO UP

8. **RBI Updates : Maintenance of Cash Reserve Ratio (CRR)**

It has been decided to increase the Cash Reserve Ratio (CRR) of all banks by 50 basis points from *4.00 percent to 4.50* percent of their Net Demand and Time Liabilities (NDTL), effective from the reporting fortnight beginning *May 21, 2022*.

9. **RBI Updates : Change in Bank Rate**

The Bank Rate is revised upwards by 40 basis points from *4.25 per cent to 4.65 per cent* with immediate effect.

Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.25 per cent) or Bank Rate plus 5.0 percentage points (9.25 per cent).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent)

10. **RBI Updates : Standing Liquidity Facility for Primary Dealers**

The policy repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 40 basis points to 4.40 per cent from 4.00 per cent with immediate effect.

The Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate of 4.40 per cent with effect from May 4, 2022.

11. **RBI Updates : Liquidity Adjustment Facility- Change in rates**

It has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 40 basis points from 4.00 per cent to 4.40 per cent with immediate effect.

The standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted from 3.75 per cent to 4.15 per cent and from 4.25 per cent to 4.65 per cent respectively, with immediate effect.

12. **RBI Updates : Review of Minimum Investment Grade Credit Ratings for Deposits of NBFCs**

It has been decided that the minimum investment grade credit rating for deposits of NBFCs shall be '**BBB-**' from any of the SEBI-registered Credit Rating Agencies.

GO UP

13. **RBI Updates : Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs**

The guidelines are intended only for providing broad guidance to NBFCs and their NRCs in formulating their compensation policy. While formulating the compensation policy, it has to be ensured that all statutory mandates and the rules and directions issued under them are fully complied with.

These guidelines will be applicable for fixing the compensation policy of Key Managerial Personnel and members of senior management of all Non-Banking Financial Companies under SBR framework, except those categorised under 'Base Layer' and Government owned NBFCs.

These guidelines shall come into effect from *April 01, 2023*.

As per the guidelines, the compensation packages will comprise of fixed and variable pay components aligned effectively with prudent risk taking to ensure that compensation is adjusted for all types of risks. Further, the compensation outcomes should be symmetric with risk outcomes and compensation pay-outs have to be sensitive to the time horizon of the risks.

All the fixed items of compensation, including the perquisites and contributions towards superannuation/retiral benefits, may be treated as part of fixed pay.

The proportion of variable pay in total compensation of the management of the NBFCs should be commensurate with their role and prudent risk taking profile and at higher level of responsibility the proportion of variable pay should be higher. Variable pay can be even be reduced to zero based on performance at an individual, business unit and company wide level.

The board of NBFCs may not offer guaranteed bonuses to the senior management and key managerial personnel. " However, in the context of new hiring, joining/ sign on bonus could be considered. such bonus will neither be considered part of fixed pay nor of variable pay.

GO UP

PAN made compulsory for more transactions Insertion of new Rules 114BA and 114BB - 10th May, 2022

Opening of a current account or cash credit account by a person with a bank or post office needs to quote PAN. The Central Board of Direct Taxes (CBDT) has expanded the requirement of Permanent Account Number (PAN), the identification number issued by the tax authority, to more transactions as part of efforts at closer monitoring of economic activity. As per this, cash deposits or withdrawals exceeding Rs.20 lakh in one or more bank account or post office in a financial year would need to quote the PAN or Aadhaar number. The Rs.20 lakh threshold is for the aggregate of all deposits or aggregate of all withdrawals in a year. This requirement also covers deposits and withdrawals from cooperative banks. In addition, opening of a current account or cash credit account by a person with a bank or post office needs to quote PAN, according to Income-tax (Fifteenth Amendment) Rules notified on 10.05.2022. The notification also says that any person who intends to make these transactions should apply for a PAN at least seven days before the date on which the transaction is intended to be made. Already, there is a requirement for quoting PAN on bank deposits of over Rs.50,000 made in one day and on a host of other transactions like payment of over Rs.50,000 for purchase of mutual funds, debentures, foreign exchange and for settling hotel bills at any one time. The annual threshold of Rs.20 lakh deposit or withdrawal suggests that one cannot breach this threshold without quoting PAN by making too many smaller deposits below the daily threshold of Rs.50,000 without PAN. The expansion of the use of PAN signals the income tax department's increased monitoring of economic activity in the country. This enables the authorities to assess whether the spending pattern of individuals and entities as well as their assets match with their reported income. Already, the tax department makes available to the taxpayer a list of transactions reported to it by third parties so that assesses do not miss out any income while filing their tax returns. According to Mitesh Jain, partner at law firm Economic Laws Practice, the new rules will provide additional data points to the tax authorities and such transactions may be reflected in the 'Insights' portal. Project Insights is the income tax department's integrated data warehousing and business intelligence platform meant to encourage voluntary compliance and deter non-compliance. "This notification has widened the reporting and compliance framework for taxpayers and increased the information monitoring by the tax authorities," said Jain. The new rules also put the onus of ensuring compliance on both the persons who make deposits as well as on the recipient – banks, cooperative banks and the Postmaster General. These changes in the Income Tax Rule, 1962 shall come into effect after the expiry of 15 days from the date of notification in the Gazette.

Link to the Notification:

<https://incometaxindia.gov.in/pages/communications/index.aspx>

IV. KNOWLEDGE SHARING

Employee Stock Option Plan (ESOP)

Employee Stock Option Plan is governed under Section 62 of Companies Act, 2013 and Rule 12 of Companies (Share Capital and Debentures) Rules, 2014. Rule 12 specifies certain terms and conditions on compliance of which can company offer shares to its employees under ESOP.

Section 2 (37) of the Companies Act, 2013 defines employee stock option as the option given to the directors, employees or officers of the company or of its holding or subsidiary company, the right to purchase or benefit or subscribe for the shares of the company at a predetermined price on a future date. Thus, ESOP is a scheme where a company proposes to increase its subscribed share capital by issuing further shares to its employees at a predetermined rate.

To whom ESOP can be issued

Rule 12 (1) of Companies Rules, 2014 states that ESOP can be issued to the following employees -

- A permanent employee of the company who is working in India or outside India.
- A Director of the company, including a whole-time or part-time director but not an independent director.
- A permanent employee or director of a subsidiary company in India or outside India, or holding company, or an associate company

Procedure for issue of shares under ESOP

- Draft of ESOP Scheme to be prepared as per Companies Act, 2013.
- Board resolution needs to be passed at a Board meeting. Notice of which shall be sent 7 days prior to the Board meeting.
- MGT-14 to be filed with ROC along with certified true copy of Board resolution.
- Resolution for issue of ESOP to be passed (Private Company is exempted from filing MGT-14). Further, Price of shares to be issued under ESOP needs to be determined.
- Special Resolution needs to be passed at a general meeting of Shareholders (Private Company is exempted).
- Offer to be sent to employees, directors and officers of the company for purchasing shares under ESOP.
- 'Register of Employees Stock Option' to be maintained in Form SH-6 with details and particulars of the ESOP granted to employees, directors and officers of the Company.

Allotment of Shares under ESOP

There are three terms that are mainly focused on the time of issuance of shares through ESOP to the employees. They are as follows-

Grant: Grant means the issue of stocks to the employees. It means informing the employee that he is eligible for ESOP. The company will have the freedom to determine the exercise price while providing the option of ESOP to the employees.

Vest: Vest means the right of the employees to apply for the shares granted to them. There shall be a minimum of one year between the grant of option and vesting of option for the ESOP scheme.

Exercise: The exercise period is where the employees can exercise the option of buying the shares. The company will have the freedom to specify the lock-in period for the shares issued (if any) after the exercise of the option. The employees will not have the right to receive any dividend or to vote or enjoy the advantages of a shareholder in respect of the ESOP granted to him until the shares are issued on exercise of his option.

Disclosures to be made while issuing ESOP

The company should make the following disclosures in the explanatory statement annexed to the notice for passing the special resolution for the issuance of ESOP-

- The total number of stock options which is to be granted,
- The identified class of employees who can participate in the ESOP,
- Requirements of vesting period of ESOP,
- Maximum period within which the options can be vested,
- The exercise price and process of exercise,
- The lock-in period, if any,
- The grant of the maximum number of options for an employee,
- The methods used by the company to value its options,
- The conditions of lapsing of the options vested in employees,
- A statement that the company will comply with the applicable accounting standards.

Frequently asked questions

ESOPs can be allotted to permanent employees only ? Who are permanent employees ?

Yes, ESOPs can be granted to permanent employees only. Under, Companies act, 2013 there is no exact definition for permanent employees. Therefore, any employee who has completed probation period can be considered to be a permanent employee.

Can the exercise price be less than the face value ?

No. A company can set the exercise price below the prevailing market price or at a discounted price but it cannot be below the face value of the shares.

GO UP

THANKYOU
