
VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA
AUGUST 2022 | ISSUE



WHY VEDANAM?

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

Unless you try to do something beyond what you have already mastered, you will never grow

READ ON FOR MORE



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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. Companies (Accounts) Fourth Amendment, Rules, 2022 – 5th August, 2022

MCA vide its notification dated 5th August, 2022, made amendments to the Companies (Accounts) Rules, 2014. These rules may be called as Companies (Accounts) Fourth Amendment, Rules, 2022.

Sr. No.	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
1.	Sub-rule (1) is substituted under rule 3 of Companies (Accounts) Rules, 2014	in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” shall be substituted;	The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India at all times so as to be usable for subsequent reference.
2.	Sub-rule (5) is substituted under rule 3 of Companies (Accounts) Rules, 2014	in sub-rule (5), in the proviso, for the words “periodic basis”, the words “daily basis” shall be substituted;	There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law: Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers

Sr. No.	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
			physically located in India on a daily basis .
3.	Clause (e) is shall be inserted after clause (d) of sub-rule (6) of rule 3 of Companies (Accounts) Rules, 2014	in sub-rule (6), after clause (d), the following clause shall be inserted, namely:- “(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”.	Where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

Link to the Notification:

<https://lexcomply.com/pdfview3.php?file=d4rH39SvkD3KRJKNDhkosQ==>

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2. Companies (Incorporation) Third Amendment, Rules, 2022 - 18th August, 2022

MCA vide its notification dated 18th August, 2022, made amendments to the Companies (Incorporation) Rules, 2014. These rules may be called as Companies (Incorporation) Third Amendment, Rules, 2022.

Sr. No.	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
1.	rule 25B is inserted after rule 25A of Companies (Incorporation) Rules, 2014	<p>“25B. Physical verification of the Registered Office of the Company:-</p> <p>(1) The Registrar, based upon the information or documents made available on MCA21, shall visit at the address of the registered office of the company and may cause the physical verification of the said registered office for the purposes of sub-section (9) of section 12, in presence of two independent witness of the locality in which the said registered office is situated and may also seek assistance of the local police of such verification, if required.</p> <p>(2) The Registrar shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant of the property</p>	<p>Due to insertion of new rule, a requirement has been availed for physical verification of the registered office in presence of two independent witness by Registrar. Registrar can also seek assistance of the local police for verification if required.</p> <p>Physical verification of the registered office of the company to be made by cross verifying documents submitted with MCA 21. Further, property should be duly authenticated from the occupant of the property whereat the said registered office is situated.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
		whereat the said registered office is situated.	
		(3) The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.	Requirement to take photograph of the registered office of the company has been availed in order to complete physical verification.
		<p>(4) The report of the physical verification shall be prepared in the following format namely:-</p> <ol style="list-style-type: none"> 1. Name and CIN of the company 2. Latest address of the registered office of the company as per MCA 21 record 3. Date of authorisation letter issued by the Registrar of Companies 4. Name of the Registrar of Companies 5. Date and Time of visit for physical verification of the registered office 6. Location details along with Landmark 	<p>Following format needs to followed while preparing report of physical verification :</p> <ol style="list-style-type: none"> 1. Name and CIN of the company 2. Latest address of the registered office of the company as per MCA 21 record 3. Date of authorisation letter issued by the Registrar of Companies 4. Name of the Registrar of Companies 5. Date and Time of visit for physical verification of the registered office 6. Location details along with Landmark

Sr. No.	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section/Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
		<p>7. Details of person available, if any at the time of the visit:-</p> <p>(i) Name (ii) Father's name (iii) Residential address (iv) Relationship with the company, if applicable</p> <p>8. Remarks, if any</p> <p>9. Documents attached:-</p> <p>(i) Copy of the agreement/ownership/rent agreement/No objection Certificate of the registered office of the company from owner/tenant/lessor (ii) Photograph of the registered office (iii) Self attested ID-card of the person available, if any (iv) Any other document(s)</p>	<p>7. Details of person available, if any at the time of the visit:-</p> <p>(i) Name (ii) Father's name (iii) Residential address (iv) Relationship with the company, if applicable</p> <p>8. Remarks, if any</p> <p>9. Documents attached:-</p> <p>(i) Copy of the agreement/ownership/rent agreement/No objection Certificate of the registered office of the company from owner/tenant/lessor (ii) Photograph of the registered office (iii) Self attested ID-card of the person available, if any (iv) Any other document(s)</p>
		<p>(5) Where the registered office of the company is found to be not capable of receiving and acknowledging all communication and notices, the Registrar shall send a notice to the company and all the directors of the company, of his intention to remove</p>	<p>In case, where registered office is not capable of receiving and acknowledging all communication and notices, the registrar may send notice to the company and all directors of the company of his intention to remove name of company from registrar of</p>

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
		the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of thirty days from the date of the notice before taking further actions in accordance with the provisions of section 248 of the Act."	companies and request representations, if any to be submitted within thirty days from the date of notice in accordance with provisions of section 248 of the Act.

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mds=wIHQjtXEQJK%252F7i1M2jM5wQ%253D%253D&type=open>

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3. Companies (Removal of Names of Companies from the Register of Companies) Second Amendment, Rules, 2022 – 26th August, 2022

MCA vide its notification dated 26th August, 2022, made amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. These rules may be called as Companies (Removal of Names of Companies from the Register of Companies) Second Amendment, Rules, 2022. This Notification will come into force from the date of publication in Official Gazette.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications
1.	In Form No. STK-1, in paragraph (1), for the brackets and words "(tick whichever is	" the company is not carrying on any business or operations, as revealed after the physical verification carried out

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications
	applicable)", the following shall be substituted	under sub-section (9) of section 12. (tick whichever is applicable)";
2.	In Form STK-5, in paragraph 1, after subparagraph (iii) and before the long line, the following shall be inserted	“(iv) the following companies are not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12. M/s. _____ (indicate names of companies) M/s. _____”;
3.	In Form No. STK-5A, in paragraph 1, for the brackets and words “[Strike off whichever is not applicable]”, the following shall be substituted, namely:-	“(iv) are not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mids=z76om3NiBGIHmWV4e0HtcA%253D%253D&type=open>

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4. Companies (Acceptance of Deposits) Amendment, Rules, 2022 - 29th August, 2022

MCA vide its notification dated 29th August, 2022, made amendments to the Companies (Acceptance of Deposits) Rules, 2014. These rules may be called as Companies (Acceptance of Deposits) Amendment, Rules, 2022. These rules shall come into force on the date of their publication in the Official Gazette.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
1.	Rule 16 has been substituted of Companies (Acceptance of Deposits) Rules, 2014	<p>In rule 16, after the words “auditor of the company”, the words, letters and figure “and declaration to that effect shall be submitted by the auditor in Form DPT-3” shall be inserted;</p> <p>In the Annexure, for Form DPT-3 and Form DPT-4, the following shall be substituted.</p>	<p>Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in Form DPT-3.</p> <p>Form DPT-3 and Form DPT-4 has been substituted which is provided in the form of Annexure of this Notification on the MCA Website.</p>

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mds=G48YjzJXPg7MAA15VRH6Gg%253D%253D&type=open>

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5. **Companies (Appointment and Qualification of Directors) Third Amendment, Rules, 2022 - 29th August, 2022**

MCA vide its notification dated 29th August, 2022, made amendments to the Companies (Appointment and Qualification of Directors) Rules, 2014. These rules may be called as Companies (Appointment and Qualification of Directors) Third Amendment, Rules, 2022.

Due to this amendment, E-Form DIR-3 KYC and web-form DIR-3-KYC-WEB has been substituted and format of the same has been provided on the MCA Website.

The amendment resulted in additional details which needs to be provided in Form DIR-3. Applicant now needs to provide Area/Locality, District and Jurisdiction of police station under the head Present/Permanent residential address.

Further, Under the head Verification and Certificate by practising professional in Form DIR-3 KYC amendment has been made in point V where additional liability has been added on applicant as well as certifying professional under Section 447.

The amendment shall come into force from their date of publication in the Official Gazette.

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=slrNNMj6rSE43YrWxXorGw%253D%253D&type=open>

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6. **Companies (Registration of Charges) Second Amendment, Rules, 2022 - 29th August, 2022**

MCA vide its notification dated 29th August, 2022, made amendments to the Companies (Registration of Charges) Rules, 2014. These rules may be called as Companies (Registration of Charges) Second Amendment, Rules, 2022.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2014 Modifications	Analysis
1.	Rule 13 shall be inserted after Rule 12 of Companies (Registration of Charges) Rules, 2014	<p>13. Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation.-</p> <p>The Form No. CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.</p>	<p>Due to this amendment, The Form No. CHG-1, CHG-4, CHG-8 and CHG-9 for the companies under resolution or liquidation shall be signed by insolvency resolution professional or resolution professional or liquidator.</p> <p>This requirement shall come into force from the date of their publication in the Official Gazette.</p>

Further, it is to be noted that under the said rules, Form No. CHG-1 shall be substituted. The new format of Form No. CHG-1 is provided on MCA Website.

Link to the Notification:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=z76om3NiBGiHmVWy4e0HtcA%253D%253D&type=open>

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II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

1. SEBI CIRCULARS AND NOTIFICATION

1. SEBI Circular on enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence - 04th August, 2022

SEBI, vide its circular dated 04th August, 2022 provided revised requirements relating to encumbrance, creation of security and related due diligence by DTs on receiving feedback from market participants on the aspects of due diligence and security creation. This circular is in reference with SEBI Board meeting dated 28th September, 2020 where SEBI approved changes to the regulatory framework relating to debenture trustees (DTs), enhancing their role. Resultant amendments were made in the SEBI (Debenture Trustees) Regulations, 1993, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008, pursuant to which a circular on the creation of security and due diligence by DTs was issued.

A. Manner of change in security/ creation of additional security/ conversion of unsecured to secured in case of already listed non-convertible debt securities:

Regulation 59 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) provides for a change in terms of listed non-convertible debt securities. A change in the structure of non-convertible debt securities, inter-alia, may include:

- A change in security,
- Creation of additional security in case of already secured debt securities or
- Creation of security in case of unsecured debt securities.

Accordingly, in order to harmonize the process of creation of security pursuant to listing, the following directions are issued:

Before initiating due diligence, a DT and the listed entity shall enter into an amended debenture trust agreement to incorporate the obligations arising out of provisions of para 4 to 7 of SEBI Circular dated 03rd November, 2020 and obligations prescribed in terms of SEBI Circular dated 12th November, 2020 and SEBI Circular SEBI dated 19th May, 2022 for continuous monitoring and any other stipulations of SEBI from time to time with respect to security creation, initial due diligence and continuous monitoring by DTs.

A DT shall carry out due diligence for change in security, creation of security/ additional security in the manner as prescribed in para 4 to para 7 of SEBI Circular dated 03rd November, 2020. Pursuant to the initial due diligence carried out as per para 4-7 of SEBI Circular dated 03rd November, 2020, the DT shall issue a no-objection certificate (NOC) to issuer company

for going ahead with proposed change in the structure/ creation of security.

Thereafter, the issuer company shall create the proposed security and the charge in favour of DT and the same shall be registered with the sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently verifiable, then the same shall be considered as a breach of the covenants/ terms of the issue by the Issuer.

Pursuant to the creation and registration of charge, the issuer company and DT shall enter into a supplemental/ amended debenture trust deed including all the terms and conditions arising out of the due diligence carried out by the DT as well as of the security created by Issuer Company.

The issuer company, pursuant to execution of supplemental/ amended debenture trust deed, shall submit the following to the Depositories and Stock Exchanges: i. NOC by DT for change in security or creation of security. ii. Executed supplemental/ amended debenture trust deed;

An undertaking from the DT that the security has been created and registered. iv. Other documents/ consents required to be submitted to Stock Exchanges and Depositories in terms of Regulation 59 of LODR Regulations, circulars issued thereunder and bye - laws of Stock Exchanges and Depository, as applicable.

The Depository shall assign a new ISIN to the non-convertible debt securities pursuant to submission of documents mentioned above only and shall share the information with respect to change in ISIN of debt securities, with the recognized Stock Exchanges.

B. Encumbrance on securities for issuance of listed debt securities:

Creation of encumbrance on the securities for securing the non-convertible debt securities shall be through the depository system only in accordance with the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, Depository bye laws and other applicable regulations and circulars.

Encumbrance for the above shall mean the following:

Pledge, hypothecation, lien, negative lien, non-disposal undertaking or non-disposal agreement;

Any restriction on the free and marketable title to securities, by whatever name called, whether executed directly or indirectly;

Any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.

C. Due Diligence Certificate in case of Shelf Prospectus/ Memorandum:

In case security details have not been finalized at the time of the filing of a draft shelf prospectus/ placement memorandum filed by an issuer company, then the DT shall undertake due diligence as under:

The DT may furnish a due diligence certificate, confirming that it has carried out due diligence for the clauses other than that related to security creation [clauses are specified in the formats prescribed under regulations 40(a) and 44(3) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) and Annexure A of SEBI Circular dated 03rd November, 2020].

At the time of the issuance of the tranche memorandum/ prospectus when the issue structure including terms related to security has been determined and finalized, the DT shall issue a due diligence certificate covering all clauses of formats prescribed under regulations 40(a) and 44(3) of the NCS Regulations and Annexure A of SEBI Circular dated 03rd November, 2020, as applicable.

D. Empanelment of External Agencies by Debenture Trustee(s):

For the purpose of empanelment of external agencies for carrying out due diligence in terms of SEBI Circular dated 03rd November, 2020, continuous monitoring in terms SEBI Circular dated 12th November, 2020 as well as this circular, DTs shall:

Adopt an empanelment criterion/ policy as approved by their board of Directors and shall disclose the same on their website.

Formulate a policy on mitigating conflict of interest and shall disclose the same on their website; the policy shall, inter-alia, include a requirement that the empaneled agency would have no pecuniary relationship with the issuer company 3 years prior to the issue.

E. Compliance with SEBI Circulars on 'Security & Covenant Monitoring System'

In order to ensure efficient recording of details regarding creation of security and monitoring of covenants via the system hosted by Depositories using the Distributed Ledger Technology (DLT), various stakeholders, viz. Issuers, Depositories, DTs and CRAs shall ensure that they are in compliance of SEBI circulars dated 13th August, 2021 and dated 29th March, 2022 and various circulars issued in respect of the DLT system issued by SEBI from time to time.

[Link to the Circular:](#)

https://www.sebi.gov.in/legal/circulars/aug-2022/enhanced-guidelines-for-debenture-trustees-and-listed-issuer-companies-on-security-creation-and-initial-due-diligence_61629.html

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2. **SEBI circular on trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) - Framework for restricting trading by Designated Persons (“DPs”) by freezing PAN at security level - 05th August, 2022**

SEBI, vide its Circular dated 05th August, 2022 decided that Stock Exchanges and Depositories shall develop a system to restrict trading by Designated persons of listed company during trading window closure period in order to rationalize the compliance requirement under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations, improve ease of doing business and prevent inadvertent non-compliances of provisions of PIT Regulations by DPs, after having deliberations with Stock Exchanges and Depositories and listed companies.

It is to be noted that this circular is in reference to Clause 4 (1) of Schedule B read with Regulation 9 of PIT Regulations which states that :

The trading window of Designated persons and their immediate relatives shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information (“UPSI”).

Clause 4 (2) of Schedule B read with Regulation 9 of PIT Regulations which states that :

Trading restriction period for Designated persons and their immediate relatives shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

The procedure for implementation of the system as enclosed under Annexure- A of this Circular :

1. The Designated Depository (“DD”) appointed by the listed company shall enable access to the respective listed company on the portal/platform.
2. Upon login, DD shall auto-populate PAN and name of the DPs and their demat account number / DP ID and client ID.
3. The listed company shall confirm to the DD details with respect to listed ISIN of equity share of the company, Name, PAN, and confirm the demat account number viz. DP ID and client ID (in case of PAN exempted cases) of DPs.

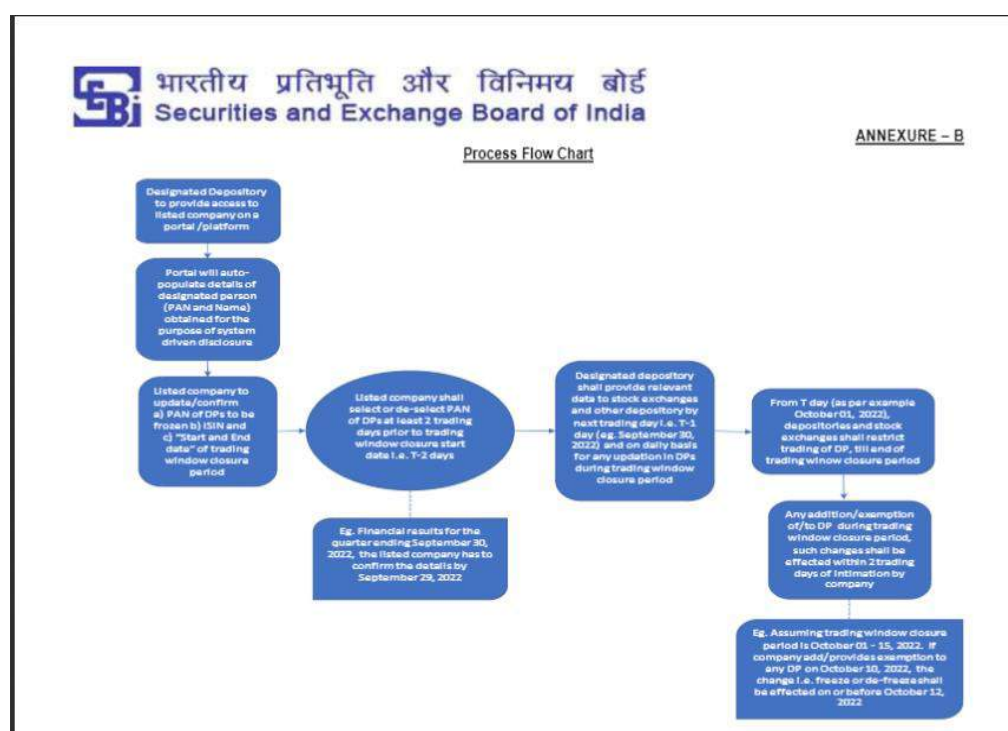
4. DD shall provide a facility to the listed company to specify the 'Trading Window Closure Period' i.e. 'Commencement Date' and 'End Date' on portal/platform.
5. With respect to financial results, the listed company shall specify the 1st day (T- day) immediately after the end of every quarter for which results are to be announced as 'Trading Window Closure commencement date' and the date on which 48 hours ends post disclosure of financial results as 'Trading Window Closure End date' in the portal/platform.
6. The listed company shall provide the aforesaid details atleast 2 trading days prior to the commencement of trading window closure date (T-2 days).
7. DD shall provide the details received from the listed company (i.e. Commencement Date and End Date of the trading window closure period, Name and PAN of DPs, ISIN, etc.) to the Stock Exchanges and other Depository atleast 1 trading day prior to the commencement of trading window closure commencement date (T-1 day).
8. The demat accounts shall be identified by the depositories based on the PAN of the DP of Sole / joint holder.
9. Based on demat accounts identified as per para 7 above and instruction given by listed company as per paras 3 and 4 above, the off-market transactions and creation of pledge shall be restricted by the Depositories with reason code as "Trading Window Closure Period".
10. On the basis of data received from the Depositories, the Stock Exchanges shall restrict the on-market transactions of DPs in equity shares and equity derivatives contracts of the listed company from T day i.e. Commencement Date of trading window closure period.
11. In case of any addition/deletion/update pertaining to the details of DP, the listed company has to follow the procedure specified in terms of SEBI Circular dated 09th September, 2020 and shall be required to separately provide the details as mentioned at paras 3 and 4 above.
12. There shall be provision in the system to specify the details of DP to be exempted by listed company from Trading Window restriction in terms of Clause 4 (3) of Schedule B read with regulation 9 of PIT Regulations. In such cases, the restriction shall be removed within 2 trading days from the date of receipt of request from the listed company.
13. The freezing/de-freezing of PAN at the security level on account of changes due to addition or deletion will be effected post market hours.
14. Pay-in and pay-out obligations in respect of transactions, if any, taken place prior to freezing the PAN of DP at the security level, may be permitted to be settled, squared off or closed out, as the case may be.

15. The formats and timelines for sharing of data shall be standardized, as agreed upon by the Depositories and Stock Exchanges. Further, operational guidelines for listed companies shall be issued by the Depositories.

In case of any discrepancy, the issue shall be resolved by the Depositories, in coordination with Stock Exchanges and listed company.

Annexure - B of the Circular

Process Flow Chart



The provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. Further, to begin with, the restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e. Futures and Options) of such listed companies and shall come into force w.e.f. the quarter ending 30th September, 2022.

Further, SEBI said that the Compliance Officer and DPs of listed companies shall continue to independently comply with the obligations under PIT Regulations, as applicable to them, till further communication.

Link to the Circular:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/aug-2022/1659701299322.pdf#page=6&zoom=100,-7,64

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3. SEBI guidelines for overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs) - 17th August, 2022

SEBI vide its Circular dated 17th August, 2022 came out with guidelines which said that Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs) can invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time.

Sr. No.	SEBI specified guidelines
1.	AIFs/VCFs shall file an application to SEBI for allocation of overseas investment limit in the format specified at <u>Annexure A</u> .
2.	SEBI circular dated 09 th August, 2007 pertained a condition that overseas investment were allowed only in those companies which had an Indian connection. Which has now been done away with.
3.	AIFs/VCFs shall invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to the bilateral Memorandum of Understanding with SEBI.
4.	AIFs/VCFs shall not invest in an overseas investee company, which is incorporated in a country identified in the public statement of Financial Action Task Force (FATF) as: a. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or b. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with FATF to address the deficiencies.
5.	If an AIF/VCF liquidates investment made in an overseas investee company previously, the sale proceeds received from such liquidation, to the extent of investment made in the said overseas investee company, shall be available to all AIFs/VCFs (including the selling AIF/VCF) for reinvestment.
6.	AIFs/VCFs shall transfer/sell the investment in overseas investee company only to the entities eligible to make overseas investments, as per the extant guidelines issued under the Foreign Exchange Management Act, 1999.
7.	AIFs/VCFs shall furnish the sale/divestment details of the overseas investments to SEBI in the format given at <u>Annexure B</u> within 3 working days of the divestment, by emailing to

	aifreporting@sebi.gov.in , for updating the overall limit available for overseas investment by AIFs/VCFs.
8.	All the overseas investments sold/divested by AIFs/VCFs till date, shall also be reported to SEBI in the format given at Annexure B within 30 days from the date of this circular, by emailing to aifreporting@sebi.gov.in .
9.	The Trustee/Board/Designated Partners of the AIFs/VCFs shall submit an undertaking to SEBI as specified at Annexure A with respect to the proposed overseas investment.

The Trustee/Board/Designated Partners of the AIFs/VCFs shall submit an undertaking to SEBI as specified at Annexure A with respect to the proposed overseas investment.

The provisions of this Circular shall come into force with immediate effect and are applicable to all Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs).

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/aug-2022/guidelines-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-62020.html>

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4. SEBI circular on Block Mechanism in demat account of clients undertaking sale transactions - 18th August, 2022

SEBI vide its circular dated 18th August, 2022 decided to amend clause 5 of SEBI circular dated 16th July, 2021 where SEBI introduced block mechanism in the demat account of clients undertaking sale transactions, for ease of operations in Early Pay-in mechanism.

Clause 5 of the circular dated 16th July, 2021 stated following :	"5. The proposed facility of block mechanism is on optional basis and Early Pay-in mechanism shall also continue."
Clause 5 of the circular dated 18th August, 2022 pursuant to amendment :	"5. The facility of block mechanism shall be mandatory for all Early Pay-In transactions."

SEBI, further added that amendment was made after extensive consultation with Depositories, Clearing Corporations and Stock Exchanges, and considering the benefits of block mechanism.

SEBI advised Depositories and Clearing Corporations shall put in place appropriate systems to ensure compliance of the provisions of this circular.

This circular shall be applicable with effect from 14th November, 2022 and all other provisions of the circular dated 16th July, 2021 shall continue to remain applicable.

It is to be noted that this circular is applicable to all Depositories and recognized Stock Exchanges and Clearing corporations.

[Link to the Circular:](https://www.sebi.gov.in/legal/circulars/aug-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions_62131.html)

https://www.sebi.gov.in/legal/circulars/aug-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions_62131.html

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5. SEBI Circular on Participation as Financial Information Providers in Account Aggregator framework - 19th August, 2022

SEBI, vide its circular dated 19th August, 2022 joined Account aggregator framework. An Account Aggregator (AA), is a Reserve Bank of India (RBI) regulated Non-Banking Finance Company (NBFC) that facilitates retrieval or collection of financial information, pertaining to a customer, from Financial Information Providers (“FIP”) on the basis of explicit consent of the customer. The financial information shared through the Account Aggregator is not stored by the AA and it shall not be the property of the AA. This information is not to be used in any other manner except for the purpose of providing it to the customer or consented Financial Information User (FIU).

Under the purview of RBI Master Directions	It is to be noted that RBI has issued Non-Banking Financial Company –Account Aggregator Master Directions dated 02nd September, 2016 for compliance by every Non-Banking Financial Company (NBFC-Account Aggregator) undertaking the business of AA.
List of entities mentioned as Financial Information Providers (FIPs)	Out of the list of entities mentioned as Financial Information Providers (FIPs) under the Clause 3 (xi) of the Master Directions, the Asset Management Companies (AMCs) through their Registrar and Transfer Agents (RTAs) and the Depositories are inter-alia specified as Financial Information Providers (FIPs) for the purpose of sharing of information.
“Financial Information”, as specified in Clause 3(ix) of the RBI Master Directions	The FIPs in the securities market will provide the “Financial Information”, as specified in Clause 3(ix) of the RBI Master Directions, to the customers and FIUs who furnish the consent artefact (electronic consent as defined in RBI Master Guidelines) through any of the Account Aggregators registered with RBI.

	<p>The FIPs in the securities markets shall share the “Financial Information” pertaining to securities markets, through the AA only on receipt of a valid consent artefact from the customer through the Account Aggregator. The consent architecture is detailed under Clause 6 of the RBI Master Directions. Further, the FIPs in the securities markets shall also verify, through appropriate means, the following in the consent artefact: a. validity of consent b. specified dates and usage; and c. the credentials of the AA.</p>
Transmission of information to AA	<p>Upon due verification of the consent artefact, the FIPs in the securities markets shall digitally sign the financial information and securely transmit the same to the AA in accordance with the terms contained in the consent artefact.</p> <p>All responses of the FIPs in the securities markets shall be in real time.</p>
Enabling these data flows of FIPs in the securities markets :	<p>To enable these data flows, the FIPs in the securities markets shall: a. implement interfaces that will allow an Account Aggregator to submit consent artefacts, and authenticate each other, and would enable secure flow of financial information to the AA; b. adopt means to verify the consent including digital signatures, if any, contained in the consent artefact; c. implement means to digitally sign the financial information that is shared by them about the customers; d. maintain a log of all information sharing requests and the actions performed by them pursuant to such requests.</p> <p>The FIPs in the securities markets are expected to adopt the technical specifications published by ReBIT, as updated from time to time and adopt required Information Technology (IT) framework and interfaces to ensure secure data flows to AA. The technology should also be scalable to cover any other AA as may be specified by Reserve Bank of India in future.</p> <p>There shall be adequate safeguards built in IT systems of FIPs in the securities markets to ensure that it is protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data.</p>
Redressal of grievances of the customers.	<p>The FIPs in the securities markets shall also abide by the code of conduct as specified in the SEBI regulations applicable to them, including redressal of grievances of the customers.</p>

The Financial Information Providers (FIPs) in securities market must disclose prominently on their websites the names of the Account Aggregators through which the FIP shares the information about assets held with respect to securities markets with the customers and Financial Information Users (FIUs).

The provisions of this circular shall come into force with immediate effect and are applicable to all Depositories and Asset Management Companies.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/aug-2022/participation-as-financial-information-providers-in-account-aggregator-framework_62157.html

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6. SEBI Circular on disclosure requirement for Asset Management Companies (AMCs) – 25th August, 2022

SEBI, vide its circular dated 25th August, 2022 came out with disclosure requirement for Asset Management Companies (AMCs). SEBI said that AMCs shall ensure scheme wise disclosure of investments, as on the last day of each quarter, in securities of such entities that are excluded from the definition of associate.

Disclosure of Investment shall include ISIN wise value of investment and value as percentage of AUM of scheme. Such disclosure shall be made on the websites of respective AMCs and on the website of AMFI, within one month from the close of each quarter.

Under the rules, “Associate” includes

a person who directly or indirectly, by himself, or in combination with relatives, exercises control over the asset management company or the trustee or the sponsor, as the case may be, or

in respect of whom the asset management company or the trustee or the sponsor, directly or indirectly, by itself, or in combination with other persons exercises a control, or whose director except an independent director, officer or employee is a director, officer or employee of the asset management company:

Provided that the above definition of associate shall not be applicable to such sponsors, which invest in various companies on behalf of the beneficiaries of insurance policies or such other schemes as may be specified by the Board from time to time.

The provisions of this circular are applicable to all Mutual Funds, Asset Management Companies (AMCs) and Trustee Companies/Boards of Trustees of Mutual Funds/ Association of Mutual Funds in India (AMFI).

[Link to the Circular:](#)

https://www.sebi.gov.in/legal/circulars/aug-2022/disclosure-requirement-for-asset-management-companies-amcs-_62345.html

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7. **SEBI Circular on Enhanced Disclosures by CRAs and Norms on Rating Withdrawal- 25th August, 2022**

SEBI, vide its circular dated 25th August, 2022 enhanced disclosures by CRAs and Norms on Rating withdrawal. This circular is in reference to EBI (Credit Rating Agencies) Regulations, 1999 (“CRA Regulations”) which provide for a principle-based regulation of CRAs focusing inter alia on enhanced transparency and disclosures by CRAs. Over time, SEBI has prescribed various disclosures under different circulars under the CRA Regulations.

Therefore, in order to allow investors and other stakeholders to properly use such disclosures in a fair assessment of CRAs, the following changes are being suggested for disclosures made by CRAs.

Applicability: This circular shall be applicable to credit ratings of securities that are listed, or proposed to be listed, on a recognized stock exchange, and other credit ratings that are required under various SEBI Regulations or circulars thereunder.

Methodology for Computation of Sharp Rating Action:

A. SEBI circular numbered SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018 had inter alia mandated CRAs to furnish data on sharp rating actions in investment grade rating category, as per the format in Annexure A of the aforesaid circular, to Stock Exchanges and Depositories for disclosure on website on half-yearly basis.

B. In order to standardize the methodology of computation and disclosure of a ‘sharp rating action’, it is clarified that CRAs shall compare two consecutive rating actions. Therefore, a CRA shall disclose a sharp rating action, if the rating change between two consecutive rating actions is more than or equal to 3 notches downward. In other words, if the difference in credit rating between two consecutive press releases is more than or equal to 3 notches downward, the same has to be included in the disclosure on sharp rating actions.

C. The disclosure on sharp rating actions shall be limited to credit ratings referred at Section III above.

D. In addition to the current disclosures of sharp rating actions excluding non-cooperative issuers, CRAs shall also separately disclose sharp rating actions including such actions on non-cooperative issuers.

Issuers Not Cooperating (INC) and information required for rating:

A. SEBI Circular dated November 01, 2016 inter-alia prescribed certain norms regarding policy in respect of non-co-operation by the issuer, including mandating each CRA to frame detailed guidelines on what constitutes non-cooperation.

B. In continuation to the same, CRAs shall have a detailed policy in this respect which shall include the following:

i. Non-submission of material information including (but not limited to) the following:

- a) Non-submission of quarterly financial results or performance results or audited financial results within prescribed timelines
- b) Current and past operational details including details about capex plans
- c) Debt obligations and repayment details
- d) Any other issue felt appropriate by credit rating agency as per internal assessment or as laid down by CRA in its internal policy/manual.

ii. The criteria/ methodology in respect of assessing the risk of non-availability of information from the issuers including non-cooperative issuers.

iii. The steps to be taken under various scenarios in order to ascertain the status of non-cooperation by the issuer company.

C. CRAs shall follow a uniform practice of three consecutive months of non-submission of No-default Statement (NDS) (or inability to validate timely debt servicing through other sources) as a ground for considering migrating the ratings to INC and shall tag such ratings as INC within a period of 7 days of three consecutive months of non-submission of NDS. The CRA in its judgement may migrate a rating to the INC category before the expiry of three consecutive months of non-receipt of NDS.

D. CRAs shall also formulate a policy on “Minimum/ Indicative Information requirement” in terms of various sectors or types of ratings (referred at Section III above), etc. and disclose it on their website.

Rating Withdrawal:

It is clarified that while withdrawing any credit rating referred to in Section III above, a CRA in its press release shall also assign a credit rating to such security, except where there are no outstanding obligations under the security rated by the CRA, or the company whose security is rated is wound up or merged or amalgamated with another company.

Rating Withdrawal of Perpetual Debt Securities, that are listed or proposed to be listed on a recognized stock exchange:

A. As per the current rating withdrawal provisions it is seen that in case of ratings of perpetual debt securities, such as AT-I bonds, that are listed or proposed to be listed on a recognized stock exchange, a credit rating cannot be withdrawn unless the security is redeemed. Often, this can result in the issuer of such bonds to stop cooperating with the CRA.

B. Therefore, to facilitate withdrawal of ratings of perpetual debt securities that are listed or proposed to be listed on a recognized stock exchange, it is proposed to revise withdrawal norms of ratings of such securities. Accordingly, a CRA may withdraw ratings of such securities provided that the CRA has:

- i. rated such security/ies continuously for 5 years; and
- ii. received an undertaking from the Issuer that a rating is available on such security/ies; and
- iii. received an undertaking from the other CRA(s) that a rating is available on such security/ies.

Disclosure of Average Rating Transition Rates for Long-Term Credit Ratings:

A. SEBI circular numbered SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018 has inter alia mandated CRAs to disclose a rating transition matrix, where the static pool has been defined to exclude ratings that have been withdrawn or ratings of non-cooperative issuers during the financial year.

B. Given the increased non-cooperative issuers in the CRAs' rated universe, excluding such INC ratings might not depict a true picture of stability of credit ratings within CRAs and across CRAs.

C. In view of the above, it is mandated that in addition to the current disclosure of rating transitions as per SEBI circular dated November 13, 2018, CRAs shall also disclose two additional and separate rating transition matrices (limited to credit ratings of securities that are listed, or proposed to be listed, on a recognized stock exchange) using the following definition of static pool:

- i. *Static Pool: Ratings outstanding for each category at the beginning of any financial year. It shall exclude ratings that have been withdrawn or ratings of non-cooperative issuers during the financial year. Ratings downgraded to D shall be treated as default for the rest of the financial year. Ratings which are upgraded from D shall be considered as new rating for the relevant subsequent static pools.*
- ii. *Static Pool: Ratings outstanding for each category at the beginning of any financial year. It shall include ratings that have been withdrawn or ratings of non-cooperative issuers during the financial year. Ratings downgraded to D shall be treated as default for the rest of the financial year. Ratings which are upgraded from D shall be considered as new rating for the relevant subsequent static pools.*

D. In the disclosure at C.(ii) above, a CRA shall include an additional column to indicate the proportion of ratings that were withdrawn during the financial year.

Enhanced Disclosures by CRAs:

A. In order to facilitate enhanced transparency and usability of disclosures made by CRAs on their websites, the following is proposed:

- i. Disclosures required by CRAs on their websites under various SEBI circulars should be provided in excel / machine readable format.
- ii. An archive of disclosures should be maintained by CRAs on their website, for at least 10 years. This also includes ratings press releases by CRAs.

B. In addition to current disclosure on cumulative default rates (CDR) which includes non-cooperative issuers and various types of credit ratings, CRAs shall also disclose, separately, two other CDRs limited to credit ratings of securities that are listed, or proposed to be listed, on a recognized stock exchange:

- i. CDR (ii), wherein ratings of non-cooperative issuers shall be included in the cohort under the rating category in which the instrument is currently being rated.
- ii. CDR (iii), wherein ratings of non-cooperative issuers shall be excluded in the cohort under the rating category in which the instrument is currently being rated.

Applicability: The date or time period of applicability of the above sections shall be as provided below

Section of the Circular	Date of Applicability
IV. Methodology for Computation of Sharp Rating Action	Disclosures for H1 of Financial Year 2022-23
V. Issuers Not Cooperating (INC) and information required for rating	Latest by March 31, 2023
VI. Withdrawal Norms	Ratings withdrawn after September 30, 2022
VII. Rating Withdrawal of Perpetual Debt Securities	Ratings withdrawn after September 30, 2022
VIII. Disclosure of Average Rating Transition Rates for Long-Term Credit Ratings	Disclosures for Financial Year 2022-23
IX. Enhanced Disclosures by CRAs	Website Disclosures made after March 31, 2023

[Link to the Circular:](https://www.sebi.gov.in/legal/circulars/aug-2022/enhanced-disclosures-by-cras-and-norms-on-rating-withdrawal_62361.html)

https://www.sebi.gov.in/legal/circulars/aug-2022/enhanced-disclosures-by-cras-and-norms-on-rating-withdrawal_62361.html

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8. SEBI Circular for Portfolio Managers - 26th August, 2022

The amendment to SEBI (Portfolio Managers) Regulations, 2020 (“PMS Regulations”) notified on 22nd August, 2022 (available at link), inter-alia mandates prudential limits on investments in associates/related parties of Portfolio Manager, the requirement of taking prior consent of client for such investments and restrictions based on the credit rating of securities. The definitions of the terms “related party” and “associate” have been provided in the PMS Regulations. The amendment to PMS Regulations shall come into force on the thirtieth day from the date of their publication in the Official Gazette.

A. Limits on investment in securities of associates / related parties of Portfolio Managers:

Regulation 24 (3A) of PMS Regulations inter-alia provides that the Portfolio Manager shall ensure compliance with the prudential limits on investment as may be specified by the Board. Accordingly, the Portfolio Managers shall ensure the following:

- i. Portfolio Manager shall invest up to a maximum of 30 percent of their client's portfolio (as a percentage of the client's assets under management) in the securities of their own associates/related parties. Further, the Portfolio Manager shall ensure compliance with the following limits:

Security	Limit for investment in single associate/related party (as percentage of client's AUM)	Limit for investment across multiple associates/related parties (as percentage of client's AUM)
Equity	15%	25%
Debt and hybrid securities	15%	25%
Equity + Debt + Hybrid securities	30%	

- ii. The aforementioned limits shall be applicable only to direct investments by Portfolio Managers in equity and debt/hybrid securities of their own associates/related parties and not to any investments in the Mutual Funds.
- iii. Hybrid securities includes units of Real Estate Investment Trusts (REITs), units of Infrastructure Investment Trusts (InvITs), convertible debt securities and other securities of like nature.

B. Prior consent of the client regarding investments in the securities of associates/related parties:

Regulation 22(1A) of PMS Regulations provides that the Portfolio Manager may make investments in the securities of its related parties or its associates only after obtaining the prior consent of the client in such manner as may be specified by the Board from time to time. Accordingly, the Portfolio Managers shall ensure compliance with the following:

- i. Portfolio Managers shall obtain a one-time prior positive consent of client in the format specified at Annexure A (consent form), as a part of the agreement mandated under Regulation 22(1) of the PMS Regulations.
- ii. The consent form shall have an option to indicate dissent, in case the client does not want to undertake any investment in the securities of associates/related parties of respective Portfolio Manager. The client shall also have an option to specify a limit on investments in the securities of associates/related parties of respective Portfolio Manager, below the ceiling specified in para 2 (A) (i) above.

- iii. The text and figures of the consent form shall be prominently highlighted and not be below size 12 font.
- iv. For new clients, the aforementioned consent shall be obtained at the time of entering into agreement, in terms of Regulation 22 (1) of PMS Regulations (i.e., at the time of onboarding of a new client).
- v. For existing clients, the aforementioned consent shall be obtained by way of execution of a supplementary agreement with the clients. In cases where the agreements entered with existing clients contain provision for obtaining consent for investments through a specified mode, the same mode can be used for obtaining aforesaid prior consent for investments in the securities of associates/related parties of the Portfolio Manager as well.
- vi. Portfolio Manager shall not make any investments in the securities of associates/related parties without the prior consent of the client at the time of on boarding new clients. For existing clients, fresh investments in the securities of associates/related parties of Portfolio Managers can be made only after obtaining consent from the client.
- vii. In the event of passive breach of the specified investment limits, (i.e., occurrence of instances not arising out of omission and/or commission of portfolio manager), a rebalancing of the portfolio shall be completed by Portfolio Managers within a period of 90 days from the date of such breach. Notwithstanding the same, the client may give an informed, prior positive consent to the Portfolio Manager for waiver from the rebalancing of the portfolio to rectify any passive breach of the investment limits.
- viii. Such requirement of rebalancing in the event of a passive breach of investment limits shall be suitably disclosed in the consent form mentioned at para 2(B)(i) above and any waiver from the same shall also be obtained in the same document.
- ix. In accordance with Regulation 27 (1) of the PMS Regulations, Portfolio Managers shall maintain records and documents pertaining to:
 - a) Prior positive consent or dissent, as the case may be.
 - b) Instances of the passive breach of investment limits, if any.
 - c) Steps taken, if any to rectify the passive breach of investments limits.
 - d) Waiver obtained from the client regarding rebalancing in the event of a passive breach of investment limits.

C. Minimum credit rating of securities for investments by Portfolio Managers:

Regulation 24 (3C) of PMS Regulations provides that Portfolio Managers shall not be allowed to invest clients' funds in unrated securities of their related parties or their associates. Further, Regulation 24 (3E) of PMS Regulations provides that the Portfolio Manager shall ensure investment of its clients' funds on the basis of the credit rating of securities as may be specified by the Board. Accordingly, with respect to investments in debt

and hybrid securities, the Portfolio Managers shall ensure compliance with the following:

- i. Portfolio Managers offering discretionary portfolio management services shall not make any investment in below investment grade securities.
- ii. Portfolio Managers offering non-discretionary portfolio management services shall not make any investment in below investment grade listed securities. However, Portfolio Manager may invest up to 10% of the assets under management of such clients in unlisted unrated securities of issuers other than associates/related parties of Portfolio Manager. The said investment in unlisted unrated debt and hybrid securities shall be within the maximum specified limit of 25% for investment in unlisted securities under Regulation 24(4) of the PMS Regulations.

D. Disclosure of details of investments by Portfolio Manager:

I. Periodic Report to the clients

- a) Portfolio Managers shall disclose the following in the periodical report required to be furnished to clients in terms of para 12 of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020:
 - i. Details of investment of client's funds in the securities of associates/related parties of the Portfolio Manager.
 - ii. Details of instances of passive breach of investment limits, if any, and steps taken to rectify the same.
 - iii. Details of credit ratings of investments in debt and hybrid securities.
- b) Accordingly, the format for client reporting as provided in Annexure B of aforesaid Circular dated February 13, 2020 has been revised to include the following tables as a separate head underclause E.

Investments in the securities of associates/related parties of Portfolio Manager:

i. Transaction wise

Sr. No.	Issuer name	Type of security	ISIN	Transaction wise Details				
				Transaction date	Buy/sell	Quantity	Gross transaction value (INR in crores)	Net transaction value (INR in crores)

ii. Security wise

Sr. No.	Issuer name	Type of security	ISIN	Security wise Details			
				Investment amount (cost of investment) as on last day of the previous quarter (INR in crores)	Value of investments as on last day of the previous quarter (INR in crores)	percentage of client's AUM as on last day of the previous quarter (INR in crores)	percentage of PM's AUM as on last day of the previous quarter (INR in crores)

iii. Details regarding passive breach of investment limits:

Sr. No.	Details of passive breach	Date of passive breach	Details of steps taken, if any, to rectify the passive breach of limits	Date of rectification	Whether rectified within 90 days

iv. Details of credit ratings of investments in debt and hybrid securities.

II. Disclosure Document

Regulations 22 (4) (da) & (db) of PMS Regulations provides that the Portfolio Manager shall disclose in the Disclosure Document the details of its diversification policy and the details of investment of clients' funds by the Portfolio Manager in the securities of its related parties or associates. Accordingly, the Portfolio Manager shall ensure compliance with the following:

- i. Disclosure of the details of investment of clients' funds in the securities associate/related parties in the Disclosure Document under the head "*Details investments in the securities of related parties of the Portfolio Manager*", in the following format:

Investments in the securities of associates/related parties of Portfolio Manager:

Sr. No.	Investment Approach, if any	Name of the associate/related party	Investment amount (cost of investment) as on last day of the previous calendar quarter (INR in crores)	Value of investment as on last day of the previous calendar quarter (INR in crores)	percentage of total AUM as on last day of the previous calendar quarter

- ii. Portfolio Managers shall ensure that any material changes in the above information updated in the Disclosure Document and uploaded on their respective websites within 90 days.

E. Applicability :

- a) The requirements as specified at para 2 above and in Regulations 22 (1A), 22(4) (da) & (db), 24 (3A) to 3(E) of PMS Regulations shall not be applicable for advisory portfolio management services, co-investment portfolio management services and for client categories who in turn manage funds under government mandates and/or are governed under specific Acts of State and/or Parliament.

- b) Notwithstanding the above, for advisory portfolio management services, Portfolio Managers shall make suitable disclosure to the client regarding conflict of interest with respect to investments in the securities of the associates/related parties, while giving advice. The term “associate” for this purpose shall have the same meaning as defined under explanation to Regulation 24 (3C) of PMS Regulations. Further, Portfolio Managers shall disclose the credit rating of all securities, while giving advice.
- c) The circular shall come into effect from 20th September, 2022 and the requirements at para 2(D)(II) above shall come into effect from the quarter ending September 2022 and shall be applicable to all Portfolio managers.

Link to the Circular:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/aug-2022/1661505862189.pdf#page=6&zoom=80,-75,4

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9. **SEBI modifies Master Circular for Depositories dated 05th February, 2021 on opening of demat account in case of HUF - 26th August, 2022**

- SEBI, vide Master circular dated 05th February, 2021 and 17th February, 2021 prescribed procedure for opening of demat account in case of HUF.
- Further, SEBI vide its circular dated 26th August, 2022 made partial modifications Subsection 1.2(a) of Section 1.4 of the Master Circular for Depositories dated 05th February, 2021 which shall be replaced as the following :

“In the event of death of Karta of HUF, the name of the deceased Karta in the Beneficial Owner (BO) account shall be replaced by the new Karta of the HUF who in such a case shall be eldest coparcener in the HUF or a coparcener who is appointed as Karta by an agreement reached amongst all the coparceners of the HUF”

- All the other provisions of the Master Circular for Depositories dated 05th February, 2021 shall remain unchanged.
- This circular shall be applicable to all depositories.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/aug-2022/corrigendum-to-master-circular-for-depositories-dated-february-05-2021-on-opening-of-demat-account-in-case-of-huf_62387.html

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10. SEBI circular on amendment to guidelines for preferential issue and institutional placement of units by a listed InvIT- 26th August, 2022

- SEBI vide its Circular dated 26th August, 2022 amended guidelines for preferential issue and institutional placement of units by a listed InvIT. These guidelines were issued by SEBI vide its circular dated 27th November, 2019.

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
1.	Modification in Clause 3.5 of SEBI Circular dated 27 th November, 2019	<p>3.5 Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within <u>seven working days from the date of allotment:</u></p> <p>Provided that where the InvIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means <u>within twenty days from the date of the</u></p>	<p>“3.5. Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within two working days from the date of allotment:</p> <p>Provided that where the InvIT fails to list the units</p>	<p>Due to this amendment, number of days within which units shall be listed has been reduced from seven to two days.</p> <p>Further, for units which fails to list within specified time, the monies received shall be refunded within four</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
		<p><u>allotment</u>, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT and the investment manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.</p>	<p>within the specified time, the monies received shall be refunded through verifiable means within four working days from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT, investment manager of the InvIT and its director or partner who is an officer in default shall, on and from the expiry of the fourth working day,</p>	<p>days from the date of allotment which previously was twenty days.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
			be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum”.	
2.	Modification in Sub-paragraph (A) of paragraph 2 of Annexure-I of SEBI Circular dated 27 th November, 2019	<p>A. Pricing of frequently traded units</p> <p>2.1. Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:</p> <p>2.1.1. <u>the average of the weekly high and low of the volume weighted average price</u> of the related units quoted on the relevant stock exchange during the <u>twenty six weeks preceding the relevant date;</u></p> <p>or</p> <p>2.1.2. <u>the average of the weekly high and low of</u></p>	<p>“A. Pricing of frequently traded units</p> <p>2.1 Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:</p> <p>2.1.1. <u>the 90 trading days’ volume weighted average price of the related units quoted on the</u></p>	<p>Due to this amendment, the pricing formula for allotment of units under preferential issue will be the volume weighted average price of weekly highs and lows for 90 trading days or 10 trading days, whichever is higher.</p> <p>Previously, the pricing formula for preferential allotment is</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
		<p><u>the volume weighted average</u> prices of the related units quoted on the relevant stock exchange during the <u>two weeks preceding the relevant date.</u></p> <p>2.2. A preferential issue of units to institutional investors, not exceeding five in number, shall be made at a price <u>not less than the average of the weekly high and low of the volume weighted average prices</u> of the related units quoted on a recognized stock exchange during the two weeks preceding the relevant date.</p>	<p>recognised stock exchange preceding the relevant date; or</p> <p>2.1.2. the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.</p> <p>2.2. A preferential issue of units to "institutional investors" not exceeding five in number, shall be made at a price not less than the 10 trading days' volume</p>	<p>the volume weighted average price of last two weeks or last twenty six weeks, whichever is higher.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
			<u>weighted average prices</u> of the related units quoted on a recognised stock exchange preceding the relevant date.	
3.	Modification in Clause 4.1 of Annexure-I and the explanation stands deleted of SEBI Circular dated 27 th November, 2019	4.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer <u>during the six months preceding the relevant date.</u>	"4.1 Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days preceding the relevant date. Further, where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all	Due to this amendment , timelines has been extended to six months preceding the relevant date which for preferential issue of units for person who has sold or transferred any units which previously was of 90 days preceding the relevant date.

Sr. No.	Part/Chapter/Section/Sub-section(s)	Old guidelines (SEBI Circular 27 th November, 2019)	New guidelines (SEBI Circular dated 26 th August, 2022)	Comment
			sponsors shall be ineligible for allotment of units on a preferential basis.	

- This circular shall be applicable to all Infrastructure Investment Trusts (“InvITs”), Parties to InvITs, Recognised Stock Exchanges, Depositories and Merchant Bankers.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/aug-2022/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-invit_62399.html

GO UP

11. SEBI circular on amendment to guidelines for preferential issue and institutional placement of units by a listed REIT- 26th August, 2022

- SEBI vide its Circular dated 26th August, 2022 amended guidelines for preferential issue and institutional placement of units by a listed REIT. These guidelines were issued by SEBI vide its circular dated 27th November, 2019.

Sr. No.	Part/Chapter/Section/Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
1.	Modification in Clause 3.5 of SEBI Circular dated 27 th November, 2019	<p>“3.5. Post allotment, the REIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within <u>two working days from the date of allotment:</u></p> <p>Provided that where the REIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means <u>within four working days from the date of the allotment,</u> and if any such money is not repaid within such time after the issuer becomes</p>	<p>3.5 Post allotment, the REIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed <u>within seven days from the date of allotment:</u></p> <p>Provided that where the REIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means <u>within twenty days from the date of the allotment,</u> and if any such money is not repaid within such time after the issuer becomes liable to repay it, the REIT and the manager and its director or partner who is an officer in</p>	<p>Due to this amendment, number of days within which units shall be listed has been reduced from seven to two days.</p> <p>Further, for units which fails to list within specified time, the monies received shall be refunded within four days from the date of allotment which previously was twenty days.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
		<p>liable to repay it, the REIT, the manager of the REIT and its director or partner who is an officer in default shall, on and from the expiry of the fourth working day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.</p>	<p>default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.</p>	
2.	<p>Modification in Sub-paragraph (A) of paragraph 2 of Annexure-I of SEBI Circular dated 27th November, 2019</p>	<p>“A. Pricing of frequently traded units</p> <p>2.1 Where the units of the REIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher</p>	<p>Pricing of frequently traded units</p> <p>2.1. Where the units of the REIT are frequently traded, the pricing of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:</p>	<p>Due to this amendment, the pricing formula for allotment of units under preferential issue will be the volume weighted average price of weekly</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
		<p>of the following:</p> <p>2.1.1. the 90 trading days' volume weighted average price of the related units quoted on the recognised stock exchange preceding the relevant date; or</p> <p>2.1.2. the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.</p> <p>2.2. A preferential issue of units to "institutional investors" not exceeding five in</p>	<p>2.1.1. <u>the average of the weekly high and low of the volume weighted average price</u> of the related units quoted on the stock exchange during the <u>twenty six weeks preceding the relevant date;</u> or</p> <p>2.1.2. <u>the average of the weekly high and low of the volume weighted average prices</u> of the related units quoted on the stock exchange during the <u>two weeks preceding the relevant date.</u></p> <p>2.2. A preferential issue of units to "institutional investors" not exceeding five in number, shall be made at a price <u>not less than the</u></p>	<p>highs and lows for 90 trading days or 10 trading days, whichever is higher.</p> <p>Previously, the pricing formula for preferential allotment is the volume weighted average price of last two weeks or last twenty six weeks, whichever is higher.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
		<p>number, shall be made at a price not less than the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date</p>	<p>average of the weekly high and low of the volume weighted average prices of the related units quoted on a recognized stock exchange during the two weeks preceding the relevant date</p>	
3.	Modification in Clause 4.1 of paragraph 4 of SEBI Circular dated 27 th November, 2019	<p>Clause 4.1 of paragraph 4 of the SEBI circular dated November 27, 2019 (as amended), is modified as under and the explanation stands deleted:</p> <p>"4.1 Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer</p>	<p>4.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date.</p> <p>Explanation: Where any person belonging to sponsor(s) or the sponsor group has sold/transferred their units of the issuer <u>during the</u></p>	<p>Due to this amendment, timelines has been extended to six months preceding the relevant date which for preferential issue of units for person who has sold or transferred any units which previously was of 90 days preceding</p>

Sr. No .	Part/Chapter/Section /Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
		<p><u>during the 90 trading days preceding the relevant date.</u> Further, where any person belonging to the sponsor(s) or Sponsor group(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors and members of sponsor group(s) shall be ineligible for allotment of units on a preferential basis. Provided that this restriction on preferential issue of units shall not apply to a sponsor(s) or member of the sponsor group, in case</p>	<p><u>six months preceding</u> the relevant date, the sponsor(s) and sponsor group shall be ineligible for allotment of specified securities on preferential basis.</p>	<p>the relevant date.</p>

Sr. No.	Part/Chapter/Section/Sub-section(s)	New guidelines (SEBI Circular dated 26 th August, 2022)	Old guidelines (SEBI Circular 27 th November, 2019)	Comment
		any asset is being acquired by the REIT from that sponsor(s) and/or or member of sponsor group(s), and preferential issue of units is being made to that sponsor and/or member of the sponsor group, as full consideration for the acquisition of such asset."		

- This circular shall be applicable to all Real Estate Investment Trusts ("REITs"), Parties to REITs, Recognised Stock Exchanges, Depositories and Merchant Bankers.

Link to the Circular:

https://www.sebi.gov.in/legal/circulars/aug-2022/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit_62396.html

GO UP

➤ **INSOLVENCY LAW**

1. **Mr. Dhiren Shantilal Shah v. Amma Lines Pvt. Limited and Ors - 2nd August, 2022**

The fees payable to the Liquidator will become payable only upon occurrence of the events of respective receipts and disbursements at specified rates payable and not otherwise.

Case Title - Mr. Dhiren Shantilal Shah v. Amma Lines Pvt. Limited and Ors

Date of Order - 2nd Aug 2022

Fact of the Decision

The Appellant/Liquidator is aggrieved by the order passed by the NCLT, Chennai. The present appeal is filed on the ground that the Adjudicating Authority held that the fees payable to the Appellant/Liquidator will become payable only upon occurrence of the events of respective receipts and disbursements at specified rates payable and not otherwise. The Adjudicating Authority directed the Appellant to desist from claiming the amounts towards liquidator fees as immediately payable. It is submitted by the appellant that the impugned order is in contravention of Section 53 of the IBC read with Regulation 4(3), 42 and 44 of the I&B Code (Liquidation Process) Regulations, 2016 and also in contravention of the scheme for compromise and arrangement.

Decision

Hon'ble NCLAT dismissed the appeal and directed the Liquidator to handover the books of accounts to the Respondents and held that,

“A combined reading of Regulation 2 (ea) read with Regulation 4 of IBBI (Liquidation Process) Regulation, 2016 shows that the fees of the Liquidator can be decided by the CoC before a liquidation order is passed by the Tribunal in terms of Section 33 of IBC, 2016 and in its absence subregulation (3) of Regulation 4 of the liquidation process Regulations shall come into play wherein it is provided that the liquidator shall be entitled to a fee both on a percentage of the amount realized net of other liquidation costs, and of the amount distributed as per the percentages given in the table provided under sub-regulation (3) of Regulation 4 itself. The parties are in concord that at the time of passing resolution under Section 33(2) of the IBC, 2016 seeking for liquidation of the Corporate Debtor, the Liquidator's fee being part of the Liquidation cost in terms of Section 5(16) read with Regulation 2(ea) and Regulation 4(2) had not been fixed by the CoC and in the circumstances sub-

regulation (3) of Regulation 4 of IBBI (Liquidation Process) Regulations comes into play.”

GO UP

2. Rakesh Kumar Jain v. Jagdish Singh Nain & Ors - 4th August, 2022

Any Application to commence CIRP can be denied when the Creditor is using Insolvency process as an inappropriate substitute for Debt Recovery Procedures.

Section 14 and Section 66 are independent provisions incorporated for different purposes and therefore, these provisions have to be read independently to achieve the objective of the Code.

Case Title - Rakesh Kumar Jain v. Jagdish Singh Nain & Ors.

Date of Order - 4th Aug 2022

Fact of the Case

A Petition under Section 7 of the Code was filed against HBN Foods Ltd. (CD) and CIRP was initiated and Mr. Jagdish Singh Nain was appointed as the RP. During the inspection of the balance sheets of the CD, the RP found that there are various transactions carried out between 2013-14 to 2018-19 with the intent to defraud the creditors of the CD. The RP filed an application under Section 66 of the Code against various related parties of the CD which also includes companies like HBN Home Colonizers Pvt. Ltd which was also undergoing CIRP and a moratorium under Section 14 of the Code was also imposed concerning HBN Home Colonizers. The question was about the legality of the order under Section 66 passed by Adjudicating Authority during currency of moratorium.

Decision

Hon'ble NCLAT dismissed the appeal and held that,

“There is absolutely no inconsistency or repugnancy between Section 14 (1) (a) and Section 66 of IBC. Section 14 of IBC is a bar against institution and prosecution of any suits or proceedings or execution of orders and decrees in other courts or Tribunals but not a bar to pass appropriate order in the pending proceedings against the resolution professional or suspended directors and related parties, before the Adjudicating Authority, during the insolvency resolution process or liquidation process. On the other hand, Section 66 of IBC empowered the Tribunal to pass appropriate orders when the suspended directors or insolvency professional of the Corporate Debtor carried on fraudulent trading or business during resolution process. Therefore, the Adjudicating Authority passed the impugned order only by exercising power that conferred on it by Section 66 of IBC. Hence, the contention that during moratorium,

the Adjudicating authority shall not pass an order impugned in this appeal is unsustainable, without any merit. If such contention is accepted by this Tribunal, Section 66 of IBC would become otiose or redundant.

Non-obstante clause contained in Section 60 (5) authorizes the Tribunal to pass such orders and the present order is one such order passed under Section 66 of IBC, exercising power under Section 60 (5) (a) of IBC.”

GO UP

3. M/s Agarwal Veneers v Fundtonic Service Pvt. Ltd - 5th August, 2022

Any Application to commence CIRP can be denied when the Creditor is using Insolvency process as an inappropriate substitute for Debt Recovery Procedures.

Case Title - M/s Agarwal Veneers v Fundtonic Service Pvt. Ltd.

Date of Order - 5th Aug 2022

Fact of the Case

M/s Agarwal Veneers (Appellant) had filed a petition under Section 9 of IBC for initiation of CIRP against Fundtonic Service Pvt. Ltd. (Respondent). AA rejected the application stating that the Respondent is a going concern and at present giving employment to 20 employees. Hence, it would defeat the very purpose of the IBC, if a going concern is deemed insolvent. The Appellant contended that the MSME status of the Respondent could not have been a ground for dismissal of the petition, as Section 20 of the IBC clarifies that the objective of the IBC is not to put the Operational Creditor through rigours of the CIRP, but to maximize the value of assets of such persons, to promote entrepreneurship and balance the interest of all stakeholders.

Decision

Hon'ble NCLAT dismissed the appeal and held that,

“The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be ‘Reorganisation’ and ‘Insolvency Resolution’, specifically omitting the word ‘Recovery’. The Parliament has made a conscious effort to ensure that there is a significant difference between ‘Resolution’ and ‘Recovery’.

The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is ‘maximising the value of assets’ in the process of ‘Resolution’. Any Application to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent

entity and is a going concern, the question of 'Reorganising' or 'Resolution of the Company' does not arise..”

GO UP

4. Somesh Choudhary v Knight Riders Sports Private Limited & Ors - 18th August, 2022

Claims arising out of grant of an exclusive right and license to use intellectual property rights falls within the ambit of the definition of 'Operational Debt'.

Case Title: Somesh Choudhary v Knight Riders Sports Private Limited & Ors.

Date of Order : 18th Aug 2022

Fact of the Case

The shareholder of Corporate Debtor (Global Fragrance Private Limited) preferred this appeal aggrieved by the order of NCLT, New Delhi, wherein NCLT admitted section 9 application.

Knight Riders Sports Private Limited (Respondent) and M/s. Global Fragrances Private Limited (Appellant/CD) had entered into a Licensing Agreement whereby the Respondent had permitted the Appellant to (a) use manufacture, sell, distribute and advertise the licensed products (b) use the Respondent's intellectual property rights i.e., the trademark 'Kolkata Knight Riders'/'(KKR)'. Appellant was obligated to pay Minimum Guaranteed Royalties ("MGR"). The Respondent had raised invoices towards MGR payable by the Appellant and only part payment was received. The Respondent filed a petition under Section 9 of IBC. The Appellant had opposed the petition on the ground that claims arising out of non-payment of MGR were not Operational Debt as it did not pertain to any goods and services.

Decision

Hon'ble NCLAT dismissed the appeal and held that,

“We are of the considered view that the 'Claim' of the Respondent is in respect of the provision of the Goods and Services for which the 'Corporate Debtor' is contractually obligated to make the payments towards such 'Claim'. The clauses of the Agreement provided for Royalties to be paid as a variable amount to the first Respondent and the minimum guaranteed amount to be paid as a fixed payment as stipulated under Clause 4.2 of the Agreement. Keeping in view the terms and conditions of the Agreement, we are of the earnest view that the first Respondent has established a 'Right to Payment' in respect of the provisions of goods and services. We hold that granting an exclusive right and license to the 'Corporate Debtor', to use manufacture, sell, distribute and advertise the licensed products and to use the trademark in association with the licensed products as well as on

packaging, promotional advertising material has a direct nexus with the business operations and sales and also with the actual product supplied by the 'Corporate Debtor.'

Hence, we hold that the 'Claim' in respect of such provisions of 'goods and services', under the terms of the Agreement, fall within the ambit of the definition of 'Operational Debt' as defined under Section 5(21) of the Code..”

GO UP

> RBI UPDATES

1. RBI Updates: Section 23 of the Banking Regulation Act, 1949 - Branch Authorisation Policy - Left Wing Extremism affected districts - Revised List

Please refer to the paragraph 4.2 (c) of the circular DBR.No.BAPD.BC.111/22.01.001/2017-18 dated June 14, 2022, where a list of 90 Left Wing Extremism (LWE) affected districts in the country, based on the government of India's notification was issued on April 2018.

In this regard, Government has further reduced the list of LWE affected district to 70.

It further advised Bank to follow the revised list w.e.f. August 22, 2022.

Link :

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12379&Mode=0>

GO UP

2. RBI Updates : Foreign Exchange Management (Overseas Investment) Directions, 2022

Government of India has squash Notification No. FEMA 120/2004-RB dated July 07, 2004 (Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004) and Notification No. FEMA 7 (R)/2015-RB dated January 21, 2016 (Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015).

Further, Central Government has notified Foreign Exchange Management (Overseas Investment) Rules, 2022 vide Notification No. G.S.R. 646(E) dated August 22, 2022. The RBI has notified Foreign Exchange Management (Overseas Investment) Regulations, 2022 vide Notification No. FEMA 400/2022-RB dated August 22, 2022.

The significant changes brought about through the new rules and regulations are summarised below:

- (i) enhanced clarity with respect to various definitions;
- (ii) introduction of the concept of "strategic sector";
- (iii) dispensing with the requirement of approval for:
 - a. deferred payment of consideration;
 - b. investment/ disinvestment by persons resident in India under investigation by any investigative agency/regulatory body;
 - c. issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);
 - d. write-off on account of disinvestment;

(iv) introduction of “Late Submission Fee (LSF)” for reporting delays.

4. The detailed operational instructions in this regard are given in Annex1.

5. The revised reporting forms and instructions for filling up the forms under the new regime are being provided on Reserve Bank’s website in Part VIII of the Master Direction no. 18 on ‘Reporting under Foreign Exchange Management Act, 1999’ dated January 01, 2016.

6. AD banks may bring the contents of the circular to the notice of their customers/constituents concerned.

Link to the Notification:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12381&Mode=0>

GO UP

3. **RBI Update : Foreign Exchange Management (Overseas Investment) Regulations, 2022**

Government of India has inserted new regulations which may be called the Foreign Exchange Management (Overseas Investment) Regulations, 2022. These Regulation Includes namely: Financial commitment by Indian entity by modes other than equity capital, by way of debt, guarantee, pledge or charge, Acquisition or transfer by way of deferred payment, Mode of payment, Obligations of person resident in India, Reporting requirements for Overseas Investment, Delay in reporting, Restriction on further financial commitment or transfer.

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

Link to the Notification:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12380&Mode=0>

GO UP

4. **RBI Update: Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents**

It has been observed that the agents employed by REs have been deviating from the extant instructions governing the outsourcing of financial services. In view of concerns arising from the activities of these agents, it is advised that the REs shall strictly ensure that they or their agents do not resort to intimidation or harassment

of any kind, either verbal or physical, against any person in their debt collection efforts, including acts intended to humiliate publicly or intrude upon the privacy of the debtors' family members, referees and friends, sending inappropriate messages either on mobile or through social media, making threatening and/ or anonymous calls, persistently calling the borrower and/ or calling the borrower before 8:00 a.m. and after 7:00 p.m. for recovery of overdue loans, making false and misleading representations, etc

Applicability

This circular shall apply to the following REs:

- a. All Commercial Banks (including Local Area Banks, Regional Rural Banks, and Small Finance Banks) excluding Payments Banks;
- b. All All-India Financial Institutions (viz. Exim Bank, NABARD, NHB, SIDBI, and NaBFID);
- c. All Non-Banking Financial Companies including Housing Finance Companies;
- d. All Primary (Urban) Co-operative Banks, State Co-operative Banks, and District Central Co-operative Banks; and
- e. All Asset Reconstruction Companies.

GO UP

5. RBI Updates : Bilateral Netting of Qualified Financial Contracts - Amendments to Prudential Guidelines

It is clarified that:

- a. the exemption for foreign exchange (except gold) contracts which have an original maturity of 14 calendar days or less shall be applicable to entities calculating the counterparty credit risk under Original Exposure Method without taking the benefit of bilateral netting. Accordingly, the exemption would be applicable only to Regional Rural Banks, Local Area Banks and Co-operative Banks, where the bank has not adopted the bilateral netting framework. For other entities, the exemption shall stand withdrawn.
- b. 'sold options', provided the entire premium / fee or any other form of income is received / realised, can be excluded only when such 'sold options' are outside the netting and margin agreements.
- c. For Credit Default Swaps where the bank is the protection seller and that are outside netting and margin agreements, the exposure may be capped to the amount of premium unpaid. Banks have the option to remove such credit derivatives from their legal netting sets in order to apply the cap.

GO UP

6. **RBI Updates : Rupee Interest Rate Derivatives (Reserve Bank) Directions - Review**

Please refer to Paragraph 4 of the Statement on Developmental and Regulatory Policies, issued as a part of the Bi-monthly Monetary Policy Statement for 2022-23 dated August 05, 2022 regarding permitting stand-alone primary dealers (SPDs) in India to deal in Foreign Currency Settled Overnight Indexed Swaps (FCS-OIS). Attention is also invited to the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019 dated June 26, 2019, as amended from time to time (hereinafter, Directions).

Banks in India having Authorised Dealer Category-I (AD Cat-I) license under FEMA, 1999 have been permitted under the above Directions to offer FCS-OIS to persons not resident in India as well as to other AD Cat-I banks vide circular dated February 10, 2022. On a review, it has been decided that SPDs, authorized under section 10(1) of FEMA, 1999 shall also be eligible to offer FCS-OIS to persons not resident in India as well as to other AD Cat-I banks and eligible SPDs.

GO UP

7. **RBI Updates : Authorised Dealer Category-I License eligibility for Small Finance Banks**

It has been decided that all the scheduled SFBs, after completion of at least two years of operations as Authorised Dealer Category-II, will be eligible for Authorised Dealer Category-I license, subject to compliance with the eligibility norms.

The eligible SFBs may approach Foreign Exchange Department, Central Office, Reserve Bank of India with their applications along with the supporting documents with regard to their eligibility and requisite documents as specified.

GO UP

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

The Bank Rate is revised upwards by 50 basis points from 5.15 per cent to 5.65 per cent with immediate effect.

GO UP

9. **RBI Updates : Reserve Bank - Integrated Ombudsman Scheme, 2021 (RBIOS, 2021)**

The powers conferred by sub section (1) of Section 11 of the Credit Information Companies (Regulation) Act, 2005, and in partial modification of its notification C dated November 12, 2021, the Reserve Bank of India, being satisfied that it is in public interest to do so, and to provide an avenue for cost free alternate grievance

redress to customers of regulated entities covered under the RBIOS 2021 (the Scheme) for grievances against Credit Information Companies, hereby directs that the 'Credit Information Company' as defined in the Credit Information Companies (Regulation) Act, 2005, shall also be treated as a 'Regulated Entity' for the purpose of the Scheme.

As a result, the Scheme shall also be applicable to Credit Information Companies to the extent not specifically excluded under the Scheme.

The amendment in the Scheme shall come into force w.e.f. September 1, 2022

GO UP

10. RBI Updates : Standing Liquidity Facility for Primary Dealers

It has been decided by the Monetary Policy Committee (MPC) to increase the policy repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 4.90 per cent to 5.40 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 5.40 per cent with immediate effect.

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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 50 basis points from 4.90 per cent to **5.40 per cent** with immediate effect.

The standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 5.15 per cent and 5.65 per cent respectively, with immediate effect.

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12. RBI Updates: Gold Monetization Scheme (GMS), 2015

The powers conferred on the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949, the RBI makes the amendments in the Reserve Bank of India (Gold Monetization Scheme, 2015) Master Direction dated October 22, 2015, with immediate effect.

Central Government has decided that with effect from November 5, 2016, designated banks will be paid handling charges (including gold purity testing, refining, transportation, storage and any other relevant costs) for a new MLTGD at a flat rate of 1.5% and commission at the rate of 1% of the rupee equivalent of the amount of gold mobilized under the scheme until further notice.

In case of renewal of deposits, as banks will not incur any expenses on purity testing, refining, transportation, storage and insurance etc., the banks will only be given a fixed commission of 1% of the rupee equivalent of the amount of gold on the date of renewal towards their administrative and account maintenance cost.”

The general guideline for renewal/ redemption of MLTGD is also given.

Link to the Notification:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12368&Mode=0>

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13. RBI Updates: Master Circular on Credit Facilities to Minority Communities

The Reserve Bank of India periodically issues guidelines/instructions/directives to banks with regard to providing credit facilities to Minority Communities. RBI has Advised Banks to ensure smooth flow of bank credit to 121 identified minority concentration districts having at least 25% minority populations.

Each bank should set up a special cell having a Nodal Officer holding the rank of Deputy General Manager/ Assistant General Manager or any other similar rank, in order to ensure smooth flow of credit to minority communities.

Lead Banks of the Minority Concentration Districts will have to exercise the proactive role expected of them to ensure that the minority communities, particularly those who are poor and illiterate have access to bank credit for taking up productive activities.

Link to the Notification:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12367&Mode=0>

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14. RBI Updates: External Commercial Borrowings (ECB) Policy - Liberalisation Measures

It has been decided, in consultation with the Central Government, to:

- i) increase the automatic route limit from USD 750 million or equivalent to USD 1.5 billion or equivalent.
- ii) increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from

Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling, as hitherto.

The above relaxations would be available for ECBs to be raised till December 31, 2022.

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15. RBI Updates: Master Circular - Credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs)

The Reserve Bank of India has, from time to time, issued a number of guidelines/instructions to banks on credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs).

Role of Banks

Bank staff may help the borrowers in filling up the forms and completing other formalities so that they are able to get credit facility within a stipulated period from the date of receipt of applications.

Role of SC/ST Development Corporations

The Government of India has advised all State Governments that the Scheduled Caste/Scheduled Tribes Development Corporations can consider bankable schemes/proposals for bank finance.

Reservations for SC/ST beneficiaries under major Centrally Sponsored Schemes.

Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM)

Deendayal Antyodaya Yojana - National Urban Livelihoods Mission (DAY-NULM)

Differential Rate of Interest (DRI) Scheme

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1. Foreign Exchange Management (Overseas Investment) Regulations, 2022

Foreign Exchange Management (Overseas Investment) Regulations, 2022 ('Regulations') was notified on 22nd August 2022. Gist of the regulations is that the new norms aim to simplify and liberalise the existing framework for overseas investment by a person resident in India to cover wider economic activity and significantly reduce the need for seeking specific approvals thereby significantly increasing the ease of making investment outside India. The Foreign Exchange Management (Overseas Investment) Regulations 2022 subsumes extant regulations pertaining to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015. The Rules are administered by the Reserve Bank.

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IV. KNOWLEDGE SHARING

FAQs V3 COMPANY FORMS (Director KYC, Charge & Deposit Forms)

1. Where should I file Company forms effective from 31st August, 2022?

Private Placement is governed under Section 42 of Companies Act, 2013 read with The Companies (Prospectus and Allotment of Shares) Rules, 2014. Private Placement means offer or invitation to subscribe shares to such number of persons as identified by the Board of Directors of the Company through a private placement offer letter.

Set 1 forms covering 9 forms are being migrated to V3 while remaining Company forms are still in the V2 portal. This phased migration is done to enable smooth transition of the portal. Both Version 2 and Version 3 are now working seamlessly.

Effective from 31st August 2022, Director KYC, Charge & Deposit forms (For complete list of Set 1 forms please refer question no. 02 below) for Company are required to be filed in Version 3 post log in on the MCA21 V3 Portal and other remaining company forms will be continued to be filed in the same manner as earlier in Version 2. You can download the other company forms from <<Insert link>> and proceed with the filing of the same as per previous process.

2. What are the form IDs included in Set 1 forms ?

Forms covered in Set 1 forms are:

- a. CHG-1
- b. CHG-4
- c. CHG-6
- d. CHG-8
- e. CHG-9
- f. DIR-3 KYC Eform
- g. DIR-3 KYC web
- h. DPT-3
- i. DPT-4

3. When will Set 1 Company forms be rolled out in V3 portal ?

Set 1 forms will be rolled out on 31st August 2022 on MCA21 V3 Portal and will be available post log-in.

4. What are the “main” differences between V2 and V3?

In the V2, forms are required to be filled and uploaded in the portal while in V3 the forms are to be filled online. This enables user convenience including the ability to save a half-filled form and file it later.

Further in V2, there was only a My Workspace which had a list of notices from MCA and circulars issued by them. In V3, there is a personalised “My Application” feature which allows one to view all the forms filed by them till date along with the status of the forms such as pending for DSC upload and Payment, Under Processing, Pay fees, Resubmission etc.

When a user logs in to V3, the login is through the email id whereas in V2 it was possible with the user id.

When a business user logs in to the MCA system, an OTP will be sent to your mobile and email address to ensure the authenticity of the user.

5. Who is a Business User in V3? what is the process of new user registration?

Please refer below mentioned link for FAQs on user registration

[Microsoft Word – V3 Related FAQ's Dated 26_06_2022 \(mca.gov.in\)](#)

6. What are the high-level changes done in Set 1 forms in V3 as compared to V2?

- All Set 1 forms excluding DIR-3 KYC web are required to be filed through Business users accounts only. Filing of the SET 1 forms through registered user account has been discontinued.
- All Forms have been made Web-based.
- Few attachments have been removed and the required information is either captured in machine readable format within the form itself or in the form of declaration.
- Signing by IRP/RP/liquidator of Charge Forms for companies under liquidation/Under CIRP.
- Automatic notification to RoC of CHG-8 form filed to RD and removal of hardship of filing the same manually / through GNL-2 form.
- Functionality for online payment of cost (if imposed by RD in order made pursuant to CHG-8).
- System based email and automated reply in case of CHG-1/CHG-9/CHG-4 filing is done by the charge holder (i.e., form not signed by the company or its representative).

- Addition of few new charged assets under the head “Type of Charge” in CHG-1 and CHG-9 forms.
 - DPT-3 form filed with purpose ‘Onetime Return’ will be processed in STP mode.
 - DPT-4 form will be processed in STP form.
 - Other miscellaneous enhancements like pre-filling of data, repositioning of fields, declaration changes etc.
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THANKYOU
