

OCTOBER 2022 | ISSUE

VEDANAM

Insolvency & Bankruptcy code
and RBI Update

Why Vedanam?

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

**KNOWLEDGE IS
LIKE PAINT.**

**IT DOES NO GOOD
UNLESS IT'S
APPLIED**

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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. RESERVE BANK OF INDIA (“RBI”) UPDATES:

A. RBI CIRCULARS AND NOTIFICATIONS:

1. RBI Updates: Appointment of Internal Ombudsman by the Credit Information Companies dated 6th October, 2022

Government of India referring to paragraph 2 of the Circular dated 5th August, 2022, on ‘Statement on Developmental and Regulatory Policies’ wherein the decision to bring Credit Information Companies (CICs) under the Internal Ombudsman (IO) Framework was announced with a view to strengthen and improve the efficiency of the internal grievance redressal mechanisms of CICs.

Further, in exercise of the powers conferred by sub section (1) of Section 11 of the Credit Information Companies (Regulation) Act, 2005 (the Act), the Reserve Bank of India, being satisfied that it is in public interest to do so, directs all Credit Information Companies holding a Certificate of Registration under sub-section (2) of Section 5 of the Act, to comply with the Reserve Bank of India (Credit Information Companies- Internal Ombudsman) Directions, 2022 annexed with the Circular.

The above Directions issued with a view to strengthen the internal grievance redress mechanism within the Credit Information Company (CIC) by enabling a review of customer complaints before their rejection, by an independent apex level authority within the CIC.

This Circular is applicable to all Credit Information Companies and shall come into effect on 1st April, 2023.

[Link to the Circular:](https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12395&Mode=0)

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12395&Mode=0>

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2. RBI Updates- Review of Prudential Norms - Risk Weights for Exposures to Corporates and NBFCs dated 10th October, 2022

Government of India referring master circular on Basel III Capital regulations dated 1st April, 2022 in terms of which banks are permitted to derive risk weights for their unrated exposures based on the ratings available for a specific rated debt subject to the conditions specified that the bank’s facility ranks pari passu or senior to the specific rated debt in all respects and the maturity of the unassessed claim is not later than the maturity of the rated claim.

Further, Press Releases (PRs) issued by External Credit Assessment Institutions (ECAIs) on rating actions are often lack of the lenders details. This may result in banks applying the derived risk weights for unrated exposures, without satisfying themselves regarding adherence to prescribed condition and lead to potentially lower provision of capital as well as under-pricing of risks. With respect to above information, Reserve Bank of India had advised ECAIs vide letter dated June 4, 2021 to disclose the name of the banks and the corresponding credit facilities rated by them in the PRs issued on rating actions by August 31, 2021, after obtaining requisite consent from the borrowers.

Further, on a review it has been observed that the above disclosures are not available in a large number of PRs issued by ECAIs owing to the absence of requisite consent by the borrowers to the ECAIs. Therefore, ECAI shall not be eligible for being reckoned for capital computation by banks without bank loan rating of the above disclosure. Banks shall treat such exposures as unrated and assign applicable risk weights in terms of paragraph 5.8.1 of the Master Circular *ibid* read with amendments carried out from time to time.

In the event of ECAI not making the above disclosure, none of the banks shall reckon the said rating, and therefore shall apply risk weights of 100 percent or 150 percent as applicable in terms of extant instructions.

This Circular is applicable to all Schedule Commercial Banks (including Small Finance Banks) (Excluding Local Area Banks, Regional Rural Banks and Payments Banks) and shall come into effect from 31st March, 2023.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12396&Mode=0>

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3. RBI Update- Diversification of activities by SPDs - Review of permissible non-core activities dated 11th October, 2022

Reserve Bank of India, vide its Circular dated 11th October, 2022, made a reference to circular DNBR (PD) CC.No.094/03.10.001/2018-19 dated July 27, 2018 in terms of which SPDs, as part of their non-core activities, are permitted to offer foreign exchange products, as allowed from time to time, to their Foreign Portfolio Investor (FPI) clients.

As proclaimed in the Statement on Developmental and Regulatory Policies Para 3 dated 5th August, 2022, it has been decided to allow (Standalone Primary Dealers) SPDs to offer all foreign exchange market-making facilities to users, as currently permitted to Category-I

Authorized Dealers, subject to adherence to the prudential regulations and other guidelines to be issued separately in this regard.

Further, all financial transactions involving the Rupee undertaken globally by related entities of the SPD shall be reported to CCIL's Trade Repository before 12:00 noon of the business day following the date of transaction will be applicable with effect from 1st January, 2023.

Further, SPDs shall comply with other regulations contained in the aforementioned Circular and prudential regulations issued by Reserve Bank from time to time. All the instructions contained in the Master Direction - Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021 (FMRD.FMD.07/02.03.247/2021-22) dated September 16, 2021 shall also apply to SPDs and the Master Direction - Standalone Primary Dealers (Reserve Bank) Directions, 2016, is being modified accordingly.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12397&Mode=0>

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4. RBI Update- Diversification of activities by SPDs - Review of permissible non-core activities - Prudential regulations and other instructions dated 11th October, 2022

Reserve Bank of India referring to the circular DOR.FIN.REC.No.72/03.10.117/2022-23 dated October 11, 2022 allows SPDs to undertake foreign exchange activities as part of their non-core activities. In this connection, SPDs shall adhere to the prudential regulations and other instructions contained in this circular and other associated guidelines applicable to SPDs.

SPDs shall continue permissible foreign exchange activities as part of their non-core activity and may approach the Reserve Bank of India, Foreign Exchange Department, Central Office, Mumbai for necessary authorization. Further, in case of failure of SPDs to meet the obligations of Primary Dealership (PD) business in the Government securities market or any other violations on regulations on conducting the PD business, the Reserve Bank reserves the right to impose restrictions or withdraw permission to undertake the foreign exchange business.

The SPDs shall adhere to the following prudential regulations:

- a) As prescribed in the existing capital adequacy guidelines for SPDs, the capital charge for market risk in foreign exchange exposures shall be higher of the charges worked out by the standardised approach and the internal risk management framework-based Value at Risk (VaR) model. Further, under the standardised approach, SPDs shall maintain a market risk capital charge of 15% for net open positions (limits or actual, whichever is higher) arising out of forex business with a risk weight of 100%. The net open position for foreign exchange exposures shall be calculated as per the methodology prescribed in para 8.5 of Master Circular - Basel III Capital Regulations dated April 01, 2022 (as amended from time to time) to the extent applicable to SPDs. Capital charge for market risk shall be over & above the capital charge for credit risk of 15% as per directions prescribed in Master Directions - Standalone Primary Dealers (Reserve Bank) Directions, 2016 dated August 23, 2016 (as amended from time to time).
- b) In addition to the foreign exchange exposure limits prescribed under Master Direction - Risk Management & Inter-Bank Dealings dated July 05, 2016 (as amended from time to time), the capital charge for market risk (calculated as per provisions of Master Direction - Standalone Primary Dealers (Reserve Bank) Directions, 2016) for all the permissible non-core activities, including foreign exchange activities, shall not be more than 20% of the Net Owned Fund of the SPD as per last audited balance sheet.

SPDs shall continue to comply with the provisions of FEMA and all rules, regulations and directions issued thereunder; and also, the following directions to the extent applicable:

- a) Master Direction - Risk Management and Inter-Bank Dealings dated July 05, 2016 (as amended from time to time).
- b) Master Direction - Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021 dated September 16, 2021 (as amended from time to time).
- c) Guidelines for Internal Control over Foreign Exchange Business - FE.CO.FMD.No.18380/02.03.137/2010-11 dated February 03, 2011 (as amended from time to time).

Further, on reviewing the terms on which SPDs are permitted to undertake investment/ trading in equity and equity derivatives market as a part of their non-core activity as per sub-clause (i)(a) of para 12(5) of Master Direction - Standalone Primary Dealers (Reserve Bank) Directions, 2016, it has been decided to permit SPDs to take up trading and self-clearing membership with SEBI approved stock exchanges/

clearing corporations for undertaking proprietary transactions in equity and equity derivatives market as permitted in sub-clause (i)(a) of para 12(5) of the aforementioned Master Direction for SPDs. While doing so, SPDs shall comply with all the regulatory norms laid down by SEBI and all the eligibility criteria/ rules of stock exchanges and clearing corporations.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12398&Mode=0>

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5. RBI Update - Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 - Disclosure of Divergence in Asset Classification and Provisioning dated 11th October, 2022

Reserve Bank of India, vide its Circular dated 11th October, 2022, requires Commercial banks (excluding Regional Rural Banks (RRBs) to disclose details of divergence in asset classification and provisioning where such divergence assessed by the Reserve Bank of India (RBI) exceeds certain specified thresholds , in terms of paragraph C.4(e) of Annexure III to the Reserve Bank of India (Financial Statements-Presentation and Disclosures) Directions, 2021. Further it is decided to introduce similar disclosure requirements for Primary (Urban) Co-operative Banks (UCBs) and revise the specified thresholds for commercial banks to strengthen compliance with income recognition, asset classification and provisioning norms.

Banks shall make suitable disclosures in the manner specified in paragraph C.4(e) of Annex III to the afore-mentioned Directions for the financial statements for the year ending March 31, 2023, if either or both of the following conditions are satisfied:

- a) the additional provisioning for non-performing assets (NPAs) assessed by the RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period; and
- b) the additional Gross NPAs identified by the RBI exceed 10 per cent of the reported incremental Gross NPAs for the reference period.

Provided further that in the case of UCBs the threshold for reported incremental Gross NPAs specified in paragraph 2(b) above shall be 15 per cent, which shall be reduced progressively in a phased manner, after review.

The thresholds specified above shall be revised for disclosures in annual financial statements for the year ending March 31, 2024 as under:

Ref.	Threshold linked to:	Commercial Banks (%)	UCBs (%)
2(a)	Reported profit before provisions and contingencies	5	5
2(b)	Reported incremental Gross NPA	5	15*
*may be reduced subject to review			

These instruction are applicable to all commercial banks (excluding Regional Rural Banks) and all Primary (Urban) Co-operative Banks and shall come into effect for disclosures in the notes to the annual financial statements of the year ending March 31, 2023, and onwards.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12401&Mode=0>

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6. RBI Updates: RBI Update- Multiple NBFCs in a Group: Classification in Middle Layer dated 11th October, 2022

Reserve Bank of India, vide its Circular dated 11th October, 2022, made a reference to para 1 of the Annex to the Circular on “Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs” issued on October 22, 2021 delineating the four layered regulatory structure for NBFCs under Scale Based Regulatory Framework. As per para 16 of the Master Direction – Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016, applicable NBFCs that are part of a common Group or are floated by a common set of promoters shall not be viewed on a standalone basis. In line with the existing policy on consolidation of assets of the NBFCs in a Group, the total assets of all the NBFCs in a Group shall be consolidated to determine the threshold for their classification in the Middle Layer.

Further, if the consolidated asset (consolidation as per para 2 above) size of the Group is ₹1000 crore and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the Group shall be classified as an NBFC in the Middle Layer and consequently, regulations as applicable to the Middle Layer shall be applicable to them.

Further, Statutory Auditors are required to certify the asset size (as on March 31) of all the NBFCs in the Group every year and certificate shall

be furnished to the Department of Supervision of the Reserve Bank under whose jurisdiction the NBFCs are registered. Provisions contained in this circular will not be applicable for classifying an NBFC in the Upper Layer.

This Circular is applicable to all Non-Banking Financial Companies and shall be effective from 1st October, 2022.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12400&Mode=0>

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7. **RBI Update: Reserve Bank of India (Unhedged Foreign Currency Exposure) Directions, 2022 dated 11th October, 2022**

Reserve Bank of India has received references from banks seeking clarification on various aspects including inter-alia clarity in the definition of 'entities' for which banks shall assess UFCE, exempted exposures / entities, alternative method for smaller entities, assessment of UFCE of entities incorporated outside India by overseas subsidiaries / branches of Indian banks etc.

Further, a comprehensive review of the extant guidelines has been undertaken and all the existing instructions on the subject including the revisions / clarifications on the issues stated above have been consolidated in the Directions enclosed in the circular and Explanatory Note providing the background for these Directions is also enclosed in the circular.

This Circular is applicable to all commercial banks (excluding Payments Banks and Regional Rural Banks) and shall come into effect from 1st January, 2023.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12402&Mode=0>

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8. **RBI Updates- Review of Regulatory Framework for Asset Reconstruction Companies (ARCs) dated 11th October 2022**

Reserve Bank of India, vide its circular dated 11th October, 2022, considering the critical role of Asset Reconstruction Companies (ARCs) in the management of distressed financial assets of banks and financial

institutions, reviewed their functioning and operating framework. As part of the Statement on Developmental and Regulatory Policies released along with the Monetary Policy Statement on April 7, 2021, the Reserve Bank of India had set up a Committee to undertake a comprehensive review of the working of ARCs and recommend suitable measures for enabling them to function in a more transparent and efficient manner.

Further, on Committee's recommendations and feedback from the stakeholders, the extant regulatory framework for ARCs has been amended as detailed in the Annex of the Circular.

This Circular is applicable to All Asset Reconstruction Companies and shall be effective immediately.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12399&Mode=0>

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9. RBI Update: Claims Received from the National Credit Guarantee Trustee Company Ltd (NCGTC) - Classification for the Purpose of Maintenance of Cash Reserve Ratio (CRR)/Statutory Liquidity Ratio (SLR) dated 13th October, 2022

Reserve Bank of India vide its Circular dated 13th October, 2022 made a reference in Para 9 (Liabilities not to be included for NDTL computation) of Master Direction on CRR/SLR - 2021 dated July 20, 2021, as amended on April 06, 2022. In the above connection, it has been decided that the amounts received by a bank from the National Credit Guarantee Trustee Company Ltd towards claims in respect of guarantees invoked and held by them pending adjustment of the same towards the relative advances, need not be treated as outside liabilities for the purpose of computation of NDTL for CRR and SLR.

Further, para 9 of the Master Direction on CRR/SLR - 2021 will henceforth include "Amount received by the eligible banks from National Credit Guarantee Trustee Company Limited (NCGTC) by invoking the guarantee towards claims and pending adjustments thereof".

This Circular is applicable to all Scheduled Commercial Banks (including Regional Rural Banks), Local Area Banks, Small Finance Banks, Payments Banks, Primary (Urban) Co-operative Banks (UCBs), State and Central Co-operative Banks (StCBs/CCBs).

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12403&Mode=0>

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10. RBI Updates: Exim Bank's Short-Term Line of Credit (STLoC) of EUR 100 million to the Banco Exterior de Cuba for purchase of rice from India dated 20th October, 2022

Export-Import Bank of India (Exim Bank) has entered into an agreement dated June 23, 2022 with the Banco Exterior de Cuba- an agency nominated by the Government of Republic of Cuba for making available to the latter, Short Term Line of Credit (STLoC) of EUR 100 million (Euro One Hundred Million Only) for the purpose of financing procurement of rice from India to the Republic of Cuba. Reserve Bank of India allowed export of eligible goods including plant, machinery and equipment, and services including consultancy services for the purpose of procurement of rice to be exported from India, as defined under the agreement subject to their eligibility under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India, and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

Further, the Credit Agreement under the STLoC has become operational from September 09, 2022. Under the STLoC, the terminal utilization period is 8 months from the date of contract inclusion under the STLoC. As per the instructions issues by Reserve Bank of India the shipments under the STLoC shall be declared in Export Declaration Form/Shipping Bill.

Further, no agency commission is payable for export under the above STLoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission and may bring the contents of this circular to the notice of their exporter constituents and

advise them to obtain complete details of the STLoC from the Exim Bank's office.

This Circular is applicable to all Category - I Authorised Dealer Banks and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12405&Mode=0>

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II. INSOLVENCY LAW:

1. **Mr. B Parmeshwara Udpa, Resolution Professional of M/s. Easun Reyrolle Limited v/s. Assistant PF Commissioner and ors**

There shall be complete embargo to continue any proceeding against the 'Corporate Debtor' by any 'Authority' till the 'Corporate Insolvency Resolution Process' is completed.

Case Title - Mr. B Parmeshwara Udpa, Resolution Professional of M/s. Easun Reyrolle Limited v/s. Assistant PF Commissioner and ors.

Date of Order - 23rd Sept 2022

Fact of the Decision

The Adjudicating Authority (AA) vide an Order dated 05.05.2020 had initiated the Corporate Insolvency Resolution Process ("CIRP") against M/s. Easun Reyrolle Limited (Corporate Debtor/CD). CoC appointed appellant as IRP and RP. During the examination of accounts of CD, the IRP came across the 'Order of Attachment' issued by Employees' Provident Fund Organisation (EPFO). The RP filed an application before the Adjudicating Authority, seeking removal of Attachment Orders. AA directed RP to make adequate provisions in relation to the amount stated in the 'Orders of Attachment, as dues towards PF. The appellant alleged that the impugned order is contrary to section 14 of IBC. Hence, filed the present appeal before the Appellate Tribunal.

Decision

Hon'ble NCLAT allowed the appeal and set aside the application. It observed that,

"As per Section 14(1)(a), it is clear that continuation of pending suits or proceedings against the 'Corporate Debtor' including Execution of any Judgment, decree or order in any 'Court of Law', 'Tribunal', 'Arbitration Panel' or other 'Authority' will temporarily cease to operate during 'Moratorium'. The purpose of the Section 14 is to ensure that no depletion of 'Assets' of the 'Corporate Debtor' takes place during the 'Corporate Insolvency Resolution Process' and the 'Corporate Debtor' is allowed to continue as a going concern in order to maximise the value for all the 'Stakeholders'. If we read Section 14(1)(a), it can be inferred that there shall be complete embargo to continue any proceeding against the 'Corporate Debtor' by any 'Authority' till the 'Corporate Insolvency Resolution Process' is completed and 'Moratorium' is lifted by the 'Adjudicating Authority' or it result into 'Liquidation' on failure of the 'Corporate Insolvency Resolution Process'. As such, the order of 'Moratorium' shall give relief to the 'Corporate Debtor' from any such continuation during calm period.

`Attachment of Bank Account' of the `Corporate Debtor' by `EPFO' cannot be continued when `Moratorium' is declared under I & B Code, 2016 and proceedings are required to be kept in abeyance till lifting of moratorium. Liberty can, however, be given to the respondent to continue/ initiate proceedings against the `Corporate Debtor' after disposal of the proceedings and lifting of the `Moratorium' and completion of the `Corporate Insolvency Resolution Process'".

GO UP

2. **Jones Lang Lasalle Building Operations Private VS Celebration City Projects Private Limited**

The decree of a civil court will not alter the basic nature of a transaction. The transaction prima facie has to be considered for the purpose of adjudicating a claim.

Case Title - Jones Lang Lasalle Building Operations Private VS Celebration City Projects Private Limited

Date of Order - 26th Sept 2022

Fact of the Case

The Applicant is a real estate allottee of the Corporate Debtor. The Resolution Professional had rejected the Applicant's claim upon the premise that the latter had ceased to be a real estate allottee on account of Arbitral Award dated 25.10.2018 passed in her favour. In the Award the Corporate Debtor was directed to deliver the possession of the Unit to the Applicant and to pay penalty for the delayed period and interest. There was a clause in the Award that the Applicant would be entitled to enforce the allotment of Unit within 60 days or in default it could secure the same by way of a money decree. Therefore, the Applicant made a claim before the Resolution Professional stating that it is a real estate allottee and its claim should be treated in that class. The Resolution professional rejected the claim and directed the Applicant to file the same as a financial creditor as award was in the form of a decree.

Decision

Hon'ble NCLT allowed the application and held that,

“the Hon’ble NCLAT has held that the decree of a civil court will not alter the basic nature of a transaction. The transaction prima facie has to be considered for the purpose of adjudicating the claim. The decree of Court is a measure of debt and that would be the manner in which it should be heard. In view of the above position of law, we are inclined to hold that the present petitioner should be treated as the real estate allottee/creditor in class and dealt with accordingly.”

GO UP

3. **M/s Shri Sadguru Traders v. M/s Gajalee Coastal Foods Pvt. Ltd.**

The Operational Creditor cannot change the 'date of default' by confining the invoices to a later period.

Case Title - M/s Shri Sadguru Traders v. M/s Gajalee Coastal Foods Pvt. Ltd.

Date of Order - 4th Oct 2022

Fact of the Case

The Corporate Debtor (CD) had placed purchase orders with the Operational Creditor (OC) for supply of food grains and grocery items. OC had supplied the goods, however, only part payment of Rs. 1,70,000/- was received till 24.12.2018. On 15.05.2019 the OC issued demand notice to the CD, demanding balance principle amount of Rs. 49,57,924/-. The CD replied to the said Demand Notice on 28.05.2019. When the payments were still not received, the OC filed a petition under Section 9 of IBC, seeking to initiate CIRP against the CD. Operational Creditor computed the period of limitation from 24.12.2018 for invoices from 2015 till 24.02.2018. The CD raised the objection that the default included certain invoices that were raised in 2015-2016, hence, petition was time barred.

Decision

Hon’ble NCLT, Mumbai Bench dismissed the petition. It placed reliance on the case of Next Education India Private Limited vs. K12 Techno Services Private Limited and held that,

“Whether the ‘Operational Creditor’ can change the ‘date of default’ by confining the invoices to a later period, when the Demand Notice under section 8 includes all the invoices from the date of default and the ‘debt amount’ is crystallized based on the invoices.

As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the ‘Operational Creditor’. We are of the view that the Tribunal does not have jurisdiction in these Insolvency Proceedings to cut-short

the invoices which would cause recurring dates of cause of action as it is not a suit for recovery.

The Operational Creditor cannot change the 'date of default' by confining the invoices to a later period. Specially when the Demand Notice under Section 8 of IBC includes all the invoices from the date of default and the 'debt amount' is crystalised based on the invoices."

GO UP

4. **Axis Bank Limited v. Mr. Nageswara Rao**

An indemnity of the obligations under an Agreement will not constitute a 'financial debt' under Section 5(8) of the Code.

Case Title - Axis Bank Limited v. Mr. Nageswara Rao.

Date of Order - 7th Oct 2022

Fact of the Decision

Through this Application, it was asserted that the 'Obligor undertaking' is and /or asking to a 'Guarantee' and therefore it attracts the definition of 'financial debt' under Section 5(8) of the Code. Alternatively, it was urged that the 'Obligor Undertaking' and the Commercial papers must be construed together to constitute 'financial debt' under Section 5(8) of the Code. By this Application, the Applicants sought the issuance of Orders by this Tribunal for admitting it as a 'financial creditor' into the Corporate Debtor's CoC on the strength of the 'Obligor Undertaking' bearing a 'financial debt' under section 5(8) of the Code.

Decision

Hon'ble NCLT, Mumbai Bench rejected the application and held that,

"The 'Obligor Undertaking' lacks a covenant/promise to perform in case of RHFL (borrower's) in servicing the Commercial paper. It is thus not a guarantee, and it does not attract the definition of 'financial debt' under Section 5(8) of the Code.

Ongoing through the facts and submissions of the Applicant and the Corporate Debtor it is concluded that the Applicant has not established that the money was disbursed to the Corporate Debtor and hence the question of default on the part of the Corporate Debtor does not arise.

Plainly, is not an indemnity that would constitute 'financial debt' under Section 5(8) of the Code. As stated above, the obligations under the Undertaking do not attract the definition of 'financial debt'. A fortiori, an indemnity of the obligations under the Agreement will equally not constitute a 'financial debt' under Section 5(8) of the Code."

GO UP

5. **Subrata Maity Vs. Mr. Amit C. Poddar & Ors**

Adjudicating Authority can invoke its inherent powers to replace the Liquidator.

Case Title: Subrata Maity Vs. Mr. Amit C. Poddar & Ors.

Date of Order : 13th Oct 2022

Fact of the Case

Mr. Subrata Maity (Appellant) was the Liquidator of the Seam Industries Ltd. ("Corporate Debtor"). The Adjudicating Authority vide its order dated 22.09.2022 had replaced the Appellant with another Liquidator namely Mr. Amit C. Poddar. The Adjudicating Authority had noted that the Appellant was arrested by CBI, due to which 116 days were lost due to the Appellant's incapability to act as a Liquidator. The Appellant contended that he was not issued any notice and was not even served the copy of the Application filed by the Stakeholders Consultation Committee seeking appointment of Mr. Amit C. Poddar. Further, when Appellant was arrested he was granted bail immediately.

Decision

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

Be that as it may, the fact that the criminal prosecution is going on against the Appellant and he was arrested by the CBI, there is no error committed by the Adjudicating Authority in passing the impugned order by replacing the Appellant with another Liquidator. The Liquidator does not have any personal right to continue in the Liquidation Process and the reasons which have been noted in the order are sufficient to exercise even the inherent power by NCLT to replace the Liquidator. It is not a fit case to interfere in exercise of our Appellate Jurisdiction.

Learned Counsel for the Appellant also contended that there is no provision in law for replacement of Liquidator by the Adjudicating Authority. The present is a case where inherent power can be exercised by the Adjudicating Authority to do substantial justice"

GO UP

III. OTHER UPDATE:

1. **MSME Notification - 18th October, 2022**

Union Government allows MSMEs to avail non-tax benefits for three years. The Central Government has recently notified further amendments under sec 7 and sec 8 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006. Sec.7 deals with Classification on the basis of Investment in plant & machinery for manufacturing and equipment for service sector. Sec.8 deals with Filing of Memorandum with authorities. The amendment provides that MSME can avail all the benefits for the period of three years after reclassification, which has been increased from one year.

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2. **CBDT extends ITR Filing due date for AY 2022-23 CBDT Income Tax Circular 20/2022 - 26th October, 2022**

Extends Deadline for Filing TDS on Non-Salary Transactions. The Central Board of Direct Taxes has announced an extension on the due date for quarterly filing of TDS statement for non-salary payments by one month. The revised deadline for filing of Form 26Q for the second quarter of financial year 2022-23 stands changed from Oct. 31, 2022 to Nov. 30, 2022, it said in a circular. Form 26Q is a statement for tax deducted at source on payments received by the taxpayer, other than salaries like dividend securities, interest on securities, rent, insurance commission, professional fees, etc. The form is to be submitted on a quarterly basis with the due date for the July-September quarter usually falling on October 31. In its circular, the CBDT said that this was in consideration of difficulties arising in timely filing of TDS statement in Form 26Q, on account of revision of its format and consequent updation required for its filing.

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3. **Central Bank Digital Currency The Reserve Bank of India brought out a Concept Note on Central Bank Digital Currency**

Central Bank Digital Currency. The Reserve Bank of India brought out a Concept Note on Central Bank Digital Currency (CBDC), explaining the objectives, choices, benefits and risks of issuing a CBDC in India, referred to as ₹ (digital Rupee). The e₹ will provide an additional option to the currently available forms of money. It is substantially not different from banknotes, but being digital it is likely to be easier, faster and cheaper. It also has all the transactional benefits of other forms of digital money. The purpose behind the issue of this Concept Note is to create awareness

about CBDCs in general and the planned features of the digital Rupee, in particular. The Note also seeks to explain Reserve Bank's approach towards introduction of the digital Rupee. Reserve Bank's approach is governed by two basic considerations – to create a digital Rupee that is as close as possible to a paper currency and to manage the process of introducing digital Rupee in a seamless manner. Please click here for the Concept Note: [Concept Note on CDBC](#)

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THANKYOU
