

March, 2023 | ISSUE

VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA



WHY VEDANAM?

We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our March, 2023 issue.

TABLE OF CONTENT

1. SEBI UPDATE
2. RBI UPDATE
3. IBC UPDATE
4. KNOWLEDGE SHARING
5. IBC CASE LAWS
6. DECODING CORPORATE LAWS WITH MEHTA & MEHTA



THOUGHT

“

Knowledge With
Action Converts
Adversity In To
Prosperity.

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Legal and Advisory Services

SECURITIES AND EXCHANGE BOARD OF INDIA

SEBI Update- Framework for Adoption of Cloud Services by SEBI Regulated Entities (REs)- 6th March, 2023

SEBI vide its Circular dated 6th March, 2023 unveiled a framework for the adoption of cloud services.

Background:

Cloud computing is becoming increasingly popular for delivering IT services, thanks to its scalability, ease of deployment, and lower maintenance costs. However, it also introduces new cyber security risks and challenges that businesses need to be aware of. To help regulated entities(REs) navigate these risks, SEBI vide circular no. SEBI/HO/ITD/ITD_VAPT/P/CIR/2023/033, dated March 6, 2023 has introduced a cloud framework that sets baseline standards for security and regulatory compliances. This framework is a crucial addition to SEBI's existing guidelines on cloud computing and is designed to help REs implement secure and compliant cloud adoption practices.

Objective:

The main objective of the framework for adoption of cloud services by SEBI regulated entities (REs) is to identify and address the critical risks associated with cloud computing and to establish mandatory control measures that REs must implement before adopting cloud services. By following the guidelines outlined in the framework, REs can establish a robust risk management approach for cloud adoption, which includes assessing risks, implementing appropriate controls, monitoring compliance, and ensuring regulatory compliance.

Transition Period:

The transition Period for Regulated Entities is as follows:

·For the REs which are not utilising any cloud services currently, the framework shall be applicable/ come into force from the date of issuance.

·For REs currently utilising cloud services, SEBI has allowed a grace period of up to 12 months to comply with the framework, during which they must provide milestone-based updates to demonstrate their progress towards full compliance. Additionally, such REs shall provide regular milestone-based updates as follows:



	Timeline	Milestone
1.	Within one (1) month of issuance of framework	REs shall provide details of the cloud services, if any, currently deployed by them.
2.	Within three (3) months of issuance of framework	The REs shall submit a roadmap (including details of major activities, timelines, etc.) for the implementation of the framework.
3.	From three (3) to twelve (12) months of issuance of framework	Quarterly progress report as per the roadmap submitted by the RE.
4.	After twelve (12) months of issuance of framework	Compliance with respect to the framework to be reported regularly

Scope:

As per NIST, cloud computing has four types of deployment models i.e

- Public cloud
- Community cloud
- Private cloud
- Hybrid cloud

Approach:

The cloud framework is a principle-based framework which covers Governance, Risk and Compliance (GRC), selection of Cloud Service Providers (CSPs), data ownership and data localization, due-diligence by REs, security controls, legal and regulatory obligations, Disaster Recover (DR) & Business Continuity Planning (BCP), and vendor lock-in risk.

These principles serve as general guidelines to set the standards for REs to comply with while adopting cloud services. The principles are stated as below:

Principle 1: Governance, Risk and Compliance Sub-Framework

Principle 2: Selection of Cloud Service Providers

Principle 3: Data Ownership and Data Localization

Principle 4: Responsibility of the Regulated Entity

Principle 5: Due Diligence by the Regulated Entity

Principle 6: Security Controls

Principle 7: Contractual and Regulatory Obligations

Principle 8: BCP, Disaster Recovery & Cyber Resilience

Principle 9: Vendor Lock-in and Concentration Risk Management

The given framework will enable REs to improve their overall IT resilience and reduce cybersecurity risks, while ensuring regulatory compliance. By adhering to the guidelines outlined in the framework, REs can minimize the risks associated with cloud adoption and make informed decisions about implementing cloud services. The detailed framework is enclosed at Annexure-1 of the given circular.

This Circular is applicable to following Regulated Entities: Stock Exchanges, Clearing Corporations, Depositories, Stock Brokers through Exchanges, Depository Participants through Depositories, Asset

Management Companies (AMCs)/ Mutual Funds (MFs), Qualified Registrars to an Issue and Share Transfer Agents, KYC Registration Agencies (KRAs) and shall come into force with immediate effect.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/framework-for-adoption-of-cloud-services-by-sebi-regulated-entities-res-_68740.html

SEBI Update- Operational Guidance - Amendment to Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 ("Buy-back Regulations")- 8th March, 2023

SEBI vide its Circular dated 8th March, 2023 referred to Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2023 which were notified on 7th February, 2023. They shall come into force on 30th day of the date of notification i.e. 9th March, 2023.

Further, all buy-back offers where the Board of Directors of the company approve resolution with respect to Buy-back on or after 9th March, 2023 the above mentioned Regulations shall be applicable.

Following restrictions set-out for the companies undertaking buy-back through stock exchange route:

- The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.
- The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.
- The company's purchase order price should be within the range of $\pm 1\%$ from the last traded price.
- Margin Requirement for deposits in Escrow Account the escrow account shall consist of cash and/or other than the cash.

This Circular is applicable to all Listed Entities, Recognized Stock Exchange, Registered Merchant Bankers and shall come into force from 9th March, 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/operational-guidance-amendment-to-sebi-buy-back-of-securities-regulations-2018_68765.html

SEBI Update -Common and simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination

SEBI vide its Circular dated 16th March 2023 issued a Circular for All registered Registrars to an Issue and Share Transfer Agents (RTAs), All Listed Companies through Recognized Stock Exchanges Recognized Stock Exchanges, All Recognized Depositories, Depository Participants through Depositories, stating that:

SEBI made it mandatory for all holder of Physical Securities in listed companies to provide PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their folio numbers.

In case the documents/details are not available, on or after October 01, 2023 the folio status shall be frozen by RTA. Only after completing the required documents procedure the holder can lodge grievance or any service request. Any payment including dividend, interest or redemption payment in respect of such frozen folios, shall be made only through electronic mode from April 01, 2024. Therefore listed companies shall announce that such payment will be done after the completion of documents/details. Further the notice states that Frozen folios shall be liable under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002 by the RTA / listed company Administering Authority if they continue to remain frozen till December 31, 2025. If above documents/details are submitted then RTA shall revert status frozen Folios to normal status.

RTA will only accept self-attested document for processing of service requests

The Security Holder can provide the documents/details to the RTAs through Person Verification' (IPV) or Post or electronic mode with e-sign. Standardized, simplified and common norms for processing investor service requests. Various Forms are available for Investor service For any service request except transmission and request for issuance for duplicate security certificates, indemnity shall not be required

Details mentions in form ISR-1 on that basis RTAs shall update the PAN and KYC details of all the folios of the holder. Details which are not available for the physical folio in RTA database as provided in CML. Form ISR-1 also to be submitted to CML and Further CML shall update. Timelines for registering of / updation of / change in PAN, KYC and nomination is mentioned in the circular.

RTAs shall provide their complete contact details (viz. postal address, phone numbers and e-mail address etc.) on their respective websites. RTAs can raise all objections, if any, in one instance only.

Any queries and complaints can communicate through E-mail or through online portal by using appropriate credentials for login and password along with it. Also the security holder should upload scanned copies of self-attested documents in support of his/her query or complaint. Listed companies, RTAs and Stock Exchanges shall circulate the requirements and to be observed by holders of physical securities of all listed companies on their respective websites. Also Listed companies should communicate with their security holders about folios which are incomplete with regard to details required.

RTAs shall provide a certificate of compliance from a practicing Company Secretary, within 30 days from the date of this circular coming into effect, certifying the changes carried out, systems put in place/new operating procedures implemented etc. to comply with the provisions of this circular.

This circular shall come into force with effect from April 01, 2023

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/common-and-simplified-norms-for-processing-investor-s-service-requests-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination_69105.html

SEBI Update: E-wallet investments in Mutual Funds.

SEBI vide its Circular dated 23rd March 2023 issued a Circular for All Mutual Funds (MFs)/ Asset Management Companies (AMCs)/ Trustee Companies/ Board of Trustees of Mutual Funds/ Association of Mutual Funds in India (AMFI).

The Circular States:

SEBI Official allowed the use of E-wallet for investment in mutual Funds with the Limit of INR 50,000.

E-wallet used for investment in mutual funds should be complaint with KYC norms prescribed by Reserve Bank Of India.

The provision related to E-wallet will be applicable with effect from May 1st 2023.

The circular is issued to protect the interest of investors in securities and to promote the development and regulate the securities market.

This circular shall come into force with effect from March 23rd

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/e-wallet-investments-in-mutual-funds_69254.html

SEBI Update: Nomination for Eligible Trading and Demat Accounts - Extension of timelines for existing account holders.

SEBI vide its Circular dated 27 th March 2023 issued a Circular for All Recognized Stock Exchanges, All Recognized Depositories Stock Brokers (Trading Members) through Recognized Stock Exchanges Depository Participants through Depositories.

The circular states :

Earlier SEBI asked all existing eligible holder and demat account holder to provide a choice of nomination on or before March 31 st 2022, failing which the trading and demat account would be frozen for debits.

However, SEBI in a circular dated February 24 th , 2022, had extended this deadline by one year to March 31 st , 2023.

Now, the deadline for existing eligible holder and demat account holder to nominate a beneficiary for their accounts to September 30 th ,2023 which is extended by another 6 months.

This circular shall come into force with effect from 27 th March , 2023.

Link:https://www.sebi.gov.in/legal/circulars/mar-2023/nomination-for-eligible-trading-and-demat-accounts-extension-of-timelines-for-existing-account-holders_69391.html

SEBI Update: Streamlining the onboarding process of FPIs.

SEBI vide its circular dated 27 th March 2023 issued for All Foreign Portfolio Investors ("FPIs") through their Designated Depository Participants ("DDPs"), All Designated Depository Participants ("DDPs") and Custodians, and The Depositories (NSDL and CDSL).

The circular states:

SEBI has simplified the procedural requirements for onboarding of Foreign Portfolio Investors (FPIs).

SEBI has allowed designated depository participants (DDPs) to grant FPI registrations on the basis of scanned copies of the application forms and supporting documents. FPI applicants are required to send both scanned copies as well as physical documents of applicants forms and supporting documents to the DDPs for obtaining the FPI registration. For granting of registration on the basis of

scanned copies has been allowed but trading can be activated following the verification of the physical documents.

SEBI has allowed DDPs to accept the use of digital signature by FPIs for the execution of CAF and other registration-related documents.

SEBI has allowed authorized bank official to use SWIFT mechanism for certificate of copies of original documents submitted by FPIs.

SEBI has permitted verification of PAN by DDPs through the Common Application Form (CAF) module available on the website of the depositories.

DDPs can verify the PAN only after receiving a hard copy of the PAN from the applicant.

For operational convenience, it is now specified that in case an FPI applicant belongs to an existing FPI investor group, it may submit its unique FPI investor group ID in the CAF, in lieu of providing complete details of all group constituents. In case the applicant wants to club additional FPIs (apart from itself) in such unique investor group ID, the FPI only needs to provide details of such additional FPI, along with the investor group ID,

Presently, an FPI applicant, at the time of registration, is required to provide details of FPIs with whom it share ownership of more than 50 percent or common control . Depositories in turn generate a unique FPI investor group ID for identifying each such FPI investors group.

This circular shall come into force with effect from 27th March, 2023.

Link:https://www.sebi.gov.in/legal/circulars/mar-2023/streamlining-the-onboarding-process-of-fpis_69390.html



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

SEBI Update: Amendment to Securities Lending Scheme, 1997.

SEBI vide its Circular dated 27th March 2023 issued for All Recognized Stock Exchanges, Depositories and Clearing Corporations.

The circular states:

SEBI issued a circular regarding the Amendment to Securities Lending Scheme, 1997.

The following has been Amendment:

Point 7 in Annexure-B (Schedule of Fees) stands modified and be read as follows:

"7. Approved intermediaries are requested to send the fee payable, as stated above by way of direct credit into the bank account through NEFT/RTGS/IMPS or online payment using the SEBI payment gateway or any other mode as may be specified by SEBI from time to time"

Point 8 under Annexure-B stands modified and read as follows:

"8. A receipt shall be sent to the approved intermediaries after the realization of the payment through the any of the modes specified at Point 7".

SEBI circular dated May 07, 1997 shall, accordingly, be modified to the above extent. All other provisions of the said SEBI circulars shall continue to remain applicable.

Stock Exchanges and Clearing Corporations are directed to:

Take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations, bring the provisions of this circular to the notice of their members and also disseminate the same on their websites, confirm to SEBI, that the provisions of this circular have been implemented.

This circular shall come into effect from April 01, 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/amendment-to-securities-lending-scheme-1997_69449.html

SEBI Update: Norms for Scheme of Arrangement by unlisted Stock Exchanges, Clearing Corporations and Depositories.

SEBI vide its Circular dated 28th March 2023 issued for

All recognized Stock Exchanges, All recognized Clearing Corporations, All registered Depositories.

The Circular states:

Unlisted Market Infrastructure Institute (MII) desirous of undertaking a scheme of arrangement will have to file the draft scheme of arrangement along with the regulator for obtaining the observation letter or no objection letter before filing such a scheme with any court or tribunal.

At present there is no specific provision for unlisted MII – Stock exchange, clearing corporations and depositories to file the draft scheme of arrangement with SEBI prior to filing the application before any court or tribunal.

Comments were sought by SEBI from unlisted MIIs, and the matter was deliberated by the Secondary Market Advisory Committee (SMAC). Taking into account the recommendations of SMAC, SEBI has decided to introduce the framework for scheme of arrangement by unlisted MIIs.

The unlisted MIIs will have to provide certain information to SEBI while filing the draft scheme arrangement for obtaining the observation letter or no objection letter.

Entities will have to provide information pertaining to valuation report, audit committee report, shareholding pattern of the unlisted MII pre and post the implementation of the scheme of arrangement, and audited financial for the last three year, Auditor's Certificate, Declaration from the unlisted MII on any past defaults of debt obligations (including listed debt, if any) of the entities forming part of the Scheme, No Objection Certificate from the lending scheduled commercial banks or financial institutions or debenture trustees, Report on Complaints, Detailed Compliance Report.

The market regulator will have to provide its observation letter or no-objection letter on the draft scheme within 30 days from receiving satisfactory reply with respect to clarification.

The validity of the observation letter or no-objection letter of SEBI will be from 6 months from the date of issuance, within which the scheme will be filed Court or Tribunal for approval.

This circular shall come into effect from April 27th , 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/norms-for-scheme-of-arrangement-by-unlisted-stock-exchanges-clearing-corporations-and-depositories_69450.html

SEBI Update: Nomination for Mutual Fund Unit Holders –Extension of timelines.

SEBI vide its Circular dated 28th March 2023 issued for All Mutual Funds, All Asset Management Companies ('AMCs'), All Trustee Companies/Boards of Trustees of Mutual Funds, All Registrar to an Issue and Share Transfer Agents ('RTAs'), Association of Mutual Funds in India ('AMFI').

The circular states:

SEBI has announced an extension of the nomination deadline for mutual funds unit holder from March 31st, 2023 to September 30th, 2023.

Earlier the deadline was March 31st, 2023. Through a circular on March 28th, 2023, SEBI said based on representations received from the market participants, it has been decided that the provision mentioned at para 4 of SEBI circular dated June 15, 2022 with regard to freezing of folios, shall come into force with effect from September 30, 2023 instead of March 31, 2023.

Assets Management Companies (AMCs) and Registrar and Transfer Agents (RTAs) are required to encourage the unit holder to fulfill the requirement for nomination/ opting out of nomination by sending a communication on fortnightly basis by way of emails and SMS to all such unit holder who are not in compliance with the requirement of nomination. The communication should include guidance on how to nominate or opting out of nomination.

All other provisions of circular dated June 15, 2022 and July 29, 2022 shall remain unchanged.

This circular shall come into effect from March 28th, 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/nomination-for-mutual-fund-unit-holders-extension-of-timelines_69465.html

SEBI Update: Review of time limit for disclosure of NAV of Mutual fund schemes investing overseas.

SEBI vide its Circular dated 29th March 2023 issued for to All Mutual Funds (MFs)/ Asset Management Companies (AMCs)/ Trustee Companies/ Board of Trustees of Mutual Funds/ Association of Mutual Funds in India (AMFI).

The circular states:

Mutual funds are mandated to disclose the NAVs of all schemes within a given outer time limit.

However, to address the difficulties being faced in calculation of NAV for schemes investing overseas due to differences in time zones and market hours, SEBI has made partial modification with regards to timeline for declaration of NAV depending on investment objective and assets allocation.

T day refers to date of investment in Mutual fund unit in India.

For all other scheme the time limit would be 11pm + 1day.

SEBI has set an outer time limit of 9am on T+1day for declaration of NAV for schemes having exposure to exchange traded commodity derivatives (ETCDs) and Funds of Funds (FoFs) schemes 10am to T+1 day.

SEBI has prescribed a time limit of 10am on T+1 day for schemes investing at least 80 percent of total assets in permissible overseas investment. At present, the time is 11pm on T day.

Schemes that are unable to disclose NAV as per timeline due to inability in capturing same day valuation of underlying investments, for such schemes can disclose NAVs as per disclosure made in SID along with reasons for such delayed disclosure. Currently the time limit is 11 pm to T day or 10 am on T+1 day.

While complying with the new timelines for declaration of NAV, AMCs as a principle shall ensure that NAV of schemes is disclosed based on the value of underlying securities/ Funds as on the T day.

This Circular shall come into force with effect from 1st July 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/review-of-time-limit-for-disclosure-of-nav-of-mutual-fund-schemes-investing-overseas_69519.html

SEBI Update: Cyber Security and Cyber Resilience framework for Portfolio Managers.

SEBI vide its Circular dated 29th March 2023 issued for All Portfolio Managers, Association of Portfolio Managers in India (APMI).

The circular states:

With rapid technological advancement in the securities market, there is a greater need for maintaining robust cyber security and to have a cyber-resilience framework to protect the integrity of data and guard against breaches of privacy.

SEBI has issued cyber security and cyber resilience framework for Portfolio Managers with an asset under management of Rs 3,000 crore or more. SEBI also clarified that discretionary and non-discretionary portfolio management services as on the last date of the previous calendar month are to be taken together for calculating the asset under management.

SEBI also directed the Association of Portfolio Managers in India to furnish activity wise implementation timelines and its progress on a bi-monthly basis.

This circular shall come into force with effect from October 01, 2023.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/cyber-security-and-cyber-resilience-framework-for-portfolio-managers_69521.html

SEBI Update: Extension of compliance period –Fund raising by large corporates through issuance of debt securities to the extent of 25% of their incremental borrowings in a financial year.

SEBI vide its Circular dated 31st March 2023 issued for All listed entities, All the Recognized Stock Exchanges.

The circular state:

The requirement for large corporates to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities has been extended to a contiguous block of three years from FY 2021-22. This is due to representations from market participants and a review of the matter

The Stock Exchange(s) are directed to bring the provisions of this circular to the notice of Stock Brokers and disseminate it on their websites, and make necessary amendments to the relevant bye-laws, rules and regulations to achieve uniformity in approach and communicate it to SEBI.

Link:https://www.sebi.gov.in/legal/circulars/mar-2023/extension-of-compliance-period-fund-raising-by-large-corporates-through-issuance-of-debt-securities-to-the-extent-of-25-of-their-incremental-borrowings-in-a-financial-year_69574.html

SEBI Update: OPERATIONAL CIRCULAR FOR DEBENTURE TRUSTEES

SEBI vide its Circular dated 31st March 2023 issued to All Registered Debenture Trustees, All Registered Credit Rating Agencies, Issuers who have listed and/or propose to list Debt Securities and Municipal Debt Securities Recognized Stock Exchanges, Recognized Depositories.

The Circular states:

Debenture Trustees are regulated by the DT Regulations, but procedural/disclosure requirements and obligations have been specified by SEBI through circulars. A single operational circular has been prepared to remove inconsistencies and repetitions. This operational circular supersedes the circulars listed at Annex - 1 in detail.

This operational circular uses the terms "Issuer" and "Listed Entity" interchangeably, making it easier to reference.

Debenture Trustees must comply with the conditions of this circular and have the necessary systems and infrastructure in place, and the Board of Directors is responsible for ensuring compliance.

Link: https://www.sebi.gov.in/legal/circulars/mar-2023/operational-circular-for-debenture-trustees_69684.html

RESERVE BANK OF INDIA UPDATES

RBI Updates - Reporting and Accounting of Central Government transactions for March 2023

RBI vide its Notification dated 16th March, 2023 to All Agency Banks

The Notification States:

Circular dated February 24, 2022 is about the procedure to be followed for reporting and accounting of central government transaction (including CBDT, CBIC, Departmentalized Ministries and Non-Civil Ministries) Nodal/Focal Point branches of Our bank For the financial year 2021-2023.

The Government of India has decided that the date of closure of residual transactions for the month of March 2023 to be fixed as April 10, 2023 as result of closing government accounts for the FY 2022-23. Receiving branches including not situated locally should choose to take up courier services etc. for passing on challan/scrolls to the Nodal/Focal Point branches so that all payments and collection made on behalf of Government towards the end of March are accounted for in the same financial year.

As respect to this reporting of March 2023 transactions by Nodal/Focal Point branches in April 2023, the branches will advised to follow the procedure as .To Add up the Nodal/Focal Point branches will be required to prepare separate set of scrolls, i.e

(1) Referring to March 2023 residual transactions and

(2) for April transactions during the first 10 days of April 2023. i.e

Transactions prepared from April 1 to April 10, 2023.

Nodal/Focal Branches should see to it that the accounts for all transactions (revenues/tax collections/payments) are effected at the receiving branches up to March 31, 2023 in the accounts for the current financial year itself and not mixed up with the transactions of April 2023 while reporting transactions relating to March 2023 up to April 10, 2023, i.e April 1st to April 10th 2023 should not be mixed up with the residual transactions relating to March 2023.

This Notification is applicable to all Agency Banks.

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12460&Mode=0>



RBI Update - Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments to 102 entries.

RBI vide its Notification dated 17th March 2023 to Chairpersons/ CEOs of all the Regulated Entities.

Notification States :

To refer section 51 Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021 (MD on KYC).

Further Ministry of External Affairs (MEA) has informed about UNSC press release wherein the Security Council Committee approved amendment to 102 entries.

Registered Entity's are advised to take appropriate action in terms of sections 51, 52 and 53 of the MD on KYC and strictly follow the procedure laid down in the UAPA Order.

Updated lists of individuals and entities linked to ISIL (Da'esh), Al-Qaida and Taliban are available in notification.

Ministry of Home Affairs (MHA) informed, any request for delisting received by any Registered Entity is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration.

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12461&Mode=0>

RBI Update: Annual Closing of Government Accounts – Transactions of Central / State Governments – Special Measures for the Current Financial Year (2022-23)

RBI vide its Notification dated 23rd March 2023 to all Bank Agency

Notification States:

All government transactions done by agency banks for the Financial Year 2022-23 must consider with the same financial year.

Following are the provision to report and account for Government transactions for 31st March 2023:

All bank agency should keep their branches open for over the counter transaction related to government transactions on normal working hours on 31st March 2023.

Transactions through National Electronic Funds Transfer (NEFT) and Real Time Gross Settlement (RTGS) system will remain continue for 24 hours

Special clearing will be conducted for collecting government cheques on 31st March 2023. For this RBI will issue necessary instructions.

Central and State Government transactions should report to RBI, and should upload GST/ TIN2.0/ e-receipts, the reporting window will be kept open till 12PM on 1st April 2023.

Link :
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12462&Mode=0>

RBI Update: Cessation of “Abu Dhabi Commercial Bank PJSC” as a banking company within the meaning of sub section (2) of Section 36 A of Banking Regulation Act, 1949,

RBI vide its Notification dated 27 th March 2023 to All Banks

RBI issued a notification announcing the cessation of Abu Dhabi Commercial Bank as a banking company under the Banking Regulation Act, 1949, which has been published in the Gazette of India (Part III - Section 4) dated March 25 -March 31, 2023. As a result, the Abu Dhabi Commercial Bank would no longer be able to carry on banking business in India.

Link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12464&Mode=0>

Exclusion of “Abu Dhabi Commercial Bank PJSC” from the Second Schedule to the Reserve Bank of India Act, 1934.

Along with the cessation of Abu Dhabi Commercial Bank as banking company, the RBI also excluded the bank from the Second Schedule to the Reserve Bank of India Act, 1934. As a result, the Abu Dhabi Commercial Bank will no longer listed in the Second Schedule, and therefore, will not able to operate in India as a banking company.

Link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12463&Mode=0>

RBI Update: Special Clearing Operations on March 31, 2023.

RBI vide its Notification dated 29 th March, 2023 to The Chairman and Managing Director / Chief Executive Officer all Scheduled Commercial Banks including Regional Rural Banks /Urban Co-operative Banks / State Co-operative Banks / District Central Co-operative Banks / Local Area Banks / Payment Banks /Small Finance Banks / National Payments Corporation of India.

The notification states:

The clearing facility will be conducted across three Cheque Truncation System (CTS) grids in New Delhi, Chennai and Mumbai, the presentation clearing will be done between 5:00-5:30 pm and the return will be done between 7:00-7:30 pm on March.

It is mandatory for all banks to participate in the special clearing operations on March 31, 2023. All the member banks under the respective CTS Grids are required to keep their inward clearing processing infrastructure open during the Special Clearing hours and maintain sufficient balance in their clearing settlement account to meet settlement obligations arising out of the Special Clearing.

Further, normal clearing timing, as applicable on any working Friday, will be followed on 31st March 2023.

Link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12466&Mode=0>

INSOLVENCY AND BANKRUPTCY CODE, 2016 UPDATES

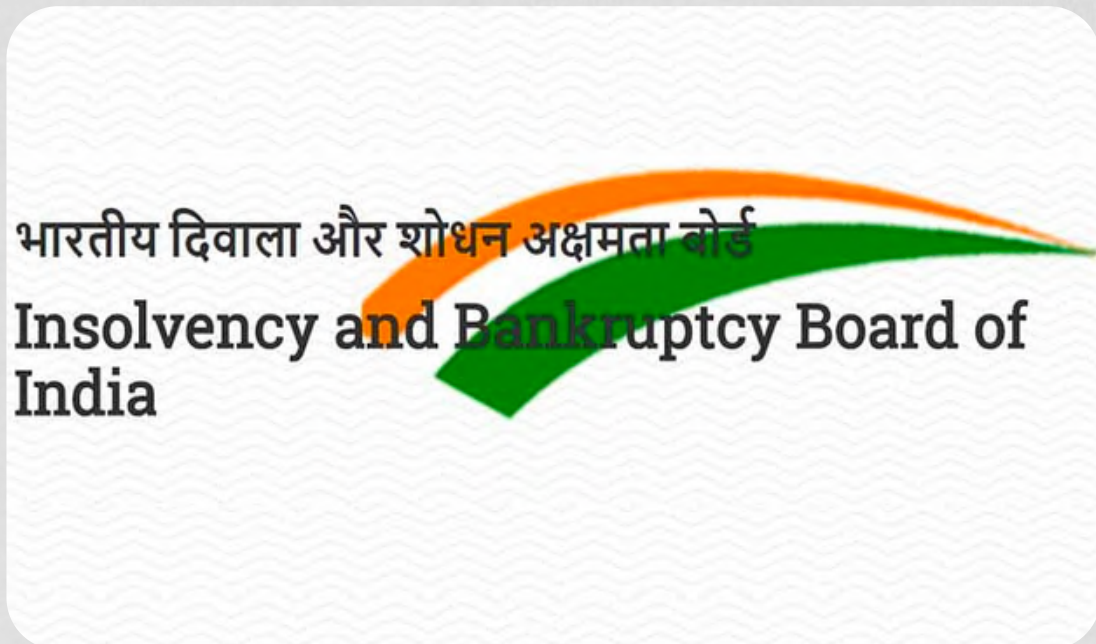
IBBI Update: Serving of copy of applications to the Board, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IBBI vide its Circular dated 04 th March, 2023 issued to All Registered Insolvency Professionals All Recognised Insolvency Professional Entities All Registered Insolvency Professional Agencies.

The Circular States:

To ensure filing of authentic information with the Board and further enable the Board to share information relating to the application for initiation of CIRP with the IU efficiently, the format has been revised. The revised format is at Annexure A. A step-by-step guide for submission of the application is at Annexure B. On submission of the application online, the applicant shall get an acknowledgment.

Link: <https://ibbi.gov.in/uploads/legalframework/a64b05965497a2bfb8334195b4ebd35e.pdf>



KNOWLEDGE SHARING

Co. and MD penalized for not disclosing DIN in the financials filed with MCA; RD reduces penalty taking lenient view.

Facts of the case:

M/s. Shri Narayani Nidhi Limited, a company involved in the activities of legal, accounting, book-keeping and auditing activities; tax consultancy; market research and public opinion polling; business and management consultancy etc.

The company failed to mention the DIN (director identification number) in multiple financial statements submitted to the Ministry of corporate affairs via the MCA portal for the years 2014-15, 2016-17 and 2017-18. The ROC observed the same for the violation of the provision of sec158(1) of companies act 2013. A fine was imposed of 3,00,000 by order dated 20th dec 2022 under sec 454(3) and (4) of the companies act 2013.

The company and its directors filed an appeal under Section 454 (5) of the Companies Act, 2013 in Form ADJ on 30th December 2022. The appeal mainly contended the impugned order passed by the Registrar of Companies of Tamil Nadu and pleaded that the non-compliance had occurred due to unavoidable circumstances and the default was unintentional.

The company appointed an authorized representative, a practicing company secretary, who made the submission that the inadvertent omission to mention DIN of signing directors was neither deliberate nor intentional and it was an unintentional clerical error and went unnoticed and hence, prayed for view.

The Regional Director, after allowing the appeal, revised the penalties imposed by the ROC Registrar of Companies of Tamil Nadu by passing an order on 19th January 2023 and directed the company and its directors to make the revised amount of penalty, which is 1,20,000 through the MCA portal within 15 days of the order.

Conclusion:

In the absence of the company secretary, the directors and other authorized officials of the company need to ensure that the DIN number is mentioned beneath the signature of the director on information, documents and returns (including the financial statements) submitted to the regulator by the company. As it attracts heavy penalties and fines for not complying in view of the stringent provisions of the Companies Act 2013.

Although the matter has been resolved, the company and its directors had spent time which they would have effectively utilized for business activities and also ended up paying the penalty. At the end of the day, the company needs to complaint about all the applicable laws which are applicable to the company.



INSOLVENCY AND BANKRUPTCY CODE 2016 CASE

ABHISHEK SINGH Vs. HUHTAMAKI PPL LTD. & ANR. SLP

Date of Supreme Court Judgements: March 28, 2023

Facts of the Case:

The Appeal is filed by Mr. Abhishek Singh (hereinafter referred as 'Appellant'), a Suspended director of the Manpasand Beverages Ltd. (hereinafter referred as "CD") after being aggrieved by the AA's order dated 13.04.2021.

The CD was in the business of manufacturing and distribution of fruit beverages. Huhtamaki PPL Ltd. (hereinafter referred as "Respondent"), used to supply packaging material to the CD. Later, The Respondent filed a petition under Section 9 of IBC, seeking initiation of CIRP of the CD, over a default of Rs.1,31,00,825/-. The AA admitted the petition against the CD by order dated 01.03.2021. Two days after initiation of CIRP, the parties entered into settlement even before the CoC could be constituted. As per settlement terms, the CD paid Rs. 95.72 Lakhs to the respondent and the IRP filed an application before AA seeking withdrawal of CIRP against the CD.

Meanwhile an appeal was preferred before the Appellate Tribunal against the admission order of AA dated 01.03.2021 on the ground that Section 9 of IBC was not maintainable as there was a pre-existing dispute. Later, the appeal was withdrawn with liberty to revive the appeal in case the settlement failed. The Appellate authority also granted stay on formation of CoC.

The AA observed that (i) Appellant had violated the moratorium directions contained in admission order dated 01.03.2021, (ii) 35 creditors have filed their claims during the pendency of the CIRP application and withdrawal of the proceeding would adversely affect their rights, and (iii) Regulation 30A of IBBI Regulations was not binding upon it and such provision would not be of any help to the CD or Appellant. Therefore, the AA by its order dated 13.04.2021 rejected the settlement application and fixed the matter for disposal of the application under Regulation 30A after hearing all creditors.

Supreme Court Observations:

The Supreme Court referring to the judgements in Swiss Ribbons Pvt. Ltd. & Anr. Vs UOI & Ors. (2019) and Kamal K. Singh v. Dinesh Gupta & Anr. (2021) held that section 12A of IBC permits withdrawal of applications admitted under section 7,9 or 10 of IBC and does not debar entertaining applications for withdrawal even before constitution of CoC. The substituted Regulation 30A (as it stands today after the judgement of Swiss Ribbon) clearly provides for withdrawal applications being entertained before constitution of CoC.

The Supreme Court further stated that the AA committed an error in holding that Regulation 30A would have no binding effect as this would amount to defeating the very purpose of substituting Regulation 30A in IBBI Regulations.

The Apex Court further held that large number of creditors filed their claim due to the delay on the part of AA in disposing of applications under Section 12A of IBC and Regulation 30A of CIRP Regulations.

Order/Judgement:

The impugned order of the AA cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed and the impugned order of NCLT is set aside.

Case Review:

Appeal is allowed and pending applications, if any, are disposed of.

INSOLVENCY AND BANKRUPTCY CODE 2016 CASE

SREI MULTIPLE ASSET INVESTMENT TRUST VISION INDIA FUND Vs. DECCAN CHRONICLE MARKETEERS & OTHERS

Date of Supreme Court Judgements: March 17, 2023

Facts of the Case:

This appeal was preferred by SERI Multiple Asset investment Trust Vision India Fund (hereinafter referred as 'Appellant'), the successful resolution applicant of the Deccan Chronicle Marketeers (hereinafter referred as 'Respondent') after Being aggrieved by the impugned order dated 02.09.2022, passed by the Appellate Tribunal. The Respondent was involved in printing, publication, and sale of daily newspapers by the tradenames "Deccan Chronicle" and "Andhra Bhoomi". CIRP was initiated against the Respondent by the Canara Bank and consequently the RP issued a public announcement and invited claims from the creditors. Upon receiving the claims, a CoC was formed.

Consequently, the Resolution Plan submitted by the Appellant was approved by the CoC with 81.39% of voting rights and was later approved by the AA by the order dated 03.06.2019, However, an application seeking a declaration by the Respondent that he is the owner of trademarks ("Deccan Chronicle" and "Andhra Bhoomi") and the said trademarks is treated as part of the assets of the Respondent was pending.

Later, the AA decided the pending application and held that the Respondent has an exclusive right to use the above mentioned trademarks and further declared that the trademarks belonged to the Respondent. The said order was challenged before the Appellate Tribunal who set aside the order stating that the AA has transgressed its jurisdiction as such declaration amounts to modification/alteration of the approved Resolution Plan by CoC and is impermissible in law.

The question raised before the Supreme Court is that whether the Appellate Tribunal was right in observing that the ownership of the Respondent declared over the trademarks after the approval of the Resolution Plan by CoC would amount to modification of the approved plan?

Supreme Court Observations:

The Supreme Court referring to its judgement in "Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr." held that as per the approved Resolution Plan, it was the perpetual exclusive right to use the trademarks by the Respondent which were available to the Appellant.

The Supreme Court further held that the right to exclusive use of the trademarks belonging to the Respondent is always available to the Appellant, but not the ownership rights.

Order/Judgement:

The appeal being devoid of any substance was dismissed.

Case Review:

No Costs and Pending applications, if any, shall stand disposed of.

INSOLVENCY AND BANKRUPTCY CODE 2016 CASE

VICTORY IRON WORKS LTD. Vs. JITENDRA LOHIA & ANR.

Date of Supreme Court Judgement: March 14, 2023

Facts of the Case:

This appeal was preferred by M/s Victory Iron Works Ltd. (hereinafter referred as 'Appellant') before the Supreme Court after being aggrieved by the impugned order passed by NCLAT dated 08.04.2021.

M/s Sesa International Ltd., a financial creditor, filed an application of CIRP u/s 7 of IBC against Avani Towers Private Limited (Corporate Debtor/CD), which was admitted for CIRP by the Adjudicating Authority (AA) dated 15.10.2019. Energy Properties, in its capacity as an 'ostensible owner' purchased a land of 10.19 acres from UCO bank which was funded by the CD under a MoU dated 24.01.2008. The CD also entered into an agreement with Energy Properties dated 16.06.2008 for the joint development of the said property wherein exclusive rights regarding the development of the property were handed over to the CD. Thereafter, the CD executed a Leave and License Agreement dated 19.08.2011 under which a license was granted for the use of 10,000 sq. ft. land out of 10.19 acres to M/s Victory Iron Works Ltd (Appellant).

The suspended Board of Directors of the CD informed the RP that 'Energy Properties' was forcefully removing the security guards from the property. Therefore, RP filed an application before the AA under Section 25 of IBC read with Regulation 30 of IBBI (CIRP) Regulations, 2016 for seeking appropriate action. After that, the AA directed the Appellant and Energy Properties not to obstruct the possession and activities of the RP and also held at the same time that the order would not prevent the appellant from carrying on their activities in the portion of the land given to them under the Leave and License Agreement.

Aggrieved by the said order of the AA, Appeals were filed, by the Appellant and Energy Properties, before the NCLAT and the same were dismissed. But NCLAT also confirmed the decision of NCLT that the Appellant could use that part of the land on which it had licensed right. However, the Appellant wanted the entire land and opposed the RP's claim that "development rights are held by the CD that forms it an intangible asset of the CD and must be protected" and argued that AA does not have the power under the IBC to evict a licensee in possession of the property.

Namely, two issues raised before the Supreme Court, firstly, what is the nature of the interest that the CD has over the property in question? Secondly, whether the jurisdiction exercised by the AA and Appellate Tribunal is vested in them or not?

Supreme Court Observations:

The Supreme Court observed that a bundle of rights arising from the MoUs and various agreements entered into by the CD related to the property in question constitute an 'asset' in common parlance denotes 'property of any kind' within the meaning of Section 18(f) and Section 25(2)(a) of IBC. The Court relied on a previous judgement of the Apex Court in the matter of **Sushil Kumar Aggarwal Vs. Meenakshi Sadhu & Ors. (2019)** to conclude that some of this bundle of rights and interests partake the character and shades of ownership rights. Therefore, the RP is duty-bound to include the property in question in CIRP, take custody, and control of the same. In addressing the second issue, the Supreme Court cited its judgment in **Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority & Anr. (2020)**, stating that there is no record of the Appellant occupying any land in excess of what was permitted under the Lease and License Agreement. Therefore, the AA, as well as the Appellate Authority, was right in exercising their jurisdiction.

Order/Judgement:

The impugned orders do not call for any interference.

Case Review:

Appeals Dismissed.

INSOLVENCY AND BANKRUPTCY CODE 2016 CASE

M/s. SMS Foundation & Investment LLP. Vs. J. John Ohilvi

Facts of the Case:

The current Appeal is filed by the M/s SMS Foundation & Investment LLP (hereinafter referred as "Appellant") after being aggrieved by the Impugned order dated 11.10.22 passed by AA.

The AA rejected the Appellant claim to consider him as 'Financial Creditor' because of the fact that the Appellant fall under the category of Shareholder. The Appellant contended that the order was never pronounced by the AA.

The Appellant stated that the order was available online on 21.11.2022 and he received the certified copy of the order on 24.11.2022. The Appellant filed the appeal through e-filing portal on 23.12.2022 but due to serious medical issues and the closure of the Tribunal on account of holidays the Appellant filed the Hard Copies of the appeal on 28.12.2022 and therefore, he had filed the instant 'Condonation of Delay' through IA in the current appeal to avoid any discrepancy.

The Appellant relying on the judgment in "Balaji Baliram Mupade &anr v. The State of Maharashtra & Ors" pleaded that the delay of five days in physical filing of the hard copies may be condoned and the appeal may be allowed. The RP of M/s Harsha Exito Engineering Pvt. (hereinafter referred as "Respondent") citing the judgement in " V. Nagarajan v. SKS Ispat and Power Ltd" sought the dismissal of the appeal on the ground that the Appellant had knowledge of the order dated 11.10.2022 and the limitation period started from that date.

NCLAT Observations:

The Appellate Tribunal placing their reliance on the judgment given by Hon'ble Supreme Court in **Central Bank of India v. Vrajlal Kapurchand Gandhi & Anr.** held that the order in question is a matter of 'Judicial Record' of the AA and the contra stand taken on behalf of the Appellant is not accepted.

The Appellate Tribunal further stated that the Appellant cannot have any grievance as the impugned order was pronounced in Open Court in the presence of authorized representative of the appellant. There is sufficient compliance of Rule 150(1) of the NCLT Rules, 2016 and hence the limitation will be counted from 11.10.22.

The Appellate Tribunal observed that the 45 days period lapsed on 25.11.22 and E-filing of the Appeal papers were made by appellant on 23.12.22, i.e. on 73rd day counted from impugned order dated 11.10.2022, after deducting 45days from Outer Limit period, there is a delay of '28 days' and there is no power enjoined upon the Appellate Tribunal to condone the delay beyond the prescribed period as per section 61 of IBC 2016.

Order/Judgement:

The 'Condone Delay Application' filed by the appellant is not entertained and the same stand rejected.

Case Review:

Appeal is dismissed.

INSOLVENCY AND BANKRUPTCY CODE 2016 CASE

R. Venkatakrishnan (Liquidator) Vs. GC Logistics India Pvt. Ltd. and Others

Date of NCLT Judgement: February 19, 2023

Facts of the Case:

Phoenix ARC Private Ltd. in its capacity of Financial Creditor filed an application under Section 7 of the IBC in the year 2018 to initiate CIRP of St. John Freight Systems Ltd. (hereinafter "CD"). The same was admitted by NCLT Chennai through an order dated December 10, 2018. However, as the CD could not be resolved through a Resolution Plan, the AA issued an order for Liquidation of the company on November 26, 2019.

The promoters of the CD approached NCLAT against the Liquidation. Though the Liquidation order was stayed, the NCLAT finally dismissed the appeal stating that there is no merit in the appeal. Subsequently, the first meeting of Stakeholders Consultation Committee ("SCC") was held for sale of the CD as a Going Concern. In the meeting discussions were made on three proposals but none of the three proposals could receive required percentage of votes. Consequently, all the three proposals were rejected, and a fresh Expression of Interest (EOI) was published.

The SCC considered the bids received in the second EOI and rejected all of them. Later, an offer letter from Global Corp's Logistics LLC was received and pursuant to it the SCC filed an application with the AA to approve Swiss Challenge Method with Global Corp's Logistics LLC offer as base price. After receiving the approval of the AA, the Liquidator conducted the Swiss Challenge, and all the documents were presented before the AA for approval of 'Sale of the CD Going Concern'.

Mr. Karthikeyan, proprietor of M.S.K. Lorry Booking Office, being Operational Creditor of the CD, objected to the sale of CD as going concern and filed petition under section 60(5) of IBC.

NCLT's Observations:

Citing the judgement of the NCLAT in "M/s Visisth Services Ltd vs. Mr. S.V. Ramani" the AA held that that the proposal for sale of CD as a Going Concern was in conformity to Regulation 32A of IBBI (Liquidation Process) Regulations, 2016. The AA was of view that considering the business nature, MSME Status and the employees of the CD, it is necessary to pave way for the smooth revival.

Further, the AA put on record the submission of Liquidator that the proposed sale of CD as a Going Concern represents the best prospect of revival of the CD which will continue to provide gainful employment to 320 direct employees and 220 indirect/ contract/ seasonal employees. The sale of the company as a Going Concern represents the best option for maximization of value as opposed to selling the assets of the CD.

Order/Judgement:

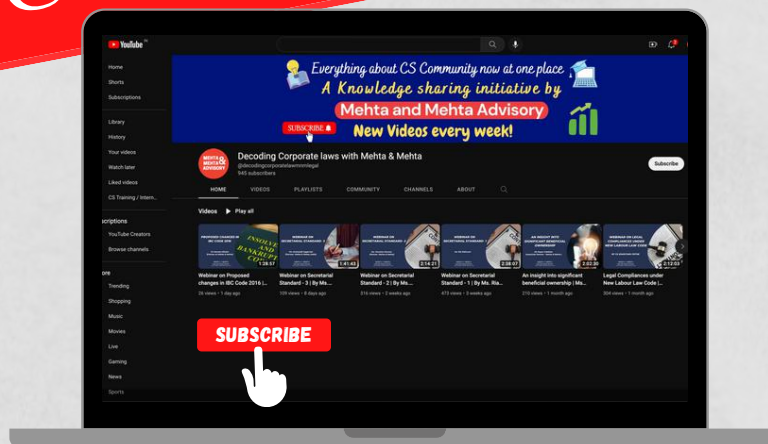
AA approved the sale of the CD as a Going Concern and ordered that the CD shall not be dissolved. Besides, the AA ordered that the status of the Corporate Debtor be changed from "in liquidation" to "Active" in records of the Registrar of Companies. Besides, other required reliefs were also granted to the applicant.

Case Review:

Application Admitted. Other IAs disposed of.

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