

April, 2023 | ISSUE

# VEDANAM

A MONTHLY NEWSLETTER BY MEHTA & MEHTA

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## WHY VEDANAM?

We, Mehta & Mehta, present you with our monthly newsletter which covers 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

“

Any Good Business  
applies financial  
discipline to everything  
they do

”

# Ministry of Corporate Affairs Updates

Rules	Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2016	Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023	Comments
Rule 4, for sub-rule (1)	An application for removal of name of the company under sub-section (2) of section 248 shall be made in Form STK-2 along with fee of ten thousand rupees	An application for removal of the name of a company under sub-section (2) of section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with the fee of ten thousand rupees.	The application for removal of name of the company should be made to the Registrar Centre for Processing Accelerated Corporate Exit in Form STK-2 along with fees of ten thousand rupees Paragraph text
sub-rule (3), clause (iv)	a copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid-up share capital as of the date of application	a copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid-up share capital as on the date of application.	sub-rule (3), clause (iv) is omitted.
After sub-rule (3) rule 3A is inserted		The Registrar, Centre for Processing Accelerated Corporate Exit established under sub-section (1) of section 396, shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India.	New clause inserted.

**Link of the Circular <https://www.mca.gov.in/bin/dms/getdocument?mds=ab6Q0qvTuxNB7D4ij6zO7Q%253D%253D&type=open>**

# Securities and Exchange Board of India

## **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 an E-wallet for investment in Mutual Funds with a Limit of INR 50,000.

E-wallets used for investment in mutual funds should be compliant with KYC norms prescribed by the 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](https://www.sebi.gov.in/legal/circulars/mar-2023/e-wallet-investments-in-mutual-funds_69254.html)



## **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 Amendment shall be as follows:**

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 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.**

[https://www.sebi.gov.in/legal/circulars/mar-2023/amendment-to-securities-lending-scheme-1997\\_69449.html](https://www.sebi.gov.in/legal/circulars/mar-2023/amendment-to-securities-lending-scheme-1997_69449.html)

**SEBI Update: Extension of compliance period -Fundraising by large corporates through the 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 a minimum of 25% of their incremental borrowings in a financial year through the 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.

This circular shall come into force with effect from 31st March 2023.

**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](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: Advertisement code for Investment Advisers (IA) and Research Analysts (RA).**

SEBI vide its Circular dated 05th April, 2023 issued to all Registered Investment Advisers, all Registered Research Analysts.

### **The circular States:**

SEBI issued advertisement guidelines for investment adviser (IA) and research analysts (RA).

The advertisement code shall provide clarity as to the forms of communication that would be considered advertising. Any form of communication by or on behalf of the IA or RA that influences investment decisions would be considered advertising. This includes pamphlets, circulars, brochures, notices, research reports or any other literature. It may also include any form of communication made through any electronic, wired or wireless communication, such as text messaging, telephone, television, etc.

The advertisement shall contain information such as the name, logo, registered address, and other such information regarding the publisher. It must provide information in an accurate and unambiguous language. The advertisements shall not contain any misleading or ambiguous information or anything that's prohibited under the law. It shall not exploit the lack of knowledge or experience of the investor.

The standard warning goes: "Investments in the securities market are subject to market risks. Read all the scheme-related documents carefully before investing", should be in legible fonts (minimum 10 font size), SEBI said in changes to the code applicable to these entities. Any audio-visual reiteration of the warning shall be clear and understandable. A warning that contains 20 words and that runs for 10 seconds, both visually and verbally, will be considered clear.

Whenever the advertisement is being issued in a language other than English, it will be ensured that the standard warning is accurately translated into the language of the advertisement.

The mode of advertisement is SMS/Message/Pop-up, social media, etc. The details such as full name, logo/brand name, fully registered office address SEBI registration number, membership number of a SEBI-recognized supervisory body and standard disclaimer are not mentioned. Official website hyperlinks should be provided in such SMS/Message/Pop-up, etc.; the website must contain all such details.

Investment Advisers and Research Analysts are also barred from using superlative terms such as "Best", "No. 1", "Leading", Top Adviser/Research Analyst, "One of the best amongst market leaders", etc., in their advertisements. They shall not include SEBI Logo for such purposes.

In other restrictions, all IAs and RAs shall procure prior approval for their advertisements from a SEBI-recognized supervisory body, such as BSE Administration and Supervision Ltd. in the case of IAs. They are also barred from engaging in games, competitions, leagues, schemes, etc., which may involve distributing prize money, medals and gifts.

These restrictions also apply to any other investment, research, or consultancy agency associated with the IA or RA concerned and issues advertisements with their name.

This circular shall come into force with effect from  
1st May 2023.

[https://www.sebi.gov.in/legal/circulars/apr-2023/advertisement-code-for-investment-advisers-ia-and-research-analysts-ra-\\_69798.html](https://www.sebi.gov.in/legal/circulars/apr-2023/advertisement-code-for-investment-advisers-ia-and-research-analysts-ra-_69798.html)

### **SEBI Update: Usage of brand name/trade name by Investment Advisers (IA) and Research Analysts (RA).**

SEBI vide its Circular dated 06th April 2023 issued to all Registered Investment Advisers, all Registered Research Analysts.

The Circular States:

SEBI observed that few investment advisers and research analysts use the brand name/trade name/logo more prominently in their advertisements, websites, publications, correspondences with clients and various documents while marketing their services rather than their name as registered with SEBI.

Investment Advisers and Research Analysts can still use the brand name/trade name/logo, SEBI has issued some guidelines to ensure transparency.

IAs and RAs may use the brand name/logo, they need to ensure that the information such as name of the IA/RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers are prominently displayed on their websites, display boards, advertisements, publications, KYC forms and client agreements, according to a circular. Also, the compliance officer, his telephone number and e-mail address, and the name, telephone number and e-mail address of the grievance officer should be displayed prominently in statements or reports or any other form of correspondence with the client.

SEBI has also mandated the usage of the disclaimer, "Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors". This disclaimer will now have to be mentioned on the portal/website, if any, notice boards, display boards, advertisements, publications, know-your-client forms, client agreements, statements or reports or any other form of correspondence with the client.

Also, SEBI has barred IAs and RAs from using its logo

Link of the circular:

[https://www.sebi.gov.in/legal/circulars/apr-2023/usage-of-brand-name-trade-name-by-investment-advisers-ia-and-research-analysts-ra-\\_69839.html](https://www.sebi.gov.in/legal/circulars/apr-2023/usage-of-brand-name-trade-name-by-investment-advisers-ia-and-research-analysts-ra-_69839.html)

This circular shall come into force with effect from 1st May 2023.

Also, SEBI has barred IAs and RAs from using its logo

Link of the circular:

[https://www.sebi.gov.in/legal/circulars/apr-2023/usage-of-brand-name-trade-name-by-investment-advisers-ia-and-research-analysts-ra-\\_69839.html](https://www.sebi.gov.in/legal/circulars/apr-2023/usage-of-brand-name-trade-name-by-investment-advisers-ia-and-research-analysts-ra-_69839.html)

This circular shall come into force with effect from 1st May 2023.

### **SEBI Update: Guidelines with respect to excusing or excluding an investor from an investment of AIF.**

SEBI vide its Circular dated 11th April 2023 issued for All Alternative Investment Funds (AIFs).

#### **The circular states:**

SEBI has observed that there is inconsistency and a lack of adequate disclosure with respect to certain industry practices. Alternative Investment Policy Advisory Committee ('AIPAC') recommend that an AIF may excuse its investor from participating in a particular investment in the following circumstances:

The investor based on the opinion of a legal professional/legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation; or

The investor, as part of the contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention of the internal policy of the investor.

AIF shall exclude an investor from participating in a particular investment opportunity if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in a material adverse effect on the scheme of the AIF.

This circular shall come into force with immediate effect.

The investor of an AIF is also an AIF or any other investment vehicle, the such investor shall be partially excused from participation in an investment opportunity to the extent of the contribution of the said fund/investment vehicle's underlying investors who are to be excused or excluded from a such investment opportunity.

#### **Link:**

[https://www.sebi.gov.in/legal/circulars/apr-2023/guidelines-with-respect-to-excusing-or-excluding-an-investor-from-an-investment-of-aif\\_69995.html](https://www.sebi.gov.in/legal/circulars/apr-2023/guidelines-with-respect-to-excusing-or-excluding-an-investor-from-an-investment-of-aif_69995.html)

### **SEBI Update: Direct plan for schemes of Alternative Investment Funds (AIFs) and trial model for distribution commission in AIFs**

SEBI vide its Circular dated 11th April 2023 issued for All Alternative Investment Funds (AIFs)

**The circular states:**

SEBI asked Alternative Investment Funds (AIFs) to provide the option of a direct plan for their investors. In such a plan, investors can participate in an AIF without having to pay any distribution fee or placement fee. SEBI has also asked the AIFs to disclose distribution fees to the investors while boarding them.

SEBI also added Category III AIFs shall charge distribution fee/ placement fee, if any, to investors only on an equal trial basis i.e. no upfront distribution fee/ placement fee shall be charged by Category III AIFs directly or indirectly to their investors.

In the case of category I and II AIFs up to one-third of the total distribution fee may be paid to distribution upfront basis while the remaining shall be paid on a trial basis.

These measures have been brought in to enhance transparency and curb misselling.

This circular shall come into force with effect from 01st May 2023.

**Link:**

[https://www.sebi.gov.in/legal/circulars/apr-2023/direct-plan-for-schemes-of-alternative-investment-funds-aifs-and-trail-model-for-distribution-commission-in-aifs\\_69996.html](https://www.sebi.gov.in/legal/circulars/apr-2023/direct-plan-for-schemes-of-alternative-investment-funds-aifs-and-trail-model-for-distribution-commission-in-aifs_69996.html)

**SEBI Update: Contribution by eligible Issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities.**

SEBI vide its Circular dated 13th April 2023 issued for all eligible issuers of debt securities Recognized Limited Purpose Clearing Corporations Recognized Stock Exchanges Registered Depositories.

**The circular states:**

SEBI said a well-functioning repo market contributes to the development of the debt securities market by way of boosting the liquidity of the underlying debt securities and allowing market participants to monetize their debt holdings without selling the underlying, thus meeting their temporary need for funds.

The development of an active repo market in debt securities may also be beneficial to the issuers as the enhanced liquidity may positively impact the yield, thereby resulting in reduced costs of raising funds to the issuers in the primary market", it added.

In its board meeting in September 2020, SEBI approved a proposal to facilitate the setting up of an LPCC. The board had also decided that an amount of 0.5 basis points of the issuance value of debt securities per annum be collected upfront before the listing of such securities to build the Settlement Guarantee Fund of the LPCC.

AMC Repo Clearing Limited (ARCL) has been granted recognition as LPCC by SEBI. RBI also gave necessary approvals to ARCL to function as a Clearing Corporation with a limited purpose and to offer central counterparty services for repo transactions in debt securities.



It has been decided to put in place, the following framework for upfront collection of amounts as charges from eligible issuers at the time of allotment of debt securities.

SEBI said the eligible issuers would be notified by the LPCC as per its risk management policy.

SEBI said that an amount of 0.5 basis points of the issuance value of debt securities per annum based on the maturity of debt securities will be collected by the stock exchanges and placed in an escrow account before the allotment of the debt securities.

The stock exchanges would transfer the amounts so collected to the bank account of the LPCC within one working day of the receipt of the amount and inform the details of the same to the LPCC.

Details of the amounts so collected would also be disclosed by the stock exchanges on their website.

LPCC would provide an illustration of the calculation of the amounts to be contributed by the eligible issuers.

**[Link:  
https://www.sebi.gov.in/legal/circulars/  
apr-2023/contribution-by-eligible-  
issuers-of-debt-securities-to-the-  
settlement-guarantee-fund-of-the-  
limited-purpose-clearing-corporation-  
for-repo-transactions-in-debt-  
securities\\_70170.html](https://www.sebi.gov.in/legal/circulars/apr-2023/contribution-by-eligible-issuers-of-debt-securities-to-the-settlement-guarantee-fund-of-the-limited-purpose-clearing-corporation-for-repo-transactions-in-debt-securities_70170.html)**

This circular shall come into force with effect from 01st May 2023.

## **SEBI Update: Issue of Master Circular by Stock Exchanges, Clearing Corporations and Depositories.**

SEBI vide its Circular dated 20th April 2023 issued a Circular for All recognized Stock Exchanges, All recognized Clearing Corporations and All Depositories.

### **The Circular States:**

This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 and Section 26(3) of the Depositories Act, 1996, to protect the interests of investors in securities and promote the development and regulation of the securities market.

Market Infrastructure Institutions (MIIs) communicate with market participants and investors on a regular basis through circulars, directions, operating instructions, communique or any other mode of communication. This has led to a plethora of guidelines by the MIIs on various subjects.

Due to the issuance of such guidelines of varied nature and based on the feedback received from the market participants, to ensure that all market participants, including investors, find all applicable provisions on a specific subject at a place, the MIIs shall ensure the following:

Issue Master Circulars to consolidate all guidelines issued and applicable as of March 31 of each year, subject-wise.

Include only relevant guidelines in Master Circular when reviewing existing guidelines on a particular subject.

Such Master Circular shall not include the following:

- i. Bye-laws, Rules and Regulations issued by MIs.
- ii. Status of any compliance by the market participant.
- iii. Actions were taken against any entity.

The Master Circular should contain a list of all guidelines and a provision rescinding them with effect from the date of implementation. These guidelines should be archived on the respective websites of The Master Circulars shall contain a savings clause as under:

“Notwithstanding such rescission,

A. Anything done or any action taken or purported to have been done or contemplated under the rescinded guidelines before the commencement of this Master Circular shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of the Master Circular or rescinded guidelines whichever is applicable.

B. The previous operation of the rescinded guidelines or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the rescinded guidelines, any penalty, incurred in respect of any violation committed against the rescinded guidelines, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the rescinded guideline has never been rescinded.”.

MIs must issue the first Master Circular on or before June 30, 2023, and then update it on or before April 30 of each year. This ensures that all guidelines issued during the financial year are included.

The MIs are directed to

- Make necessary amendments to bye-laws, rules and regulations to implement the decision.
- Distribute Master Circulars on their website and bring them to the attention of all stakeholders, including Members, Depository Participants and investors.

**Link:**

**[https://www.sebi.gov.in/legal/circulars/apr-2023/issue-of-master-circular-by-stock-exchanges-clearing-corporations-and-depositories\\_70375.html](https://www.sebi.gov.in/legal/circulars/apr-2023/issue-of-master-circular-by-stock-exchanges-clearing-corporations-and-depositories_70375.html)**

## **SEBI Update: Issue of Master Circular by Stock Exchanges, Clearing Corporations and Depositories.**

SEBI vide its Circular dated 20th April 2023 issued a Circular for All recognized Stock Exchanges, All recognized Clearing Corporations and All Depositories.

The Circular States:

This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 and Section 26(3) of the Depositories Act, 1996, to protect the interests of investors in securities and promote the development and regulation of the securities market.

Market Infrastructure Institutions (MIs) communicate with market participants and investors on a regular basis through circulars, directions, operating instructions, communique or any other mode of communication. This has led to a plethora of guidelines by the MIs on various subjects.

Due to the issuance of such guidelines of varied nature and based on the feedback received from the market participants, to ensure that all market participants, including investors, find all applicable provisions on a specific subject at a place, the MIs shall ensure the following:

Issue Master Circulars to consolidate all guidelines issued and applicable as of March 31 of each year, subject-wise.

The Master Circular should contain a list of all guidelines and a provision rescinding them with effect from the date of implementation. These guidelines should be archived on the respective websites of The Master Circulars shall contain a savings clause as under:

“Notwithstanding such rescission,

A.Anything done or any action taken or purported to have been done or contemplated under the rescinded guidelines before the commencement of this Master Circular shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of the Master Circular or rescinded guidelines whichever is applicable.

B.The previous operation of the rescinded guidelines or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the rescinded guidelines, any penalty, incurred in respect of any violation committed against the rescinded guidelines, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the rescinded guideline has never been rescinded.”.

MIs must issue the first Master Circular on or before June 30, 2023, and then update it on or before April 30 of each year. This ensures that all guidelines issued during the financial year are included.

The MIs are directed to

- Make necessary amendments to bye-laws, rules and regulations to implement the decision.

Distribute Master Circulars on their website and bring them to the attention of all stakeholders, including Members, Depository Participants and investors.

**Link:**

[https://www.sebi.gov.in/legal/circulars/apr-2023/issue-of-master-circular-by-stock-exchanges-clearing-corporations-and-depositories\\_70375.html](https://www.sebi.gov.in/legal/circulars/apr-2023/issue-of-master-circular-by-stock-exchanges-clearing-corporations-and-depositories_70375.html)

**SEBI Update: Bank Guarantees (BGs) are created out of clients' funds.**

SEBI vide its Circular dated 25th April 2023 issued for Stock Brokers through recognized Stock Exchanges Clearing Members through recognized Clearing Corporations.

The Circular States:

Stock Brokers (SBs)/Clearing Members (CMs) pledge client's funds to Banks, which issue Bank Guarantees (BGs) to clearing corporations for higher amounts. This implicit leverage exposes the market and client's funds to risks, so it has been decided to implement the following measures to safeguard the interests of investors:

a) Beginning May 01, 2023, no new BGs shall be created out of clients' funds by SBs/CMs.

b) Existing BGs created out of clients' funds shall be wound down by September 30, 2023.

The provisions of this framework are not applicable to proprietary funds of SBs/CMs in any segment and SB's proprietary funds deposited with CM in the capacity of a client.

Monitoring and reporting:

Stock exchanges and clearing corporations must take stock of the current position of BGs issued out of clients' funds by SBs/CMs and monitor the wind down to ensure implementation of the circular without disruption of services to clients, they must put in place periodic reporting mechanisms for SBs/CMs.

Stock exchanges and clearing corporations must submit data to SEBI on a fortnightly basis starting June 01, 2021.

SBs/CMs must provide a certificate from their statutory auditor confirming the implementation of this circular by October 16, 2023, to stock exchanges/clearing corporations.

Stock exchanges and clearing corporations must verify compliance with the provisions of the circular in their periodic inspections/reporting, and develop mechanisms to address cases of SBs/CMs who do not comply by the stipulated dates.

The provisions of SEBI circulars will be modified to reflect the implementation of these measures.

The stock exchanges and clearing corporations are directed to:

a) bring the provisions of this circular to the notice of stock brokers and clearing members, as the case may be, and also disseminate the same on their websites;

b) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above provisions;

c) communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development report.

**Link:**

[https://www.sebi.gov.in/legal/circulars/apr-2023/bank-guarantees-bgs-created-out-of-clients-funds\\_70518.html](https://www.sebi.gov.in/legal/circulars/apr-2023/bank-guarantees-bgs-created-out-of-clients-funds_70518.html)

### **SEBI Update: Modifications in the requirement of filing of Offer Documents by Mutual Funds.**

SEBI vide its Circular dated 25th April, 2023 issued 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 mandated the submission of a soft copy of the final SIDs and a printed/final copy seven days prior to the launch of the scheme.

The Go Green initiative has changed the circular to require AMCs to file all final offer documents digitally by emailing them to a dedicated email id. No physical copies of the documents will be filed with SEBI.

The submission of the final SID and KIM in digital form must be made at least two working days prior to the launch of the scheme, based on consultation with the Association of Mutual Funds in India (AMFI).

NFOs must remain open for a minimum of three working days to protect investors in the securities market.

The other provisions of the circular remain unchanged.

**Link:**

[https://www.sebi.gov.in/legal/circulars/apr-2023/modifications-in-the-requirement-of-filing-of-offer-documents-by-mutual-funds\\_70524.html](https://www.sebi.gov.in/legal/circulars/apr-2023/modifications-in-the-requirement-of-filing-of-offer-documents-by-mutual-funds_70524.html)

This circular shall come into force with effect from 1st May 2023.

# Reserve Bank of India Updates

## **RBI Update: Master Direction on Counterfeit Notes, 2023 - Detection, Reporting and Monitoring.**

RBI vide its notification dated 3rd April 2023 to All Banks.

The notification states:

Reserve Bank of India has time to time, issued several guidelines/ instructions/ directives to the banks on Counterfeit Notes.

The Master Circular incorporating and updating the guidelines/instructions/directives on the subject has been prepared to enable banks to have all current instructions on counterfeit notes in one place.

RBI issued Direction in the circular to exercise of its powers under Section 35A and Section 56 of the Banking Regulation Act, 1949.

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12480&Mode=0>

## **RBI Update: Master Direction on Framework of Incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests based on performance in rendering customer service to the members of the public.**

RBI vide its notification dated 3rd April, 2023 to all banks.

RBI issues guidelines/instructions for realising the objectives of the Clean Note Policy as part of currency management. With a view to furthering these objectives, the Bank has formulated a framework of incentives titled Currency Distribution and Exchange Scheme (CDES) to encourage all the bank branches to provide better customer services to the members of the public.

The Master Direction enclosed incorporates updated guidelines/circulars on the subject. The Direction shall be updated from time to time as and when fresh instructions are issued.

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12483&Mode=0>

## **RBI Update: Master Direction on Penal Provisions in reporting transactions/ balances at Currency Chests.**

RBI vide its notification dated 3rd April 2023 to all banks having Currency Chests.

The notification states:

The Reserve Bank of India has issued Master Direction on Penal Provisions in deficiencies in reporting transactions/ balances at Currency Chests.

The Master Direction enclosed incorporates updated guidelines/circulars on the subject. The Direction will be updated as and when fresh instructions are issued.

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12481&Mode=0>

**RBI Update: Master Direction – Scheme of Penalties for Bank branches and Currency Chests for deficiency in rendering customer service to the members of the public**

RBI vide its Notification dated 3rd April 2023 to all banks.

**The notification states:**

The Reserve Bank of India issues guidelines and instructions to achieve the objectives of the Clean Note Policy and enhance operational efficiency. It has also formulated a Scheme of Penalties for bank branches for deficiency in customer service.

Master Direction incorporates updated guidelines/circulars on the subject.

**Link:**

<https://rbi.org.in/Scripts/NotificationUs er.aspx?Id=12482&Mode=0>

**RBI Update: Master Direction on Outsourcing of Information Technology Services.**

RBI vide its notification dated 10th April 2023 issued to all Scheduled Commercial Banks (excluding Regional Rural Banks); Local Area Banks; Small Finance Banks; Payments Banks; Primary (Urban) Co-operative Banks; Non-Banking Financial Companies; Credit Information Companies; and All India Financial Institutions (EXIM Bank, NABARD, NaBFID, NHB and SIDBI)

The RBI issued master direction for banks and other financial service entities to ensure effective management of attendant risks in outsourcing IT activities.

The RBI move can be seen in the backdrop of growing instances of technical glitches and irregularities in the IT systems of banks as they outsource a substantial portion of their IT activities to third parties which exposes various risk

In order to ensure effective management of attendant risks, the Statement on Developmental and Regulatory Policies dated February 10, 2022, proposed the issuance of suitable regulatory guidelines on the Outsourcing of IT Services. Accordingly, a draft Master Direction on Outsourcing IT Services was released for public comments in June 2022. Based on feedback received, the finalised Reserve Bank of India (Outsourcing of Information Technology Services) Directions, 2023 are enclosed herewith.

**Link:**

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/102MDITSERVICES56B33FD530B1433187D75CB7C06C8F70.PDF>

The Master Directions shall come into effect from 1st October 2023.

## **RBI Update: Master Circular- Prudential Norms on Capital Adequacy - Primary (Urban) Cooperative Banks (UCBs).**

RBI vide its notification dated 20th April 2023, to all Primary (Urban) Co-operative Banks.

The notification states:

Master Circular dated April 2022 on the captioned subject, the Master Circular consolidates and updates all instructions/guidelines on the subject issued up to April 19, 2023, as listed in the Appendix.

**Link:**

**<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTIMC1720042308CE8333F32D4F86BB3FC68ED1FB33E4.PDF>**

## **RBI Update: Master Circular on Credit Facilities to Minority Communities.**

RBI vide its Notification dated 1st April 2023 to all Scheduled Commercial Banks (excluding RRBs and Foreign Banks with less than 20 branches).

The notification states:

RBI on issued Master Circular on Credit Facilities to Minority Communities, consolidating circulars issued on the subject to date.

It lays out details about the credit facilities available to the minority communities, and how the same has to be made available to them.

The Master circular states in detail about:

Credit Facilities to Minority Communities, Definition of Minority Communities, Creation of Special Cell and designating an exclusive Officer, Role of Lead Banks, Advances under DRI Scheme, Monitoring, Training, Publicity, National Minorities Development and Finance Corporation (NMDFC), Prime Minister's New 15 Point Programme for the Welfare of Minorities.

**Link:**

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12467&Mode=0#MC>**



## **RBI Update Master Circular – Housing Finance**

RBI vide its notification dated 3rd April 2023 All Scheduled Commercial Banks (excluding RRBs).

The notification states:

The Master Circular dated on 01st April 2022 consolidates/guidelines instructions issued to banks related to Housing Finance up to March 31, 2023.

Master Circular consolidates instructions on the above matter issued up to March 31, 2023.

**Link:**

**<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12475&Mode=0>**

## **RBI Update: Master Circular – Lead Bank Scheme**

RBI vide its Notification dated 3rd April 2023 to SLBC/ UTLBC Convenor Banks / Lead Banks

The notification states:

The Reserve Bank of India has issued guidelines/instructions on Lead Bank Scheme, and Master Circular consolidates with the relevant guidelines/instructions up to March 31, 2023, listed in Appendix.

The Master circular is given on the website of the RBI.

**Link:**

**<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12478&Mode=0>**

## **RBI Update: Master Circular – Disbursement of Government Pension by Agency Banks**

RBI vide its Notification dated 3rd April 2023 to all Agency Banks

The notification states:

Master circular dated on 01st April 2023 Reserve Bank of India has revised and updated the Master Circular to consolidate important instructions on the subject until March 31, 2023.

The Master Circular can download from the RBI website.

**Link:**

**<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12477&Mode=0>**

## **RBI Update: Master Circular – Bank Finance to Non-Banking Financial Companies (NBFCs)**

RBI vide its notification dated 3rd April 2023, to all Scheduled Commercial Banks (excluding RRBs)

The notification states:

The Master Circular dated 01st April 2022 regarding Bank finance to Non-Banking Financial Companies. Now the master circular consolidates instructions issued up to March 31, 2023, on the above subject matter.

**Link:**

**<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12476&Mode=0>**

## **RBI Update: Master Direction – Facility for Exchange of Notes and Coins.**

RBI vide its notification dated 3rd April, 2023 to all banks.

The notification states:

In exercise of the powers conferred under Section 35A of the Banking Regulation Act, 1949, refer to sections 28, 38, 39, 58(1) and 58(2)(q) of the Reserve Bank of India Act, 1934, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

The Directions are mentioned in the Master Circular.

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12479&Mode=0>

## **RBI Update: APConnect - Online application for Full Fledged Money Changers and non-bank Authorised Dealers Category-II.**

RBI vide its Notification dated 6th April 2023 to Full Fledged Money Changers, non-bank Authorized Dealers Category II.

The Notification States:

A Software application called 'APConnect' has been developed for processing applications for licensing of FFMC, non-bank AD Cat-II, authorization as MTSS Agent, renewal of existing license/authorization, for seeking approval as per the extant instructions and for submission of various statements/returns by FFMCs and non-bank AD Cat II. The application can be accessed by the link given in the notification.

**The APConnect application consists of the facilities/functionalities which are mentioned in the notifications.**

Existing FFMCs/non-bank AD Category-II shall register themselves on the APConnect application within three months from the date of issue of this circular. After registration on APConnect, requests for other facilities/approvals and submission of returns by the entities shall be done through the APConnect application.

Eligible entities, desirous of applying for fresh FFMC/ non-bank AD Category II / MTSS Agent license/authorization shall submit their application only through APConnect.

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12485&Mode=0>

## **RBI Update: Framework for Acceptance of Green Deposits**

RBI vide its Notification dated 11th April 2023 issued to all Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks), All Deposit-taking Non-Banking Finance Companies (NBFCs) including Housing Finance Companies (HFCs).

The Notification states:

The Reserve Bank of India has introduced a framework of rules, governing the acceptance of green deposits by Banks and NBFCs including Housing Finance Companies.

Climate change has been recognised as one of the most critical challenges and globally, various efforts have been taken to reduce emissions as well as promote sustainability.

The financial sector can play a pivotal role in mobilizing resources and their allocation thereof in green activities/projects. Green finance is also progressively gaining traction in India

The financial sector can play a pivotal role in mobilizing resources and their allocation thereof in green activities/projects. Green finance is also progressively gaining traction in India

Some Regulated Entities (REs) are already offering green deposits for financing green activities and projects.

This notification shall come into force with effect from 01st June 2023.

**Link:**  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12487&Mode=0>

**RBI Update: Authorised Dealers Category-II - Online submission of Form A2.**

RBI vide its Notification dated 12th April 2023 issued to all Authorised Dealers in Foreign Exchange.

The Notification states:

AD Category-I banks and AD Category-II entities are invited to read the A.P. (DIR Series) Circular dated February 11, 2016, on 'Compilation of R>Returns: Reporting under FETERS', which allows AD banks to allow online submission of Form A2. AD Category-II entities will be allowed to submit online Form A2 with the approval of their Board, subject to statutory and regulatory guidelines.

The terms and conditions of A.P. (Dir Series) Circular No. 50 dated February 11, 2016, continue to apply to all Authorised Dealers. The relevant provisions of FEMA 1999 and KYC Authorised Dealers can share this circular with their constituents. Direction, 2016 must be complied with by ADs for all transactions.

Authorised Dealers should inform their constituents of the circular.

This circular is issued under the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to any permissions/approvals required under any other law.

**Link:**  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12489&Mode=0>

**RBI Update: Provisioning for standard assets by primary (Urban) co-operative banks – revised norms under the four-tiered regulatory framework.**

**The Notification States:**

RBI vide its Notification dated 24th April 2023 to, All Primary (Urban) Co-operative Banks.

Circular dated December 01, 2022, in which Urban Co-operative Banks (UCBs) have been categorized into four Tiers for regulatory purposes: Tier 1, Tier 2, Tier 3 and Tier 4.

The current standard assets provisioning norms for UCBs consolidated in the Master Circular dated April 01, 2022, are based on the earlier categorization of UCBs into Tier I and Tier II as defined in para 4 of the circular dated May 06, 2009.

The provisioning norms for standard assets have been harmonised to apply to all categories of UCBs, regardless of Tier.

The standard asset provisioning norms for Tier 1, Tier 2, Tier 3 and Tier 4 UCBs under the revised framework are as follows:

a) Direct advances to agriculture and SME sectors which are standard, shall attract a uniform provisioning requirement of 0.25 per cent of the funded outstanding on a portfolio basis.

b) Advances to the commercial real estate (CRE) sector which are standard shall attract a uniform provisioning requirement of 1.00 per cent of the funded outstanding on a portfolio basis.

c) For advances to the commercial real estate - residential housing (CRE-RH) sector, which are standard, the provisioning requirement shall be 0.75 per cent.

d) For all other advances, banks shall maintain a uniform general standard asset provision of a minimum of 0.40 per cent of the funded outstanding on a portfolio basis.

Tier I UCBs are allowed to achieve the provisioning requirement of 0.40% on loans and advances in a staggered manner by March 31, 2025. This means the provision on all standard loans and advances outstanding as, on March 31, 2023, will be increased to 0.30% by March 31, 2024, 0.35% by September 30, 2024, and 0.40% by March 31, 2025.

**The guidelines come into effect from the date of this circular.**

**Link:**

**<https://www.rbi.org.in/Scripts/NotificationU ser.aspx?Id=12491&Mode=0>**

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

RBI vide its Notification dated 27th April 2023 issued to The Chairpersons/CEOs of all the Regulated Entities.

The notification state:

Section 51 of Master Direction on Know Your Customer dated February 25, 2016, as amended on May 10, 2021, in terms of which Regulated Entities (REs) must ensure that they do not have an account in the name of individuals/entities appearing in the lists of individuals and entities suspected of having terrorist links approved by the UNSC.

Section 51 of Master Direction on Know Your Customer dated February 25, 2016, as amended on May 10, 2021, in terms of which Regulated Entities (REs) must ensure that they do not have an account in the name of individuals/entities appearing in the lists of individuals and entities suspected of having terrorist links approved by the UNSC.

Section 51 of Master Direction on Know Your Customer dated February 25, 2016, as amended on May 10, 2021, in terms of which Regulated Entities (REs) must ensure that they do not have an account in the name of individuals/entities appearing in the lists of individuals and entities suspected of having terrorist links approved by the UNSC.

Section 51 of Master Direction on Know Your Customer dated February 25, 2016, as amended on May 10, 2021, in terms of which Regulated Entities (REs) must ensure that they do not have an account in the name of individuals/entities appearing in the lists of individuals and entities suspected of having terrorist links approved by the UNSC.

The Ministry of External Affairs (MEA) has informed about the UNSC press release dated April 26, 2023, which approved the addition of two entries to its ISIL (Da'esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) and adopted under Chapter VII of the Charter of the United Nations.

Press releases regarding the above can be found in the given link mentioned in the circular. Further, the UNSC press releases concerning amendments to the list are also available in the given link mentioned in the circular. The details of the sanction measures and exemptions are available at the following URL:

REs are advised to take appropriate action in accordance with sections 51, 52 and 53 of the MD on KYC and to follow the procedure laid down in the UAPA Order dated Feb 02, 2021.

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

The Ministry of Home Affairs (MHA) has instructed that any request for delisting received by any RE should be forwarded electronically to Joint Secretary (CTCR) MHA for consideration. Individuals, groups, undertakings or entities seeking to be removed from the Security Council's ISIL and Al-Qaida Sanctions List can submit their request to an independent and impartial Ombudsperson appointed by the UN Secretary-General. More details are available at the given link.

REs are advised to take note of the aforementioned UNSC communications and ensure meticulous compliance.

**Link:**

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12496&Mode=0>**



# KNOWLEDGE SHARING

## CASE LAW

### **Invesco Developing Markets Fund v. Zee Entertainment Enterprises Ltd. - [2022] 137 taxmann.com 216 (Bombay)[22-03-2022]**

#### **Summary:**

In the given case an appeal has been filed by Invesco Developing Market Fund (shareholders) against the order passed by the Civil judge restraining shareholders from calling an Extraordinary general meeting in the High Court. As per the case details the shareholders requisitioned calling of an Extra-ordinary General meeting u/s 100(2)(a) of the Companies Act 2013 for replacing the 3 Non-Independent Directors in the company by appointing 6 Independent Directors(ID). The appellants in the case being Invesco Developing Market fund appellant had made a such requisition to Zee Entertainment Enterprises Ltd i.e. respondents.

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.

#### **Facts of the case and the High Court's detailed views:**

The above-said requisition was challenged in the Civil Court where the Civil judge passed an order restraining shareholders from calling such an EGM.

Now, referring to the above-mentioned judgement and based on the appeal made in the High Court by Invesco Developing Market Fund the Bombay High Court held that the interference of Civil Court was against the statutory right of the shareholders of calling an EGM. It was also further noted that as per section 430 of the Companies Act 2013 the Civil Court does not have jurisdiction to restrict shareholders from calling and holding Extra-ordinary General meetings if the requisition complies with the procedural requirements u/s 100 of the Companies Act 2013.

Further, it was also held that the proposition for the replacement of all executive directors with Independent Directors does not go against section 149 of the Companies Act as well as with SEBI LODR regulation 17. It was also further stated that there is no restriction on having Independent Directors but the limitations are only w.r.t proportion of Executive Directors on the Board.

**Issues Involved:**

As rightfully noted by the Bombay High Court the order passed by the Civil Court is against the jurisdiction as prescribed in section 430 of the Companies Act 2013, hence the order forms part of the issue and hence the appeal filed against the Civil Court's order is acknowledged and found to be rightful.

**The other issues involved in the above appeal are:**

considering whether the removal of Non-independent directors and their replacement with the appointment of Independent directors is acceptable.

Considering whether the Shareholders can call and hold an EGM for the above-mentioned matter or not?

Does the appointment of Independent Directors have any restrictions w.r.t the number of independent directors being in excess of non-independent directors?

**Conclusion:**

HC declares that executive directors can be replaced by independent directors if sec 100 conditions are met:

In the judgement dated 22nd March 2022, the High Court stated that the order passed by Civil Court falls outside the purview of the Civil Court's jurisdiction. It was further held that the Civil Court cannot interfere with the statutory rights of the shareholders by restricting them from calling an EGM if all the procedural requirements as prescribed u/s 100 are met.

Bombay High Court also further held that all of the executive directors can be replaced by appointment of Independent Directors as it does not go against section 149 of the Companies Act as well as with SEBI LODR regulation 17. Thus, we can conclude that HC has ruled out the order passed by the Civil Court securing the statutory rights of the shareholders



# **INSOLVENCY AND BANKRUPTCY CODE 2016 CASE LAW**

## **Resolution Professional Under IBC Will Come Within Meaning Of 'Public Servant' Under Prevention Of Corruption Act.**

### **Sanjay Kumar Agarwal vs Central Bureau Of Investigation**

**Date of Order – April 5, 2023**

#### **The fact of the Case**

The complainant, a Director of one of the companies, alleged that the petitioner (IP) demanded a bribe of Rs. 2,00,000/- per month for being lenient in the insolvency resolution process and extending the Corporate Insolvency Resolution Process (CIRP) from 09 months to 02 years. Additionally, the petitioner also demanded Rs.20,00,000/- for obtaining a favourable forensic audit/valuation report from a specific Forensic Auditor. A raid was carried out at the company office, resulting in the petitioner being caught red-handed and accepting illegal gratification from the complainant. FIR was registered under Section 7 of the Prevention of Corruption Act, of 1988. IP filed a Cr. Misc. petition praying for the quashing of the FIR, on the ground that Section 7 of the PC Act does not apply to RPs because they do not meet the definition of a public servant as defined in Section 2(C) of the PC Act or Section 21 of the IPC.

#### **Decision**

Hon'ble Jharkhand High Court rejected the Cr. Misc. Petition and held that,

Section 233 gives protection to a resolution professional from criminal prosecution for acts in good faith, and not where he has been apprehended red-handed with the bribe amount. The insolvency and bankruptcy code is a self-contained code but only with respect to the matter provided therein. It does not cover the matters like the present, where a Resolution Professional takes bribes in order to favour a party to which P.C. Act is squarely applicable. Section 232 does not exclude the operation of the P.C. Act.

The appointment of a resolution professional is made by the National Company Law Tribunal, which is the Adjudicating Authority for the insolvency resolution process of the companies under the I & B Code, 2016. Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors. From his nature of assignment and duty to be performed his office entails the performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act.



# INSOLVENCY AND BANKRUPTCY CODE 2016 CASE LAW

**Financial Creditor who does not attend the proceeding, cannot be heard in saying that CIRP has wrongly been conducted.**

**Case Title – Consolidated Finvest & Holdings Ltd. v Subhash Kumar Kundra**

**Date of Supreme Court Judgements: March 21, 2023**

## **The fact of the Case**

A liquidation order was passed against the CD. The Appellant being a Financial Creditor challenged the same claiming that the entire process was not legally done and a fresh EOI needs to be issued. The Appellant claimed that it wanted resolution of the CD rather than liquidation.

## **Decision**

Hon'ble NCLAT, New Delhi rejected the appeal and held that,

A financial creditor of the Corporate Debtor has been given rights as per IBC to take steps for resolution of the Corporate Debtor and a financial creditor who does not attend the proceeding, cannot be heard saying that the process has wrongly been conducted. From the facts, it is clear that Form-G was issued and thereafter it was extended six times. The appellant has made several prayers in his application and one of the prayers is that the Appellant be permitted to file a fresh plan however Appellant has not filed any plan in response to Form G, hence there is no occasion for filing any Resolution Plan afresh. All the prayers made in the application have rightly been rejected by the Adjudicating Authority.



# **INSOLVENCY AND BANKRUPTCY CODE 2016 CASE LAW**

## **NCLAT Delhi Upholds Rejection Of 'Discovery & Inspection' Application Filed By Corporate Debtor In Section 9 Petition.**

### **Case Title - Baba Baidnath Spinners Pvt. Ltd. v. Textile Solutions**

**Date of Supreme Court Judgement: April 19, 2023**

#### **Fact of Case**

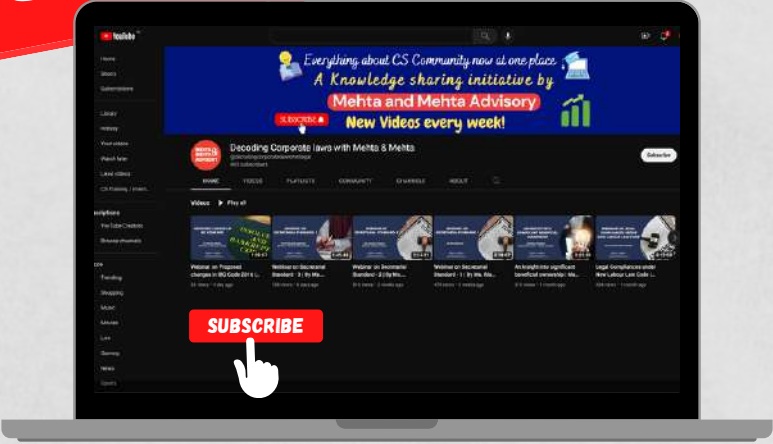
Textile Solutions filed a petition under Section 9 of IBC, to initiate CIRP against Baba Baidnath Spinners Pvt. Ltd. During the pendency of the petition, the CD filed an application for discovery and inspection of documents before the AA. He prayed to bring on record additional documents which are to be filed by the OC and further sought direction to provide discovery and inspection of all those documents. OC opposed the application while stating that the documents it would like to rely on have already been filed. Further, if any documents are not filed then the consequences will be faced by the OC alone.

#### **Decision**

Hon'ble NCLAT dismissed the appeal and held that, "We are of the view that what is worthy of the document has to be considered at the time of considering Section 9 Application and it is for the Operational Creditor to file relevant documents in support of his case and the Adjudicating Authority did not commit any error in rejecting the Application filed by the Appellant for discovery and inspection. Section 9 Application are application which has to be decided in a timely manner and the exercise of discretion by the Adjudicating Authority can not be faulted. We make it clear that we are not expressing any opinion on the merits of the claim of the parties or any other aspect of the matter."

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