

Legal Updates

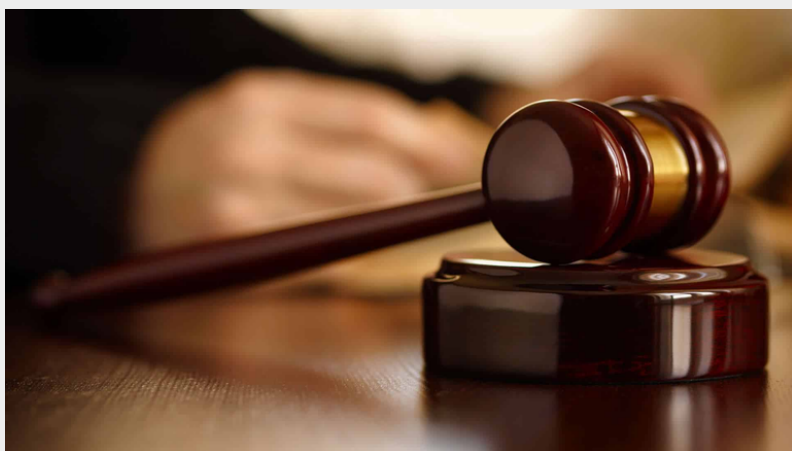
VEDANAM

August 20, 2023

MEHTA & MEHTA
Legal and Advisory Services

WHY VEDANAM?

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



Stay informed and empowered with our comprehensive Legal Newsletter "Vedanam", a thoughtfully curated newsletter designed to provide legal professionals, scholars, and enthusiasts with the latest developments, trends, and analysis from the dynamic world of law.

TABLE OF CONTENT

- MCA UPDATES
- SEBI UPDATE
- RBI UPDATE
- KNOWLEDGE SHARING
- IBC CASE LAWS



MCA Update- Condonation of delay in filing of Form-3, Form-4 and Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 of the Companies Act, 2013

The Form-3 and Form-4 would be processed under Straight Through Process (STP) mode for all purposes except for change in business activities. The stakeholders are advised to file these forms in sequential manner i.e., the filing for old events date may be filed first and so on so as to update the master data in proper manner.

At the time of filing these forms, the pre-filled data as per existing master data of the LLP shall be provided in each of above mentioned forms but the same shall have the facility to edit. The onus of filing correct data would be on the stakeholders. In case of mis-representation, the Designated Partner and the professional certifying the form may be liable for adverse action as per provisions of the law.

The filing of Form-3 and Form-4 without additional fee shall be applicable for the event dates 01.01.2021 and onwards. For events dated prior to 01.01.2021, these forms can be filed with 02 times and 04 times of normal filing fees as additional fee for small LLPS and Other than small LLPs respectively.

The filing of Form-11 without additional fee shall be applicable for the financial year 2021-22 onwards. Form-11 for previous years (prior to financial year 2021-22) can be filed with 02 times and 04 times of normal filing fee as additional fee for small LLPs and Other than small LLP's respectively.

These forms shall be available for filing from 01.09.2023 onwards till 30.11.2023 (both dates inclusive).

The LLP availing the scheme shall not be liable for any action for delayed filing of the Form-3, Form-4 and Form-11.

[Link - Condonation of delay in filing Form 3 & Form 4](#)

SEBI Update - Transactions in Corporate Bonds through Request for Quote (RFQ) platform by FPIs

It is decided that Foreign Portfolio Investors (FPIs) shall undertake at least 10% of their total secondary market trades in Corporate Bonds by value by placing/seeking quotes on the RFQ platform of stock exchanges, on a quarterly basis.

It shall come into force with effect from October 01, 2023

[Link - Corporate Bonds through RFQ platforms by FPIs](#)

SEBI Update - Facility to remedy erroneous transfers in demat accounts

Securities and Exchange Board of India on 8th Aug 2023 decided to provide a facility for exemption from one-time password to facilitate the reversal of erroneous transfers of securities in demat accounts.

Under the rule, all off-market transfer of securities will be permitted by the depositories only by the execution of a physical Delivery Instruction Slip duly signed by the client himself/herself or by way of electronic DIS.

The depositories also put in place a system of obtaining the client's consent through OTP for such off-market transfer of securities from the client's demat account.

The facility came after SEBI received representations from depositories regarding the challenges being faced with regard to obtaining OTP in case of reversal of erroneous transfers in the demat accounts, and was requested to address the issue.

"It is decided that a well-balanced and operational mechanism for exemption from OTP may be provided for reversal of such erroneous transfers in the demat accounts".

For this purpose, depositories will constitute an internal and joint committees for examining the intra-depository and inter-depository erroneous transfers, respectively. Such a committee will be headed by a Public Interest Director of the depository and have a minimum of three members, including the head.

The depositories will place before the committee all such instances of erroneous transfers pending reversal.

The committee will examine such erroneous transfers and provide an opportunity for hearing to both parties in the interest of principles of natural justice.

Based on the documentary evidence and the hearing, the committee will take a decision on the basis of reasons to be recorded in writing.

Depositories will subsequently act based on the decision of the committee and shall send an e-mail to the registered e-mail ID of the transferee, informing about the decision of the committee.

Further, to minimise such erroneous transfers, depositories will provide a facility for the investors and depository participants to add and verify the beneficiaries before the execution of off-market transfers, including inter-depository transfers.

SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

SEBI has asked depositories to put in place appropriate systems and procedures to ensure compliance with the framework and disseminate the standard operating procedure on their websites and bring it to the notice of their participants.

The framework will come into force with immediate effect, while those pertaining to verification of the beneficiaries before execution of off-market transfers would come into effect from Jan. 1, 2024.

[Link: Facility to remedy erroneous transfers in demat accounts](#)

SEBI Update- Reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days

SEBI has reduced the timeline for listing of securities after the closure of public issue to three days, from the current six working days.

With T as the issue-closing date, the securities will now have to be listed on T+3 day versus the current T+6 day. This will be an option for public issues opening after September 1, 2023, and will be a mandatory requirement for issues opening after December 1, 2023.

[Link - Reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days](#)

SEBI Update- Procedure for seeking prior approval for change in control

Sebi on 10th Aug 2023 streamlined the procedure of obtaining prior approval for the proposed change in control of merchant bankers and bankers to an issue. The new process will be applicable from September 1, 2023.

Under the process, the intermediary will have to make an online application to Sebi for prior approval through its intermediary portal. The online application in the portal would be accompanied by information about itself, the acquirer, the person who will have control and the directors or partners of the acquirer.

This information includes the current and proposed shareholding pattern of the intermediary, details about any pending investors' complaints, details of litigation, and confirmation that all the fees due to Sebi have been paid.

In addition to this procedure, in case the incumbent intermediary is a registered stock broker, clearing member, or depository participant, it will have to obtain approval from all the stock exchanges, clearing corporations, and depositories, where the incumbent is a member or depository participant.

The prior approval granted will be valid for six months from the date of such approval within which the applicant needs to file an application for fresh registration pursuant to a change in control.

Also, the regulator put in place a streamlined process of providing approval to the proposed change in control of an intermediary in matters which involve a scheme of arrangement which needs the sanction of the National Company Law Tribunal.

The application for approval of the proposed change in control of the intermediary needs to be filed with Sebi before filing the application with NCLT.

SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

After being satisfied with compliance with the applicable regulatory requirements, an in-principle approval will be granted by Sebi. The validity of such in-principle approval will be three months from the date of issuance, within which the relevant application will be made to NCLT, the regulator said.

Within 15 days from the date of the order of NCLT, the intermediary will have to submit an online application along with certain documents to Sebi for final approval.

These relate to a copy of the NCLT order approving the scheme; copy of the approved scheme; statement explaining modifications in the approved scheme vis-a-vis the draft scheme and the reasons for the same; and details of compliance with the conditions mentioned in the in-principle approval.

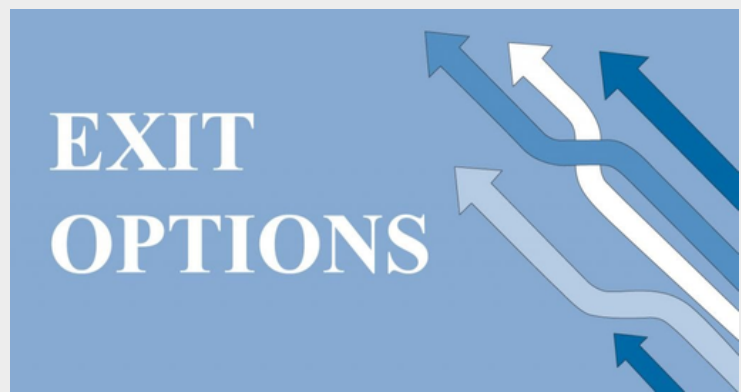
[Link- Procedure for seeking prior approval for change in control](#)

SEBI Update - Timeline for the Exit Option Window Period for Change in Control of AMC

Sebi on 11th Aug 2023 came out with a new timeline for the exit option window period given to the mutual fund unitholders for change in control of asset management company(AMC). Under the new timeline, a change in control of the AMC cannot be made unless the unitholders of the mutual fund would be given the option to exit on the prevailing Net Asset Value (NAV) without any exit load within a period of at least 15 calendar days from the date of communication.

However, in case of change in control resulting in consolidation or merger of schemes, the unitholders are given an option to exit on the prevailing Net Asset Value (NAV) without any exit within a time period not less than 30 calendar days from the date of communication.

[Link: Timeline for the Exit Option Window Period for Change in Control of AMC](#)



SEBI Update - Simplification of KYC process and rationalisation of Risk Management Framework at KYC (Know Your Client) Registration Agencies (KRAs)

Sebi on Friday simplified the KYC process and rationalised the risk management framework at KYC registration agencies (KRAs). The records of all existing clients, whose KYC has been completed based on officially valid documents other than Aadhaar, would be verified within a period of 90 days from September 1, 2023.

For the interest of investors and ease of transaction in the securities market, the client will be allowed to open an account with intermediaries and transact in the securities market as soon as the KYC (Know Your Client) process is completed. The KYC process means obtaining the Proof of Identity (PoI) and Proof of Address (PoA) of the client.

Subsequently, as a part of the risk management framework, the KRAs will verify attributes such as the PAN, name and address of all clients within two days of receipt of KYC records. Additionally, the KRAs will verify the client's mobile number and e-mail ID.

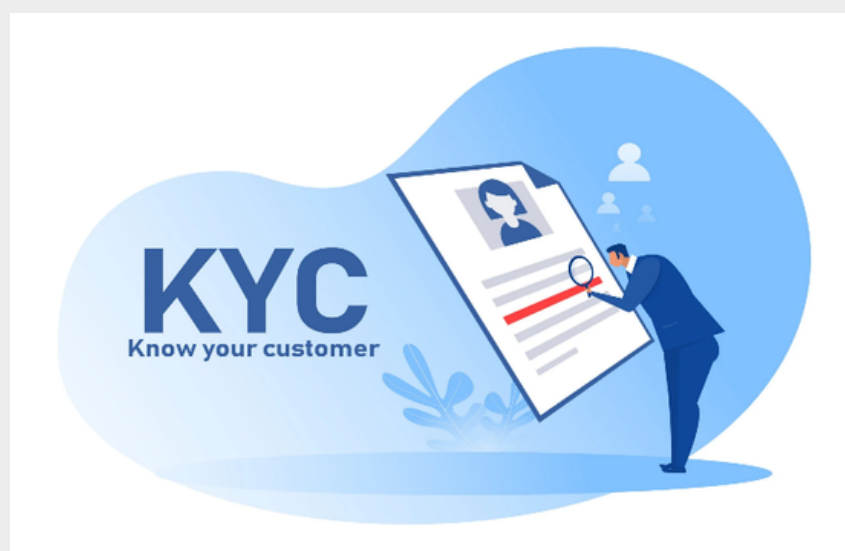
While clients in whose case, attributes of records cannot be verified, will not be allowed to transact further in the securities market until the attributes are verified and the validated records would be allowed portability the client need not undergo the KYC process again when he/she approaches a different intermediary. The intermediary will fetch the validated records from the KRA database.

KRAs to develop mechanisms, in coordination with each other, and follow uniform internal guidelines detailing aspects of the identification of attributes and procedures for verification in consultation with SEBI.

"Further, the systems of intermediaries and the KRAs shall be integrated to facilitate seamless movement of documents/information to and from the intermediary to the KRAs for verification/validation of attributes under risk management framework

The KYC process means obtaining the Proof of Identity (PoI) and Proof of Address (PoA) of the client.

[Link - Simplification of KYC process and rationalisation of Risk Management Framework at KYC \(Know Your Client\) Registration Agencies \(KRAs\)](#)



Reserve Bank of India Updates

RBI Update – Reserve Bank of India Act, 1934 – Section 42(1A) – Requirement for maintaining additional CRR

It has been decided to issue a directive under Section 42(1A) of the Reserve Bank of India Act, 1934 requiring all Scheduled Commercial Banks / Regional Rural Banks / all Scheduled Primary (Urban) Co-operative Banks / all Scheduled State Co-operative Banks to maintain with the Reserve Bank of India, effective from the fortnight beginning August 12, 2023, an incremental CRR (I-CRR) of 10 per cent on the increase in NDTL between May 19, 2023 and July 28, 2023. The I-CRR will be reviewed on September 8, 2023 or earlier.

Link – Reserve Bank of India Act, 1934 – Section 42(1A) – Requirement for maintaining additional CRR

RBI Update – Fair Lending Practice – Penal Charges in Loan Accounts

On a review of the practices followed by REs for charging penal interest/charges on loans, the following instructions are issued for adoption.

(i) Penalty, if charged, for non-compliance of material terms and conditions of loan contract by the borrower shall be treated as 'penal charges' and shall not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances. There shall be no capitalisation of penal charges i.e., no further interest computed on such charges. However, this will not affect the normal procedures for compounding of interest in the loan account.

(ii) The REs shall not introduce any additional component to the rate of interest and ensure compliance to these guidelines in both letter and spirit.

(iii) The REs shall formulate a Board approved policy on penal charges or similar charges on loans, by whatever name called.

(iv) The quantum of penal charges shall be reasonable and commensurate with the non-compliance of material terms and conditions of loan contract without being discriminatory within a particular loan / product category.

(iv) The quantum of penal charges shall be reasonable and commensurate with the non-compliance of material terms and conditions of loan contract without being discriminatory within a particular loan / product category.

(vi) The quantum and reason for penal charges shall be clearly disclosed by REs to the customers in the loan agreement and most important terms & conditions / Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under Interest rates and Service Charges.

(vii) Whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefore shall also be communicated.

Reserve Bank of India Updates

(viii) These instructions shall come into effect from January 1, 2024. REs may carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/renewed from the effective date. In the case of existing loans, the switchover to new penal charges regime shall be ensured on next review or renewal date or six months from the effective date of this circular, whichever is earlier.

Link - Fair Lending Practice - Penal Charges in Loan Accounts

RBI Update- Reset of Floating Interest Rate on Equated Monthly Instalments (EMI) based Personal Loans

Regulated Entities are advised to put in place an appropriate policy framework meeting the following requirements for implementation and compliance:

- At the time of sanction, REs shall clearly communicate to the borrowers about the possible impact of change in benchmark interest rate on the loan leading to changes in EMI and/or tenor or both. Subsequently, any increase in the EMI/ tenor or both on account of the above shall be communicated to the borrower immediately through appropriate channels.
- At the time of reset of interest rates, REs shall provide the option to the borrowers to switch over to a fixed rate as per their Board approved policy. The policy, inter alia, may also specify the number of times a borrower will be allowed to switch during the tenor of the loan.

- The borrowers shall also be given the choice to opt for (i) enhancement in EMI or elongation of tenor or for a combination of both options; and, (ii) to prepay, either in part or in full, at any point during the tenor of the loan. Levy of foreclosure charges/ pre-payment penalty shall be subject to extant instructions.
- All applicable charges for switching of loans from floating to fixed rate and any other service charges/ administrative costs incidental to the exercise of the above options shall be transparently disclosed in the sanction letter and also at the time of revision of such charges/ costs by the REs from time to time.
- REs shall ensure that the elongation of tenor in case of floating rate loan does not result in negative amortisation.
- REs shall share / make accessible to the borrowers, through appropriate channels, a statement at the end of each quarter which shall at the minimum, enumerate the principal and interest recovered till date, EMI amount, number of EMIs left and annualized rate of interest / Annual Percentage Rate (APR) for the entire tenor of the loan. The REs shall ensure that the statements are simple and easily understood by the borrower.

Link - Reset Of Floating Interest Rate On Equated Monthly Instalments (EMI) Based Personal Loans

RBI Update- Review of Regulatory Framework for IDF-NBFCs

Infrastructure Debt Fund-NBFCs (IDF-NBFCs) will now be required to have a net owned fund (NOF) of at least Rs 300 crore.

Reserve Bank of India Updates

Besides, they should have a capital-to-risk weighted assets ratio (CRAR) of minimum 15 per cent (with minimum Tier 1 capital of 10 per cent).

An IDF-NBFC is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. It raises resources through the issue of rupee or dollar-denominated bonds of minimum 5-year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF-NBFCs.

"IDF-NBFC shall raise funds through issue of either rupee or dollar-denominated bonds of minimum five-year maturity,"

With a view to facilitating better asset-liability management (ALM), IDF-NBFCs can raise funds through shorter tenor bonds and commercial papers (CPs) from the domestic market to the extent of up to 10 per cent of their total outstanding borrowings.

Under the earlier guidelines, an IDF-NBFC was required to be sponsored by a bank or an NBFC-Infrastructure Finance Company (NBFC-IFC).

The requirement of a sponsor for an IDF-NBFC has now been withdrawn and shareholders of IDF-NBFCs would be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs.

All NBFCs would be eligible to sponsor IDF-MFs with prior approval of RBI subject to certain conditions.

[Link-Review of Regulatory Framework for IDF-NBFCs](#)



Insolvency and Bankruptcy Case Laws

ANIL KUMAR, SUSPENDED DIRECTOR, SK ELITE INDUSTRIES INDIA LTD. VS. JAYESH SANGHRAJAKA, RP, SK ELITE INDUSTRIES INDIA LTD.

NCLAT NEW DELHI – DATED: 3rd AUGUST 2023

“WITHDRAWING LIQUIDATION APPLICATION AND ALLOWING A RESOLUTION PLAN AFTER DECISION TO LIQUIDATE THE CORPORATE DEBTOR WITHOUT ISSUING FRESH EOI(FORM G) IS COMMERCIAL WISDOM OF COC AND IS CANNOT BE INTERFERED IN THE EXERCISE OF JURISDICTION OF JUDICIAL REVIEW EITHER BY NCLT OR NCLAT IN THE EXERCISE OF ITS APPELLATE POWERS. ”

FACTS OF THE CASE

The CoC decided to withdraw the liquidation application. The Resolution Professional filed IA before the Adjudicating Authority seeking withdrawal of liquidation application and to permit CoC to consider the resolution plan submitted by Respondent No.3. The Adjudicating Authority kept the liquidation application in abeyance; allowed consideration of the Resolution Plan of Respondent No.3. In the 19th CoC meeting, the resolution plan of Respondent No.3 was approved by the CoC by 100% majority. The Adjudicating Authority vide its order approved the resolution plan having found the same to be in compliance with the provisions of IBC, the CIRP Regulations and not being in contravention with provisions of any law.

DECISION OF THE APPELLATE TRIBUNAL

When the CoC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. There can be no fetters on the commercial wisdom of the CoC. It is settled law that commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by this Tribunal in the exercise of its appellate powers. Having regard to the foregoing discussion, according to the board, the Adjudicating Authority did not err in approving the resolution plan. In result, both impugned orders do not warrant any interference. Appeals being devoid of merit were dismissed.

INDOTECH INDUSTRIAL SOLUTIONS PVT. LTD. VS. VISHAL STEELS

NCLAT NEW DELHI – JUDGEMENT DATED: 2nd AUGUST 2023

“ISSUE OF PRE-EXISTING DISPUTE IN SECTION 9 APPLICATION CANNOT BE RAISED IN APPEAL BEFORE NCLAT WHEN THE CORPORATE DEBTOR HAS NOT TAKEN ANY STEP REGARDING FILING OF THE REPLY.”

FACTS OF THE CASE

Learned Counsel for the Appellant submitted that there was pre-existing dispute and Operational Creditor has not disclosed the said submission in the Application and they should be punished under Section 76. The Corporate Debtor had appeared in the proceedings in the year 2022. For more than a year neither reply has been filed nor any step was taken by the Corporate Debtor regarding filing of the Reply. The Corporate Debtor choose to watch the proceedings and took a chance. No objection having been filed by the Corporate Debtor.

DECISION OF THE APPELLATE TRIBUNAL:

The NCLAT was of the view that the Adjudicating Authority having found debt due and default has rightly admitted the Application and they did not find any substance in this appeal. Hence, the Appeal was Dismissed.

Insolvency and Bankruptcy Case Laws

NITIN CHANDRAKANT DESAI VS. EDELWEISS ASSET RECONSTRUCTION LTD. & ANR.

NCLT MUMBAI – Order dated 1ST AUGUST 2023

“ANY DEFAULT COMMITTED DURING THE SECTION 10A PERIOD CANNOT BE HELD TO BAR CIRP APPLICATION WHICH IS FILED ON THE BASIS OF DEFAULT PRIOR TO SECTION 10A AND SUBSEQUENT TO SECTION 10A PERIOD”

FACTS OF THE CASE

The Appeal had been filed against the Order dated 25.07.2023 by which order the Adjudicating Authority has admitted Section 7 Application filed by the Respondent.

The Adjudicating Authority held that the date of default is mentioned as 31.01.2020 in the NESL Certificate in the record of default and the above Company Petition being filed on 26.07.2022 is well within limitation. Certainly, the above date of default does not fall within 10A period and the argument of Corporate Debtor with regard to the default during 10A period needs to be rejected on merits.

DECISION OF THE ADJUDICATING AUTHORITY:

NCLAT held that the Application indicates that default was committed by the Corporate Debtor prior to Section 10A period, and they are satisfied that no error has been committed by the Adjudicating Authority in admitting Section 7 Application. There is no merit in the Appeal, the Appeal is dismissed.

RKG ASSET MANAGEMENT LLP VS. M/S. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

NCLT MUMBAI – 1ST AUGUST 2023

“THE IBC DOES NOT MANDATE SPECIFIC UNIFORM CRITERIA FOR THE INVITATION OF RESOLUTION PLANS, AND THE COMMITTEE OF CREDITORS (COC) IS ALLOWED TO SET ITS CRITERIA ON A CASE-BY-CASE BASIS”

FACTS OF THE CASE:

The Applicant was required to deposit the amount towards the Earnest Money and Performance Security as per the said Clauses. The present application has been filed by RKG Asset Management LLP, who is an Investment Manager of RKG Trust, a category II Alternative Investment Fund registered with SEBI, seeking directions to the Resolution Professional who has issued Request For Resolution Plan (RFRP) Document. The Applicant's contention is that the said RFRP document contains onerous and discriminatory clauses that have skewed the resolution process of the Corporate Debtor in favour of some Resolution Applicants and thereby vitiated the Resolution Process.

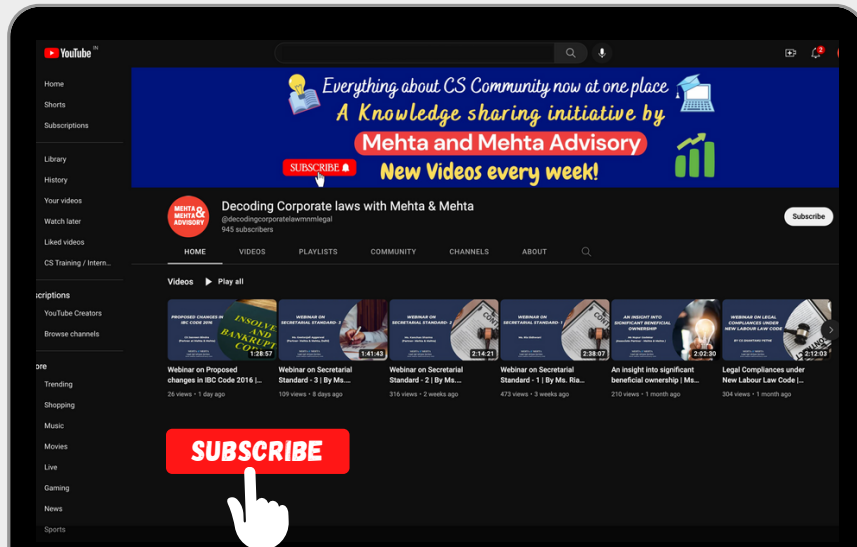
DECISION OF THE APPELLATE TRIBUNAL:

It is noted that the Applicant never raised any objections either with CoC or Resolution Professional regarding the issues raised in the present application at the time of issue of RFRP. The Applicant never raised any objection to the same and deposited a sum of Rs. 10 Lakhs but did not submit the Resolution Plans. The bench was of the view that the instant application bereft of any merits and the same is **dismissed**.

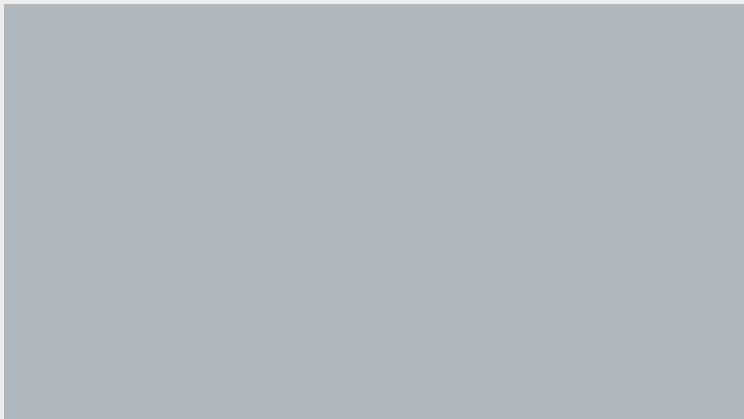
A splendid seminar by our Chief Consultant Sudhakar Sir and Partner Raveena Dugar in Kolkata on 17.08.23 on the topic Related Party Transaction.



For regular updates subscribe to our Youtube Channel
Decoding Corporate laws with Mehta and Mehta



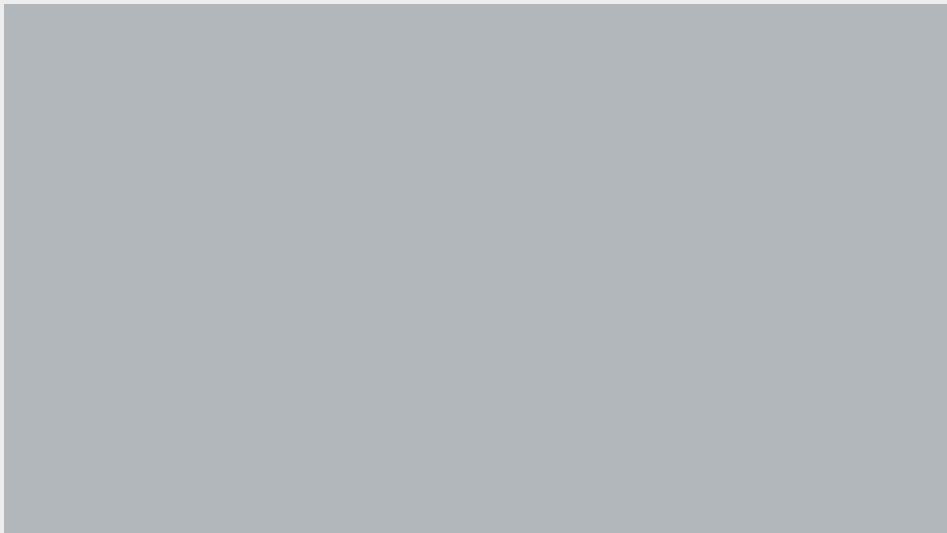
CLICK HERE TO WATCH OUR LATEST WEBINARS



Webinar on Complexities of Regulation 30



Webinar on "Compliance audit of factory"



Webinar on GIFT City