

OCT 2023 | ISSUE

VEDANAM

WHY VEDANAM?



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

We hereby release our October 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.

In this newsletter you will find compilation of:

↓ Latest updates about our webinars and circulars, notifications and updates published by SEBI, MCA, RBI, IBBI and such other official government sites

Ministry of Corporate Affairs Update

Rules	Companies (Prospectus and Allotment of Securities) Rules, 2014.	Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.	Comments
Rule -9 Dematerialisation of securities	<p>The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised Form Provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.</p>	<p>Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall, - (a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and</p>	<p>The Amendment introduces changes for public companies that had previously issued share warrants before the commencement of the Companies Act, 2013.</p> <p>These companies are required to take specific actions within specified timelines:</p> <p>Within three months of the Amendment's commencement, public companies must inform the Registrar about the details of such share warrants using Form PAS-7.</p> <p>Within six months of the Amendment's commencement, these companies must request bearers of the share warrants to surrender them and get the shares dematerialized. This requirement involves placing a notice on the company's website and publishing the same in local and English newspapers.</p> <p>Failure to surrender the share warrants results in their conversion into dematerialized form and transfer to the Investor Education and Protection Fund.</p> <p>Failure to surrender the share warrants results in their conversion into dematerialized form and transfer to the Investor Education and Protection Fund.</p>

Ministry of Corporate Affairs Update

Rules	Companies (Prospectus and Allotment of Securities) Rules, 2014.	Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.	Comments
		<p>(b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.</p> <p>(3) In case any bearer of share warrant does not surrender the share warrants within the period referred to in sub-rule (2), the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act</p>	

Ministry of Corporate Affairs Update

Rules	Companies (Prospectus and Allotment of Securities) Rules, 2014.	Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.	Comments
		<p>(1) Every private company, other than a small company, shall within the period referred to in sub-rule (2) –</p> <p>(a) issue the securities only in dematerialised form; and</p> <p>(b) facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.</p> <p>(2) A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.</p> <p>(3) Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.</p>	

Ministry of Corporate Affairs Update

Rules	Companies (Prospectus and Allotment of Securities) Rules, 2014.	Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.	Comments
		<p>(4) Every holder of securities of the private company referred to in sub-rule (2),- (a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or (b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.</p> <p>(5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.</p> <p>(6) The provisions of this rule shall not apply in case of a Government company</p>	
			After the Form PAS-6 the form PAS 7 and PAS-8 is inserted

MCA Update - Amendments to Companies (Incorporation) Rules, 2014 (Notification issued on 20th October 2023)

Ministry of Corporate Affairs (MCA) has made the following amendments to the Companies (Incorporation) Rules 2014 particularly with regard to the shifting of registered office of the Company from one state/union territory to another:

- a. The provision for levying of cost by Central Government while approving the shifting of the registered office of the Company from one state to another has been omitted through this amendment. (Refer: Rule 30(9)).
- b. A new proviso has been inserted to Rule 30(9) which clarifies about allowing of shifting of registered office of Company for which a resolution plan has been approved under Section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal is pending in any court or tribunal against the resolution plan and further no enquiry, inspection, investigation is pending or initiated after the approval of the resolution plan.

The abovementioned amendments shall come into effect from 21st October 2023.

[Link: Amendments to Companies \(Incorporation\) Rules, 2014](#)



MCA Update - Amendments to Companies (Management and Administration) Rules, 2014 (Notification issued on 27th October 2023)

MCA has made the following amendments to the Companies (Management and Administration) Rules 2014 particularly with regard to designation of a person for beneficial interest in shares of the Company.

“Beneficial Interest” means interest of shareholders who are not registered holders but have beneficial interest in the shares of the Company.

New sub rules are added to existing Rule 9 which mandates the following:

- a. Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.
- b. The Company may designate the following person(s) as the designated person:
 - i. Company Secretary (CS), if there is requirement to appoint a CS; or
 - ii. Any other Key Managerial Person (KMP) other than CS like CFO, MD, etc.; or
 - iii. Every director, in case there is no CS or KMP

Until a person is designated as mentioned above, the following persons shall be deemed to have been designated person;

- a. CS, if there is requirement to appoint a CS
- b. every Managing Director (MD) or Manager, in case a CS has not been appointed; or
- c. every director, if there is no CS or a MD or Manager.

Every company shall inform the details of the designated person in the Annual return (Form MGT-7).

If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

The abovementioned amendments shall come into effect from 27th October 2023.

MCA Update - Limited Liability Partnership (Third Amendment) Rules, 2023.

Rule 22-A has been inserted relating to “Register of Partners”.

- Every Limited Liability Partnership ('LLP'), from the date of its incorporation, has to maintain a register of partners in Form 4A.
- In the case where LLP exists on 27-10-2023, it will have to maintain the register within 30 days from commencement of these rules.

The register should contain the following particulars:

- Name of the partner,
- Address,
- Permanent Account Number/ Corporate Identification Number; Unique Identification Number; Father or mother or spouse's name; Occupation; Status; Nationality; Name and address of nominee.
- Date of becoming partner;
- Date of cessation;
- Amount and nature of contribution with monetary value.
- In case of change of name and details of partner, change in contribution amount or cessation of partnership interest, entries should be made within 7 days of such change.

Rule 22-B has been inserted relating to “Declaration in respect of beneficial interest in any contribution”.

- In case where a person's name is entered in the register, but he does not hold any beneficial interest in contribution, then he has to file a Declaration in Form 4-B, within 30 days from the date on which his name is entered in the register of partners, specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions.
- In case of any change in the beneficial interest in contribution, the beneficial partner will have to make a declaration on Form 4C, within 30 days of the date of such change.
- In case where, the beneficial interest of a registered partner is limited to the contribution stated against his name, but he does not hold beneficial interest in contribution against any other registered partner, then, he will not be required to file such a declaration.
- The LLP should record any declaration in the register of partners within 30 days from the date of receipt of the declaration.

The following Forms have been revised:

Form 4 relating to “Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner/declaration of designated partner with respect to beneficial interest”.

Form 4-A relating to “Register of Partners”.

Form 4-B relating to “Declaration by the Registered Partner who does not hold the beneficial interest in the Contribution”.

Form 4-C relating to “Declaration by the Partner who holds or acquires beneficial interest in the Contribution but whose name is not entered in the Register of Partners”.

Form 4-D relating to “Return to the Registrar in respect of declaration of beneficial interest in contribution received by the LLP”.

[Link - Limited Liability Partnership \(Third Amendment\) Rules, 2023.](#)



SEBI Update - Extension of timeline for verification of market rumours by listed entities

The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") inter-alia requires top 100 listed entities by market capitalization with effect from October 1, 2023 and top 250 listed entities by market capitalization with effect from April 1, 2024 to mandatorily verify and confirm, deny or clarify market rumours.

It has been decided to extend the effective date of implementation of the provision to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to February 1, 2024 and for top 250 listed entities by market capitalization, to August 1, 2024.

The new format will be applicable for all public issues opening on or after October 1, 2023.

[Link - SEBI Update - Extension of timeline for verification of market rumours by listed entities](#)

SEBI Update - Centralized mechanism for reporting the demise of an investor through KRAs

SEBI on 3rd Oct 2023 issued a circular regarding the Centralized mechanism for reporting the demise of an investor through KRAs.

This circular lays down the operational norms, obligations of regulated entities including registered intermediaries that have interface with investor /accounts holders.

The following has been stated namely -

It has been decided to introduce a centralised mechanism for reporting and verification in case of the demise of an investor and thereby smoothen the process of transmission in the securities market.

It states that listed companies wanting to provide the beneficial access to such a centralized mechanism to their investors holding securities in physical form, are eligible to establish connectivity with KRA through their RTAs.

It further state that in order to have uniformity for operationalizing this circular, Stock Exchanges, Depositories and industry associations like Association of Mutual Funds in India (AMFI), Registrars Association of India (RAIN) etc. in consultation with stakeholders including KRAs, may put in place common Standard Operating Procedure (SOP). The SOP shall be made available on their websites as well as that of the intermediaries. This circular shall come into effect from January 01, 2024

[Link - Centralized mechanism for reporting the demise of an investor through KRAs](#)

SEBI Update - Limited relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 58(1)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations") provides that a listed entity shall send a hard copy of the statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not so registered.

MCA vide circular dated September 25, 2023, has, inter-alia, extended the relaxation from dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) up to September 30, 2024.

It has been decided to relax, up to September 30, 2024, the requirements of regulation 58 (1) (b) of the SEBI Listing Regulations.

This Circular shall come into force with immediate effect.

[Link - Limited relaxation from compliance with certain provisions of the SEBI \(Listing Obligations and Disclosure Requirements\) Regulations, 2015](#)

SEBI Update - Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms

Sebi on 6th Oct 2023 issued the circular stating the following .

It has been decided that the members of stock exchanges functioning only in EOP segment (Category 2 EOP) shall maintain a sum of Rs. 10 Lakhs with the stock exchange as BMC deposit.

However, for members having registration of more than one segment on the same stock exchange, the BMC deposit requirement shall not be additive for such a number of segments and shall be the highest applicable BMC deposit, across various segments.

The provisions of this circular shall be implemented immediately

[Link - SEBI Update - Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms](#)

SEBI Update - Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.

SEBI Master Circular dated July 11, 2023 on compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 by listed entities ("Master Circular") inter-alia relaxed the applicability of regulation 36(1) (b) of the LODR Regulations for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2023 (section VI-J of the Master Circular).

MCA, vide General Circular dated September 25, 2023, has extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till September 30, 2024. SEBI has also received representations to extend the relaxations mentioned.

It has been decided to extend the relaxations mentioned at para 1 above till September 30, 2024.

[Link - Relaxation from compliance with certain provisions of the SEBI \(Listing Obligations and Disclosure Requirements\) Regulations, 2015 – Reg.](#)

SEBI Update - Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013

Regulation 7 of SEBI (Investment Advisers) Regulations, 2013, as amended vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, specifies the qualification and experience requirements for investment advisers and provides that an individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice shall comply with the enhanced qualification and experience requirements specified in regulation 7(1) within a period of three years, i.e., by September 30, 2023.

The emerging landscape of the domain of investment advice, the first proviso to regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013 has been amended with effect from September 30, 2023, vide the SEBI (Investment Advisers) (Amendment) Regulations, 2023 dated October 09, 2023. Accordingly, it is now specified that the timeline to comply with the enhanced qualification and experience requirements under regulation 7(1) is extended to September 30, 2025.

SEBI Update - Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013

SEBI Update - Master Circular on Know Your Client (KYC) norms for the securities market

This Master Circular is a compilation of the circulars/directions issued by SEBI up to September 30, 2023, on Know Your Client (KYC) norms for the securities market includes certain modifications to align such circulars/directions with the provisions of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the Securities and Exchange Board of India [KYC (Know Your Client) Registration Agency] Regulations, 2011.

The provisions of this Master Circular shall come into force from the date of its issue.

Link - Master Circular on Know Your Client (KYC) norms for the securities market

SEBI Update - Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

SEBI vide circular has issued Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under.

The key changes brought about by these amendments and their implications:

Enhanced AML/CFT Measures in Host Countries

One of the noteworthy additions to the regulations is the requirement for financial groups to apply additional measures when the host country does not allow proper AML/CFT implementation consistent with home country requirements. These additional measures are aimed at managing Money Laundering (ML) and Terrorist Financing (TF) risks more effectively. It's crucial for these financial groups to inform the Securities and Exchange Board of India (SEBI) about these measures, ensuring transparency and accountability in cross-border financial activities.

Group-Wide AML/CFT Programs

To reinforce AML/CFT efforts, financial groups are now mandated to establish group-wide programs to deal with ML/TF. These programs must be applicable to all branches and majority-owned subsidiaries. Key components include information sharing for Customer Due Diligence (CDD) and risk management purposes, both at the group level and among branches and subsidiaries. Adequate safeguards to prevent tipping-off are also emphasized, ensuring the confidentiality and integrity of shared information.

Trust Disclosure

In cases involving trusts, reporting entities must now ensure that trustees disclose their status at the commencement of an account-based relationship. This additional transparency and disclosure requirement aims to prevent any misuse of trusts in the context of money laundering or terrorist financing.

Beneficial Ownership Identification

The amendments provide clear guidelines on identifying beneficial owners of various entities. These include companies, partnership firms, unincorporated associations or bodies of individuals, trusts, and entities listed on Indian stock exchanges or in specific jurisdictions. The criteria for identifying beneficial owners include ownership percentages, control, and senior managing officials.

Periodic Updates

Registered intermediaries are now responsible for periodically updating client and beneficial owner information collected through Customer Due Diligence (CDD). This ensures that the information remains relevant, especially for high-risk clients, and strengthens the monitoring of potentially suspicious activities.

Strict CDD Procedure

The amendments introduce a stringent requirement: no transaction or account-based relationship can be undertaken without following the CDD procedure. This ensures that proper due diligence is conducted before any financial activity is initiated, reducing the risk of illicit money flow.

Politically Exposed Persons (PEPs)

The amendments incorporate specific norms applicable to PEPs, consistent with the Prevention of Money-Laundering Rules, 2005. These norms also extend to family members, close relatives, and associates of PEPs, ensuring comprehensive coverage in AML/CFT efforts.

Enhanced Due Diligence (EDD) Measures

Registered intermediaries are now required to apply EDD measures proportionate to the risks associated with business relationships and transactions involving natural and legal persons from countries for which the Financial Action Task Force (FATF) prescribes such measures.

Records Retrieval

In situations where registered entities lack records of their clients' identity, they must promptly obtain these records. Failure to do so will lead to the closure of the client's account, emphasizing the importance of record-keeping for AML/CFT compliance.

Appointment of Principal Officer

To streamline the reporting of suspicious transactions and assessments, registered intermediaries are now required to appoint a Principal Officer, who acts as a central reference point for these activities.

This officer must be at the management level and serves as a bridge between internal operations and the authorities responsible for AML/CFT oversight.

Link - Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

SEBI Update - Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)

The framework for fund raising by issuance of debt securities by LCs is revised

This framework is applicable with effect from April 01, 2024 for LCs following April-March as their financial year. This framework is applicable with effect from January 01, 2024, for LCs which follow January-December as their financial year.

The framework shall be applicable for all listed entities (except for Scheduled Commercial Banks), which as on last day of the FY (i.e. March 31 or December 31)

a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised Stock Exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations); and

These Directions shall be applicable to all cases where release of original movable / immovable property documents falls due on or after December 1, 2023.

b) have outstanding long term borrowings of Rs.1000 crore or above

Link - Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)

SEBI Update - Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Qualified RTAs (QRTAs)

SEBI has issued new guidelines to enhance their Business Continuity Plan (BCP) and Disaster Recovery (DR) capabilities. These guidelines aim to bolster the overall resiliency of QRTAs, ensure continuous operations, and reduce recovery time in case of a disaster.

Organizational Resilience and Documentation

QRTAs are expected to have robust BCP and DRS systems to maintain data and transaction integrity. To achieve this, they must ensure the following:

Expertise Equality: The staff at DRS/Near Site (NS) should possess the same expertise as those at the Primary Data Center (PDC) to ensure they can operate independently in case of a disaster.

Incident and Response Team: QRTAs must establish an Incident and Response Team (IRT) or Crisis Management Team (CMT), headed by the Managing Director (MD) or Chief Technology Officer (CTO). The team will be responsible for declaring a disaster, implementing the BCP, and shifting operations from PDC to DRS as needed.

Policy Documentation: QRTAs are required to document roles, responsibilities, and actions to be taken by employees, IRT/CMT, and support/outsourced staff in the event of a disaster.

Configuration of DRS/NS with PDC

In addition to maintaining a Disaster Recovery Site (DRS), QRTAs should have a Near Site (NS) to ensure zero data loss. The DRS should ideally be located in different seismic zones, and if this is not feasible, a minimum distance of 500 kilometers between PDC and DRS should be ensured.

Hardware, software, application environments, network and security devices in the DRS should correspond one-to-one with those in the PDC. Any system updates or changes should not be required for the switch from PDC to DRS.

QRTAs are required to ensure a Recovery Time Objective (RTO) of 45 minutes, meaning they must restore critical systems' operations from DRS within 45 minutes of declaring a disaster. This should be implemented within 90 days from the issuance of the circular.

The "Critical Systems" for QRTAs may include various transaction processes, connectivity with Asset Management Companies (AMCs), NAV calculation-related processes, and others. It is imperative that the RPO (Recovery Point Objective), the maximum tolerable data loss period, is set at 15 minutes.

DR Drills/Testing

QRTAs are expected to conduct regular training programs for employees and outsourced staff to enhance preparedness. DR drills should be held quarterly and closely mimic real trading scenarios.

Additionally, unannounced live operations from the DRS should be conducted at least once every three months on normal working days. The results and observations of these drills should be documented and reviewed.

BCP-DR Policy Document

QRTAs are required to have a comprehensive BCP-DR policy document that outlines various aspects of disaster recovery. This document should be approved by the Governing Board, periodically reviewed, and communicated to SEBI.

The BCP-DR policy should also address scenarios of intraday shifting from PDC to DRS, highlighting preparedness in meeting RTO and RPO requirements.

[Link - Guidelines for Business Continuity Plan \(BCP\) and Disaster Recovery \(DR\) of Qualified RTAs \(QRTAs\)](#)

SEBI Update - Revision in manner of achieving minimum public unitholding requirement - Infrastructure Investment Trusts (InvITs)

On October 31, 2023, the Securities and Exchange Board of India (SEBI) issued a significant circular, impacting Infrastructure Investment Trusts (InvITs).

Privately placed InvITs can now achieve minimum public unitholding by issuing units through preferential allotment, with the condition that only units issued to the public will be considered for compliance with the minimum unitholding requirement.

Modification of Existing Method: No. 7 under para 21.2. of Chapter 21 of the Master circular for InvITs dated July 06, 2023 has been modified. This pertains to the sale of units held by Sponsor(s), Investment Manager, Project Manager, and their associates/related parties.

[Link - Revision in manner of achieving minimum public unitholding requirement - Infrastructure Investment Trusts \(InvITs\)](#)

Reserve Bank of India Updates

RBI Update - Status of March 31, 2024 for Government transactions through integration with e-Kuber

The 'e-Kuber' which is the Core Banking Solution platform of RBI for Government and other payments does not process any Government transactions on Global holidays (which are 26th January, 15th August, 2nd October, all 2nd and 4th Saturdays of a month and on all Sundays). It is observed that March 31, 2024 falls on a Sunday. The office of Controller General of Accounts, Government of India has advised that in order to account for all the Government transactions relating to receipts and payments in the financial year 2023-24 itself, it has been decided that March 31, 2024 (Sunday) be marked as a working day for the Government transactions so that all the Government transactions through integration with e-Kuber are processed on March 31, 2024 and accounted for in the financial year 2023-24 itself for arriving the cash balance of Government of India as on March 31, 2024.

[Link - Status of March 31, 2024 for Government transactions through integration with e-Kuber](#)

RBI Update - Gold Loan - Bullet Repayment - Primary (Urban) Co-operative Banks (UCBs)

It has been decided to increase the monetary ceiling of gold loans that can be granted under the bullet repayment scheme, from ₹2.00 lakh to ₹4.00 lakh for those UCBs who have met the overall PSL target and sub targets as on March 31, 2023 and continue to meet the targets and sub-targets.

[Link - Gold Loan - Bullet Repayment - Primary \(Urban\) Co-operative Banks \(UCBs\)](#)

RBI Update - Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs) - Extension to Government NBFCs

Reserve Bank of India introduced PCA Framework for NBFCs on December 14, 2021.

The Framework has since been reviewed and it has been decided to extend the same to Government NBFCs (except those in Base Layer) with effect from October 1, 2024, based on the audited financials of the NBFC as on March 31, 2024, or thereafter.

[Link - Prompt Corrective Action \(PCA\) Framework for Non-Banking Financial Companies \(NBFCs\) - Extension to Government NBFCs](#)

RBI Update - Reverse Repo transactions - Reporting in Form 'A' Return

To bring uniformity in reporting of Reverse Repo transactions in the Form A Return by various banks, it is clarified that the banks should adhere to the following practice for presentation of Reverse Repo transactions in the above return:

Reverse Repo transactions with the banks should be reported as under:

- i. For original tenors up to and inclusive of 14 days
 1. Item III(b) of Form A (i.e. Money at call and short notice) and;
 2. Memo item 2.1 of Annex A to Form A (i.e. under Inter Bank Assets)
- ii. For original tenors more than 14 days
 1. Item III(c) of Form A (i.e. Advances to banks) and;
 2. Memo item 2.1 and 2.2 of Annex A to Form A (i.e. under Inter Bank Assets)

Reserve Bank of India Updates

Reverse Repo transactions with non-banks (other institutions) for all tenors should be reported under Item VI(a) of Form A [i.e. Loans, cash credits and overdrafts under Bank Credit in India (excluding inter-bank advances)].

[Link - Reverse Repo transactions - Reporting in Form 'A' Return](#)

RBI Update - Amendment to the Master Direction (MD) on KYC

It has been decided to amend the MD on KYC to:

(a) Update certain instructions considering amendments to the PML Rules vide Government notifications dated September 4, 2023 and October 17, 2023;

(b) Update Annex II of the MD considering the changes to Government of India Order related to Unlawful Activities (Prevention) Act (UAPA), 1967, vide corrigendum dated August 29, 2023;

(c) Update Annex III of the MD by replacing the Government of India Order dated January 30, 2023, related to Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005) with the Government of India Order dated September 1, 2023 (which has been issued by the Government in suppression of the earlier WMD Act Order dated January 30, 2023), on the matter;

(d) Update certain instructions in accordance with the FATF Recommendations;

(e) Add a new Section 55A, on FCRA, in the MD on KYC; and

(f) Update certain other instructions post review.

[Link -Amendment to the Master Direction \(MD\) on KYC](#)

RBI Update - Reserve Bank of India (Non-Banking Financial Company- Scale Based Regulation) Directions, 2023

The Reserve Bank of India, having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Reserve Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Non-Banking Financial Company from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such NBFCs, and in exercise of the powers conferred under sections 45JA, 45K, 45L and 45M of the Reserve Bank of India Act, 1934 (Act 2 of 1934) and section 3 read with section 31A and section 6 of the Factoring Regulation Act, 2011 (Act 12 of 2012), hereby issues to every NBFC, in supersession of the Non-Banking Financial Company-Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 and Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 (the Directions), hereinafter specified.

[Link - Reserve Bank of India \(Non-Banking Financial Company- Scale Based Regulation\) Directions, 2023](#)

RBI Update- Appointment of Whole-Time Director(s)

'Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board'.

Banks are advised to ensure the presence of at least two Whole Time Directors (WTDs), including the MD & CEO, on their Boards.

Reserve Bank of India Updates

The number of WTDs shall be decided by the Board of the bank by taking into account factors such as the size of operations, business complexity, and other relevant aspects. In compliance to these instructions, banks that currently do not meet the minimum requirement as above are advised to submit their proposals for the appointment of WTD(s) under Section 35B(1)(b) of the Banking Regulation Act, 1949, within a period of four months from the date of issuance of this circular. Those banks which do not already have the enabling provisions regarding appointment of WTDs in their Articles of Association may first seek necessary approvals under Section 35B(1)(a) of the Act *ibid*, expeditiously, so as to be in a position to comply with the requirements under these instructions. While ensuring compliance to the above instructions, careful consideration shall also be given to meet the requirements under other applicable statutory/regulatory provisions.

Link - Appointment of Whole-Time Director(s)

RBI Update - Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund

The 'Notes and Instructions for compilation' given in Annex II to the Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 (Master Direction) require commercial banks to present all unclaimed liabilities, where the amount due has been transferred to the Depositor Education and Awareness (DEA) Fund established under the DEA Fund Scheme, 2014, under 'Schedule 12- Contingent Liabilities - Other items for which the bank is contingently liable'.

It is advised that all co-operative banks shall present all unclaimed liabilities (where the amount due has been transferred to DEA Fund) under "Contingent Liabilities - Others".

Further, all banks shall specify in the disclosure in the notes to accounts to the financial statements that balances of the amount transferred to DEA Fund are included under 'Schedule 12 - Contingent Liabilities - Other items for which the bank is contingently liable' or 'Contingent Liabilities - Others,' as the case may be.

Applicability

These instructions are applicable to all commercial and cooperative banks for preparation of financial statements for the financial year ending March 31, 2024 and onwards.

Link - Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund

RBI Update - Strengthening of customer service rendered by Credit Information Companies and Credit Institutions

It was announced that a comprehensive framework will be put in place for strengthening and improving the efficacy of the grievance redress mechanism and customer service provided by the Credit Institutions (CIs) and Credit Information Companies (CICs).

In exercise of the powers conferred by sub-section (1) of section 11 of the Credit Information Companies (Regulation) Act, 2005 (CICRA, 2005), the Reserve Bank of India directs CICs and CIs to implement the directions as given below

Reserve Bank of India Updates

Intimation of access to Credit Information Report and updation of credit information with Credit Information Companies

- Setting up of Nodal points/ officials by CIs
- Root Cause Analysis of the Complaints by CIs
- Reasons for rejection of requests for data correction by CIs
- Periodic review of match logic algorithm by CICs
- Ingestion of credit information data by CICs
- Disclosure of complaints on credit information reporting by CICs
- Easy access to Free Full Credit Report for the individuals by CICs

[Link - Strengthening of customer service rendered by Credit Information Companies and Credit Institutions](#)

RBI Update - Framework for compensation to customers for delayed updation/ rectification of credit information

The Reserve Bank of India (RBI) on October 26 released the framework for compensation to customers for delayed updation or rectification of credit information by credit institutions (CIs) and credit information companies (CICs).

As per the framework, complainants shall be entitled to a compensation of Rs 100 per calendar day in case their complaint is not resolved within a period of thirty (30) calendar days from the date of the initial filing of the complaint by the complainant with credit institutions.

A complainant may request a CIC or CI to update the credit information by making an appropriate correction, addition or otherwise, and on such request the CI or CIC shall take steps to update the credit information within thirty (30) days after being requested to do so.

[Link - Framework for compensation to customers for delayed updation/ rectification of credit information](#)

RBI Update - Non-Callable Deposits - Master Direction on Interest Rate on Deposits

It has been decided that the minimum amount for offering non-callable TDs may be increased from Rupees fifteen lakh to Rupees one crore i.e., all domestic term deposits accepted from individuals for amount of Rupees one crore and below shall have premature-withdrawal-facility and

These instructions shall also be applicable for Non-Resident (External) Rupee (NRE) Deposit / Ordinary Non-Resident (NRO) Deposits.

These instructions shall come into force with immediate effect

[Link - Non-Callable Deposits - Master Direction on Interest Rate on Deposits](#)

RBI Update - Review of Instructions on Bulk Deposits for Regional Rural Banks (RRBs)

“Bulk Deposit” for Regional Rural Banks would now mean Single Rupee term deposits of Rupees one crore and above.

[Link - Review of Instructions on Bulk Deposits for Regional Rural Banks \(RRBs\)](#)

Reserve Bank of India Updates

RBI Update – Review of Financial Information Provider (FIP) under Account Aggregator Framework

The paragraph 3(1)(xi) of Master Direction – Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016 defining the term ‘Financial Information Provider’.

As per National Pension System (NPS) architecture, Central Recordkeeping Agency (CRA), registered under section 27 of the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013, acts as an interface between the different intermediaries in the NPS system. CRAs hold information pertaining to the subscribers including the balances under NPS. Accordingly, and as suggested by the PFRDA, it has been decided to replace ‘Pension Fund’ with ‘Central Recordkeeping Agency’ as the financial information provider in the AA ecosystem.

Link - Framework for compensation to customers for delayed updation/ rectification of credit information

RBI Update – Joining the Account Aggregator Ecosystem as Financial Information User

It has been observed that certain entities, which are eligible to join Account Aggregator (AA) ecosystem as Financial Information Provider (FIP), have onboarded as Financial Information User (FI-U) only.

Consequently, such entities are accessing financial information from other FIPs but are not providing the financial information held by them.

As such, with a view to ensure efficient and optimum utilisation of the AA ecosystem, it has been decided that regulated entities of the Bank joining the AA ecosystem as FI-U shall necessarily join as FIP also, if they hold the specified financial information and fall under the definition of FIP.

Link - Joining the Account Aggregator Ecosystem as Financial Information User

RBI Update – Banking Regulation (Amendment) Act 2020 – Change in Name of Co-operative Banks

A cooperative bank desirous of change in its name shall approach the Department of Supervision (DoS) of the concerned Regional Office (DoS, Central Office in case of Co-operative Banks coming under the purview of Mumbai Office) of the Reserve Bank of India for grant of no objection certificate (NOC) under Sections 49B and 49C of the Banking Regulation Act, 1949 (‘BR Act’), clearly stating the reason/s for such change. The approval of the General Body of the bank shall be mandatory at the time of submitting such requests to RBI.

NOC from RBI under section 49C read with section 56 of BR Act, 1949 will be necessary only in case there is a requirement for ‘confirmation’ from Central/State Government, one or more authority/authorities for alteration of bye-laws under the applicable Co-operative Act /Rules.

It will be mandatory for a co-operative bank to give a declaration in writing regarding above mentioned requirement for ‘confirmation’ under the applicable Co-operative Act /Rules while submitting its request to RBI.

Reserve Bank of India Updates

The cooperative banks shall submit their requests for change of name and by-laws, only when these are supported by valid and compelling reason/s for the proposed change. It may be noted that RBI shall have the discretion to assess whether the reason/s submitted by the bank are valid and compelling.

After getting NOC from the concerned office of the Reserve Bank, the Co-operative banks will approach the Central Registrar of Co-operative Societies (CRCS) or Registrar of Co-operative Societies (RCS) for amendment in their bye-laws. Once the approval is obtained from CRCS/RCS, the Co-operative Banks will apply to the concerned Regional Office of the Reserve Bank with the following documents:

1. Approval of Board of Directors
2. Approval of General Body of the Bank
3. Amended bye-laws as approved by CRCS/RCS
4. Copy of CoR issued by CRCS/RCS with amended name
5. Original banking licence

Co-operative Banks shall follow the above process for change in the name of the bank even if the name change is due to Government Notification. No co-operative bank shall display/operate with an amended name without affecting the corresponding change in its name in the banking licence issued by the Reserve Bank of India. Further, the displayed name of the bank shall be strictly as per the name in its banking licence.

[Link - Banking Regulation \(Amendment\) Act 2020 - Change in Name of Co-operative Banks](#)

RBI Update - Clarification regarding Shifting of Branches/Offices/Extension Counters within the same city, town or village by District Central Co-operative Banks (DCCBs) and Guidelines on Closure of Branches and Extension Counters by DCCBs

RBI has been receiving references seeking clarifications on shifting of branches within the same locality and closure of un-remunerative branches by District Central Co-operative Banks (DCCBs).

It has been decided to issue requisites clarifications regarding Shifting of Branches/Offices/Extension Counters within the same city, town or village by DCCBs and Guidelines on Closure of Branches and Extension Counters by DCCBs.

These guidelines will come into effect from the date of issue of this circular.

This circular is applicable to all District Central Co-operative Banks.

[Link - Clarification regarding Shifting of Branches/Offices/Extension Counters within the same city, town or village by District Central Co-operative Banks \(DCCBs\) and Guidelines on Closure of Branches and Extension Counters by DCCBs](#)

RBI Update - Regulation of Payment Aggregator - Cross Border (PA - Cross Border)

The developments that have taken place in the area of cross-border payments, it has been decided to bring all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator-Cross Border (PA-CB).

Entities, including Authorised Dealer (AD) banks, PAs and PAs-CB, involved in processing / settlement of cross-border payment transactions for import and export of goods and services, shall comply with these instructions.

[Link - Regulation of Payment Aggregator - Cross Border \(PA - Cross Border\)](#)

Insolvency and Bankruptcy Case Laws

DEPARTMENT OF STATE TAX VS RP OF CALCHEM INDUSTRIES (INDIA)

NCLT Mumbai Bench – Judgement Date: 6th Oct 2023

FACTS OF THE CASE

Public announcement inviting the claims was made on 01.10.2019 and last date for filing claim was 29.12.2019.

The Department of State Tax (Applicant) filed their claims on 08.10.2021, after a delay of 650 days by which time, the CoC had already approved the Resolution Plan on 13.10.2020 and the RP has filed IA for approval of the Resolution Plan by the Adjudicating Authority and the same is pending before this Tribunal since 18.11.2020.

The RP vide email dated 13.10.2021 rejected the claim of Applicant stating that the CoC has already approved the Resolution Plan on 13.10.2020 and the same is pending before the Adjudicating Authority for the approval.

These two applications are filed by Applicant under Section 60(5) of the IBC seeking direction to the Resolution Professional to accept the claims of the Applicant and deal the same with the provisions of the Code.

DECISION OF THE APPELLATE TRIBUNAL

The Adjudicating Authority held that we cannot lose the sight of the object of the Code which inter alia aims for insolvency resolution of the corporate debtor in a time bound manner.

The Code has also altered the order of priority of payment of Government dues when compared to the earlier Companies Act.

The emphasis under the Code is for time bound process rather than payment of belated Government dues.

For all these reasons there is no merit in the present applications, except to the extent that if VAT/CST liability as contended by the Applicant for Rs.2,89,980/- under MVAT and Rs. 712,870/- under CST for the relevant year 2012-13 aggregating to Rs.10,02,850/- was reflected in the books of Corporate Debtor on the date of preparation of Memorandum Information, then the RP should have considered the same in the Information Memorandum

RP is directed to consider such Government dues if appearing in the books of account of the Corporate Debtor

Insolvency and Bankruptcy Case Laws

Diwakar Sharma Vs. Anand Sonbhadra RP

NCLAT New Delhi – Judgement Date – 5th Oct 2023

FACTS OF THE CASE

An I.A. filed by the Appellant who claim to be Ex-Director of the Corporate Debtor and who has resigned in February 2014 (resignation was uploaded on ROC on 20.01.2016).

CIRP against the Corporate Debtor- Shubhkamna Buildtech Pvt. Ltd. commenced on 26.11.2018.

The Resolution Plan was approved by the Adjudicating Authority on 12.09.2022.

Learned counsel for the Appellant submits that the Appellant was also a shareholder of the Corporate Debtor.

The issue that arose consideration before the hon'ble NCLAT was

Whether the shareholding of Shubhkamana Buildtech Pvt. Ltd. in two companies namely Rudra Buildwell Projects Pvt. Ltd. and JSS Buildcon Pvt. Ltd. has been taken into consideration while assessing the assets and liabilities of the Corporate Debtor

NCLAT held that the *Information Memorandum* must have been prepared in the CIRP and *Form G* was issued for Resolution Plan including details of the assets.

At this stage no relief can be granted on the prayer as made in the application.

DECISION OF THE APPELLATE TRIBUNAL

NCLAT held that:

Suffice it to say that the Appellant was not part of the CIRP. He himself submitted that in 2014 he resigned as Director. In so far as his submission that he is shareholder of the Corporate Debtor, Resolution Plan having been approved what are the rights of different stakeholders is subject matter of the plan.

The observation made in *Association of Aggrieved Workmen of Jet Airways (India) Ltd. vs. Jet Airways (India) Ltd. & Ors.* case with regard to claim of the workmen who wanted copy of the Resolution Plan after its approval.

Insolvency and Bankruptcy Case Laws

In the above case this Tribunal held that after approval of the plan they were entitled to access the Resolution Plan and Resolution Professional was directed to provide relevant portion of the Resolution Plan which was relevant for the workmen. The said judgment cannot come to the aid of the Appellant in the present case who was not stakeholder in the CIRP process.

Entire CIRP process being over where Resolution Plan has been approved in 2022, at this stage, any direction on the prayers made by the Appellant in the application are uncalled for and unnecessary.

NCLAT concluded that we are of the view that the Adjudicating Authority did not commit any error in rejecting the application filed by the Appellant. There is no merit in the Appeal. Appeal is dismissed



Corporate Accountability: ROC takes action against Co. executives for incomplete POSH Act disclosures – A Case Study

Background of the case

1. The Registrar of Companies of Bangalore recently passed an adjudication order penalizing the company, its managing director, chief financial officer and company secretary to the tune of Rs. 9 lakhs for not including the mandatorily required statement on the constitution of the internal complaints committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act 2013 in the company's board report for the year 2019-20 and 2020-21 (two years). The above is a violation of the provisions of section 134(3)(q) of the Companies Act 2013. Let us try to understand the details of this case, its intricacies, the requirement of mandated disclosure in board reports and finally the rationale behind the penalties levied by the Registrar of Companies.

Protection of Women from Sexual Harassment at Workplace Act 2013 (POSH Act 2013)

2. The Protection of Women from Sexual Harassment at Workplace Act, 2013 (POSH Act 2013) is a landmark legislation in our country superseding the Vishakha Guidelines that existed earlier. The POSH Act seeks to protect women from sexual harassment. This law has enabled women to stand up for their rights and assert their autonomy in the workplace. Through this POSH Act, the Government has sought to provide women with a safe and secure working environment and has put in place mechanisms to prevent and redress complaints of sexual harassment.

Disclosure relating to the Protection of Women from Sexual Harassment at Workplace Act 2013 (POSH Act 2013) in the board report 2. Sub-section (3)(q) of section 134 of the Companies Act 2013, specifies that there shall be attached to statements laid before a company in a general meeting, a report by its board of directors, which shall include such other matters as may be prescribed. In this connection, one of the prescribed items on which the disclosure is required to be made in the board report is that of "Disclosure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013."

As per Rules 8 and 8A of the Companies (Accounts), Rules 2014 other than one person Company or small company were mandated to disclose a statement that the company had complied with the provisions relating to the constitution of Internal Complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 which was made effective from 31st July 2018.

Knowledge Sharing Article

Required disclosure pursuant to the POSH Act in the board report

3. The company is required to state that the company has in place a policy in line with the requirements of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013. The company has to further disclose that an Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment and all employees (permanent, contractual, temporary, trainees) are covered under this policy.

The report is also required to make disclosure / report the number of complaints filed, if any and their disposal under the POSH Act apart from intimating and reporting the matter to the District Officer as per the provisions of the POSH Act. If there have been no complaints, then the report needs to disclose that during the year under review, neither any complaints of sexual harassment were received by it from the Internal Compliance Committee, nor were there any complaints relating thereto which required any disposal thereof. In case, the company does not have any women employees, yet, under this caption, the company needs to report that the company does not have any woman employees and therefore the POST Act is not applicable to the company as on this date.

Specific Requirements for Listed Companies

3.1. All listed company companies are required to provide the details in the Corporate Governance report, and it is a mandatory requirement as per Schedule V(C) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 under item 10(I). Additionally, the top 1000 listed companies are required to report the number of cases filed by the employees during the year and the number of cases pending at the end of the financial year in the Business Responsibility and Sustainability Report prescribed under Regulation 34 of LODR. Further to this, data of the previous financial year is also required to be reported in the same format. This forms part of Principle-5 of the Business Responsibility and Sustainability Report "Business should respect and promote human rights". It may be noted that the stock exchange (s) rely on the data provided by the listed companies in their annual report.

Penal Provisions for default (if any) committed by the company

4. The relevant section for penal action is provided in section 134(8) of the Companies Act 2013 and as per this section, if a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

The related case on this matter

5. Let us go through the adjudication order passed by the Registrar of Companies, Bangalore, on 12th September 2023, order bearing F.No.ROC/B/Adj.order/454-134(3) Ceeta/Co.No. 21494/ 2023 order of adjudication of penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication for Penalties) Rules 2014 for violation of provisions of section 134(3) of the Companies Act 2013 read with Rules by Ceeta Industries Limited in the matter of M/s Ceeta Industries Limited of Tumkur, Karnataka.

Knowledge Sharing Article

Details of the company

6. M/s Ceeta Industries Limited is a public company incorporated on 31st October 1984 under the provisions of the Companies Act 1956 and the company falls under the jurisdiction of the Registrar of Companies, Karnataka and the office of the Registrar is situated at Bangalore. This company is having its registered office situated at Plot No. 34 – 38, KIADB Industrial Area, Sathyamangala, Tumkur in the state of Karnataka. The company, as per the details shown at the MCA portal has seven directors on its board and one of them is a managing director. The company also have two key managerial personnel i.e. one as chief financial officer and the other as a company secretary in whole-time employment. The company is the manufacturer of granite slabs, both random and cut-to-size, tiles & monuments and special profiles on CNG machines.

Facts relating to this case

7. The following were the facts relating to this case which had been observed during the course of enquiry conducted by the Registrar of Companies.

As per the provisions of section 134 (3) (a) of the Companies Act 2013, the company was mandated to attach a statement laid before the company in general meeting, a report by its board of directors which was required to include such other matters as may be prescribed. Pursuant to Rule 8 (5) (x) of the Companies (Accounts) Rules 2014, in addition to the information and details specified in sub-rule (4), the report of the board was to also include a statement that the company had complied with the provisions relating to the constitution of internal complaints committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013).

The Registrar of Companies observed had undertaken an enquiry pursuant to the provisions of section 206 (4) of the Companies Act 2013. During the course of such enquiry, the Registrar of Companies noticed that the board report attached to the financial statements as at the year ending 31st March 2019 and as at the year ending 31st March 2020 did not disclose the details relating to the constitution of internal complaints committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013). Therefore, the Registrar of Companies had a reason to believe that the company had violated the provisions of section 134(4) of the Companies Act 2013 and the company and the officers / KMPs in default were liable for penal action under the provisions of section 134 (8) of the Companies Act 2013.

Action taken by the Registrar of Companies

8. The above violation was pointed out in the preliminary findings letter issued by the Registrar of Companies on 28th July 2021 by the inspecting officer to the company. Thereafter, the Registrar of Companies issued a show cause notice on 20th April 2023 directing the company to show cause as to why the penal action could not be initiated against the company and its officers / key managerial personnel for the violation committed by the company.

Knowledge Sharing Article

Response from the company – adjudication application filed

9. The company upon receipt of the show cause notice issued by the Registrar of Companies, having realized the default committed by them, decided to file an adjudication application to the Registrar of Companies for passing an appropriate adjudication order on this matter for the violation committed. Accordingly, the company filed its application for adjudication on 29th May 2023.

Issue of personal hearing notice by the Registrar of Companies

10. The Registrar of Companies, upon receipt of the adjudication application from the company granted a personal hearing to the company and its officers / key managerial personnel in the interest of natural justice before passing the adjudication order and fixed up a personal hearing on 10th August 2023 for which a personal hearing notice was issued on 27th July 2023.

On the day of the personal hearing

11. On the day of the personal hearing i.e. on 10th August 2023, a duly authorised representative by the company – a practicing company secretary appeared for the personal hearing. The learned practicing company secretary had made the following submissions at the time of the personal hearing on behalf of the company and its directors / key managerial personnel. (a) The learned practicing company secretary put forward the argument stating that since the company had less than ten employees in each of its establishments, the company was not required to constitute an internal complaints committee as required under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013). (b) The learned practicing company secretary further contented that the company so far had not received any complaint from any women workers till date in the company. (c) The learned practicing company secretary also stated that the non-disclosure of the statement was not intentional or deliberate. The company thereafter submitted a letter on 16th August 2023 showing the details of officers who were in default and named the managing director, chief financial officer and the company secretary as officers in default for the financial year 2019-20 and 2020-21.

Conclusions reached by the Registrar of Companies / Adjudication Officer

12. The Registrar of Companies / Adjudicating Officer came to the conclusion after considering the facts and circumstances of the case and also after going through the adjudication application submitted by the company and the submissions made by the company/director / key managerial personnel through their authorized representative, came to a conclusion that the company and its officers in default had committed the violation of provisions of section 134 (3) (q) of the Companies Act 2013 read with Rule 8 (5) (x) of the Companies (Accounts) Rules 2014 by not disclosing the required statement relating to the constitution of internal complaints committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013) attracting the penal provisions under section 134 (8) of the Companies Act 2013. Accordingly, the Registrar of Companies / Adjudication Officer decided to pass the adjudication order.

Knowledge Sharing Article

As regards imposing a lesser amount of penalty

13. Since this company is a public limited company, the company did not fit into the criteria under the definition of being a small company as defined under section 2(85) of the Companies Act 2013, and therefore the provisions of imposing a lesser penalty pursuant to section 446B of the Companies Act 2013 did not apply in this case. Adjudication order passed by the Registrar of Companies / Adjudication Officer

14. The Registered of Companies / Adjudicating Officer, in the exercise of the powers conferred on him vide Notification dated 24th March 2015 imposed the penalty on the company and its managing director directors / key managerial personnel in default under section 134 (8) of the Companies Act 2013, for violation section 134 (3) (q) of the Companies Act 2013 read with Rule 8 and 8A of the Companies (Accounts) Rules 2014 as per the table indicated below:-

Nature violation under POSH Act in board report	Company / directors / KMPs	Penalty imposing for non-disclosure in the board report		Total penalty imposed
		Period ended 31/3/2019	Period ended 31/3/2020	
		Rupees	Rupees	Rupees
Failure to make a statement on constitution of Internal Complaints Committee	Company	3,00,000	3,00,000	6,00,000
	Managing Director	50,000	50,000	1,00,000
	Chief financial officer	50,000	50,000	1,00,000
	Company Secretary	50,000	50,000	1,00,000
Total Penalty		4,50,000	4,50,000	9,00,000

Knowledge Sharing Article

Summary of Penalty imposed

Financial year	Penalty imposed for non-disclosure in the board report				Total Penalty
	Company	Managing Director	Chief Financial Officer	Company Secretary	
	Rupees	Rupees	Rupees	Rupees	Rupees
2019-20	3,00,000	50,000	50,000	50,000	4,50,000
2020-21	3,00,000	50,000	50,000	50,000	4,50,000
Total	6,00,000	1,00,000	1,00,000	1,00,000	9,00,000

(a)The order directed that the company and its directors / key managerial personnel shall have to make the payment as tabulated above within 90 days from the date of receipt of this order and file INC-28 attaching a copy of the order and payment challans. In case of directors, such penalty amount was required to be paid out of their own funds. The company and its directors shall have to pay the said amount of penalty online by using the website.mca.gov.in (Miscellaneous head) specifying the details of this order and the notice who was paying the penalty.

(b)The order stated that an appeal, if any against this order may be filed with the Regional Director (South East Region) Hyderabad within a period of sixty days from the date of receipt of this order in form ADJ setting forth the grounds of appeal and the appeal shall have to be accompanied by a certified copy of this order.

(c)The order drew the attention to section 454(8) of the Companies Act, 2013 that in case of non-compliance with this order, wherein necessary penal action would be initiated under section 454(8) (i) and (ii) of the Companies Act 2013 against the company and its directors / key managerial personnel without further notice in the matter.

Despatch of the order

15. The order was sent by the Registrar of Companies in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the company and its directors / KMPs who were defaulting officers and also to the Regional Director, South Eastern Region, Ministry of Corporate Affairs at Hyderabad.

Knowledge Sharing Article

The complete order for reading

16. The readers may like to read the complete adjudication order passed by the Registrar of Companies, Bangalore, on 12th September 2023, order bearing F.No.ROC/B/Adj.order/454-134(3)Ceeta/Co.No.21494/2023 order of adjudication of penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies(Adjudication for Penalties) Rules 2014 for violation of provisions of section 134(3)of the Companies Act 2013 read with Rules by Ceeta Industries Limited in the matter of M/s Ceeta Industries Limited of Tumkur in the state of Karnataka and the relevant website is

<https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/roc-adjudication-orders.html>

Conclusion

17. This particular case highlights the importance of complying with all statutory requirements of all applicable laws to a company. The failure to include the required mandatory disclosure in the form of a statement on the constitution of the internal compliance committee in the board report of the directors attached to the financial statements as mandated under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act 2013) Sexual Harassment of Women at Workplace has resulted in a penalty of Rs 4.50 lakh for both the company and its managing director, chief financial officer and company secretary.

This particular case highlights the importance of complying with all statutory requirements of all applicable laws to a company. The failure to include the required mandatory disclosure in the form of a statement on the constitution of the internal compliance committee in the board report of the directors attached to the financial statements as mandated under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act 2013) Sexual Harassment of Women at Workplace has resulted in a penalty of Rs 4.50 lakh for both the company and its managing director, chief financial officer and company secretary.

Reference:-

(i)Companies Act 2013

(ii)Companies (Accounts) Rules 2014

(iii)SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

(iv)Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act 2013

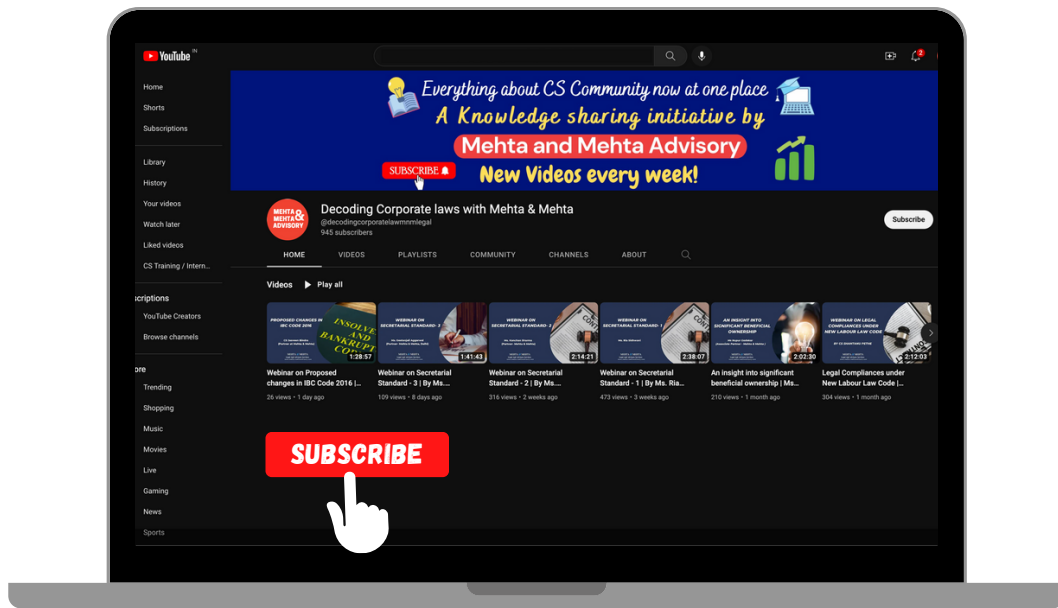
(v)Notification dated 24th March 2015

(vi)Companies (Adjudication of Penalties) Rules 2014

(vii)Adjudication order passed by the Registrar of Companies, Bangalore, on 12th September 2023, order bearing F.No.ROC/B/Adj.order/454-134(3) Ceeta/Co.No. 21494/2023 order of adjudication of penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication for Penalties) Rules 2014 for violation of provisions of section 134(3) of the Companies Act 2013 read with Rules by Ceeta Industries Limited in the matter of M/s Ceeta Industries Limited.

**- By Prof R Balakrishnan
(FCS - FCWA)**

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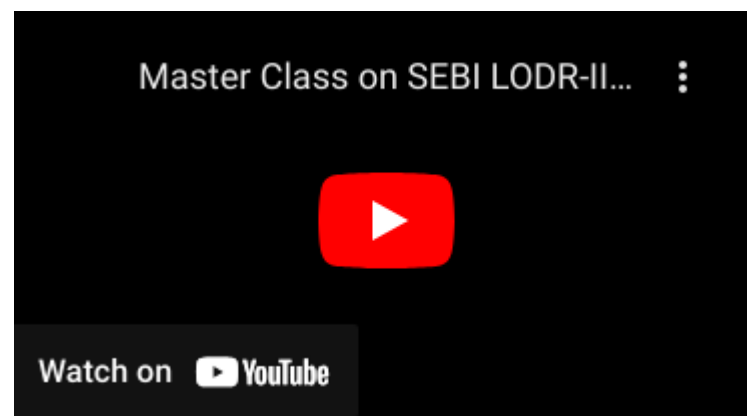
NBFC Master Class -III Prudential and Governance Norms- NBFC



Master Class SEBI LODR -I "Governing Principles and Common Obligations of Listed Entities"



Master Class on SEBI LODR-II Board Composition and Obligations with Respect to Independent Directors



Master Class on SEBI LODR-III Constitution and Role of Board Committees