

November, 2023 | Issue

# Vedanam

Newsletter by Mehta & Mehta

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

We hereby release our November 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.

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**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

### **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.

## Ministry of Corporate Affairs Update

- 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”.

### **Limited Liability Partnership Third Amendment**

### **MCA Update - Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.**

The definition of Significant Beneficial Owner (‘SBO’) has been laid down as follows:

“a reporting limited liability partnership, means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting limited liability partnership, namely:-

## Ministry of Corporate Affairs Update

- (i) holds indirectly or together with any direct holdings, not less than ten per cent of the contribution;
- (ii) holds indirectly or together with any direct holdings, not less than ten percent of voting rights in respect of the management or policy decisions in such limited liability partnership;
- (iii) has right to receive or participate in not less than ten per cent of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
- (iv) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone”.

### Duties of reporting LLP:

If there is any individual who is an SBO, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1. In cases where it is a partner instead of an individual and holds not less than 10% of its contributions/ voting rights/ right to receive or participate in the distributable profits or any other distribution payable, the reporting LLP will have to give notice to such partner in Form LLP BEN-4.

### Declaration of SBO:

Declaration to be made in Form No. LLP BEN-1 to reporting LLP within 90 days from commencement on these rules. An individual who subsequently becomes a SBO or his SBO undergoes any change then declaration has to be made within 30 days of acquiring such SBO or any change.

### Return of SBO in contribution:

After receiving the declaration, the reporting LLP will have to file a return in Form No. LLP BEN-2 with the Registrar within 30 days from the receipt of such declaration.

### Register of SBO:

To be maintained by LLP of SBO in Form No. LLP BEN-3;

The Register should be open for inspection- During business hours; For not less than 2 hours; With a fee not exceeding Rs. 50 for each inspection

## Ministry of Corporate Affairs Update

Notice seeking information about SBO to be made in the Form No. LLP BEN-4.

Application to the Tribunal: Can be made in following cases:  
where any person fails to give the information required by the notice in Form No. LLP BEN-4  
where the information given is not satisfactory

Non- applicability:

LLP held by Central government/ State Government/ Local Authority;  
Reporting LLP/ body corporate/ entity controlled by Central or State Governments; An investment vehicle registered and regulated by the Securities and Exchange Board of India; an investment vehicle regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority

**Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.**



## **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.

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

## **Link – Revision in manner of achieving minimum public unitholding requirement – Infrastructure Investment Trusts (InvITs)**

## **SEBI Update – Simplification and streamlining of Offer Documents of Mutual Fund Schemes**

SEBI on 1st Nov 2023 issued notification regarding Simplification and streamlining of Offer Documents of Mutual Fund Schemes.

The following has been stated

It states that in order to enhance ease of preparation of the Scheme Information Document (SID) by mutual funds and increase its readability for investors it has been decided to simplify the format of SID.

The revised format of SID placed in Annexure 'A'.

It states that AMFI shall carry out the necessary changes in the formats of KIM and SAI in consultation with SEBI, within two months from the date of this circular.

The revised format for SID, KIM and SAI shall be adopted as under:

a. Updated format for SID/KIM/SAI to be implemented w.e.f. April 01, 2024.

b. Draft SIDs to be filed with SEBI on or before March 31, 2024, or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before March 31, 2024), can use the old format of SID, provided that the SIDs are updated as per timeline mentioned at (c) below.

c. For Existing SIDs – by April 30, 2024, with data as on March 31, 2024.

## **Link – Simplification and streamlining of Offer Documents of Mutual Fund**

## **SEBI Update – Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors**

SEBI issued notification regarding Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors.

This shall come into effect from March 1, 2024.

The following has been stated namely

The listed entities having unclaimed amounts in the Escrow Account for less than 7 years, as on February 29, 2024, shall start computing interest, as per provisions of Annex – A, from March 1, 2024.



The listed entities which are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the investors to IPEF, in compliance with the provisions of Annex - B, on or before March 31, 2024.

**Link-Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors**

**SEBI Update - Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders**

The SEBI has issued a circular addressing the procedural framework for dealing with unclaimed amounts in Infrastructure Investment Trusts (InvITs).

The circular mandates that unitholders of InvITs should receive not less than ninety percent of Net Distributable Cash Flows (NDCFs). Regulation 18(6)(c) states that distributions should be made once every six months for publicly offered InvITs and once every year for privately placed InvITs. However, unclaimed amounts have arisen due to various reasons, including unitholders failing to update their account details.

SEBI introduced Regulation 18(6)(e) and 18(6)(f), which specify the transfer of unclaimed or unpaid amounts to the 'Investor Protection and Education Fund' (IPEF) and the process for unitholders to claim these amounts.

The provisions of this Circular shall come into effect from March 1, 2024.

**Link - Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders**

**SEBI Update - Procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs) and manner of claiming such amounts by unit holders**

The SEBI has issued a circular outlining the procedural framework for dealing with unclaimed amounts in Real Estate Investment Trusts (REITs).

The circular emphasizes Regulation 18(16)(b) and 18(16)(c) of the SEBI (Real Estate Investment Trusts) Regulations, 2014, which mandate the distribution of Net Distributable Cash Flows (NDCFs) and the timeline for such distributions.

It introduces Regulation 18(6)(f) and 18(6)(g) to define the transfer and claiming process for unclaimed distributions.

The framework includes steps for REITs to transfer unclaimed amounts to an Escrow Account and subsequently to the Investor Protection and Education Fund (IPEF). It also outlines the obligations of REITs, the role of the Manager, and the procedures for unitholders to claim their unclaimed amounts.

**Link-The provisions of this Circular shall come into effect from March 1, 2024.**

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

It has been decided that the Master Circular for Registrars to an Issue and Share Transfer Agents dated May 17, 2023 has been amended as follows:

Reference to the term 'freezing/ frozen' has been deleted.

Referral of folios by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, has been done away with.

**Link-Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination**

**SEBI Update - Extension of timeline for implementation of provisions of circular SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023, on Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform.**

The provisions of the circular dated September 20, 2023, related to workflow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies were required to come into force with effect from December 04, 2023.

Further, the designated bodies referred to in the Schedule II of circular dated September 20, 2023, were required to apply for SCORES Authentication and/or for Application Programming Interface (API) integration with SCORES within such period so as to ensure that Designated Bodies can comply with provisions of the said circular by December 04, 2023, and onwards.

It has been decided to extend the effective date of implementation of above said provisions to April 01, 2024.

Accordingly, Circular dated September 20, 2023, shall rescind the Master Circular on the redressal of investor grievances through the SEBI Complaints Redress System (SCORES) platform dated November 07, 2022, on SCORES with effect from April 01, 2024.

The Entities, however, shall continue to submit the Action Taken Report ("ATR") on SCORES within 21 calendar days from the date of receipt of the complaint as directed in the circular dated September 20, 2023.

**Link-SCORES**





# Reserve Bank of India Updates

## **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)**

## **RBI Update- Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**

The RBI on 7th Nov 2023 issued a direction on comprehensive guidelines related to information technology (IT) governance and controls for banks and NBFCs.

The key focus areas of IT governance will include strategic alignment, risk management, resource management, performance management and business continuity/ disaster recovery management.

The directions will come into force from April 1, 2024.

## **Link - Master Direction on Information Technology Governance**

## **RBI Update - Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds**

It is decided to designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR.

## **Link - Fully Accessible Route' for Investment**

## **RBI Update - Regulatory measures towards consumer credit and bank credit to NBFCs**

RBI has issued the circular on Regulatory measures towards consumer credit and bank credit to NBFCs which states the following.

### **Consumer credit exposure of commercial banks**

It has been decided to increase the risk weights in respect of consumer credit exposure of commercial banks (outstanding as well as new), including personal loans, but excluding housing loans, education loans, vehicle loans and loans secured by gold and gold jewellery, by 25 percentage points to 125%.

### **Consumer credit exposure of NBFCs**

It has been decided that the consumer credit exposure of NBFCs (outstanding as well as new) categorised as retail loans, excluding housing loans, educational loans, vehicle loans, loans against gold jewellery and microfinance/SHG loans, shall attract a risk weight of 125%.

### **Credit card receivables**

It has been decided to increase the risk weights on such exposures by 25 percentage points to 150% and 125% for SCBs and NBFCs respectively.

### **Bank credit to NBFCs**

It has been decided to increase the risk weights on such exposures of SCBs by 25 percentage points (over and above the risk weight associated with the given external rating) in all cases where the extant risk weight as per external rating of NBFCs is below 100%. For this purpose, loans to HFCs,

# Reserve Bank of India Updates

and loans to NBFCs which are eligible for classification as priority sector in terms of the extant instructions shall be excluded.

## **Strengthening credit standards**

(a) The REs shall review their extant sectoral exposure limits for consumer credit and put in place, if not already there, Board approved limits in respect of various sub-segments under consumer credit as may be considered necessary by the Boards as part of prudent risk management. In particular, limits shall be prescribed for all unsecured consumer credit exposures. The limits so fixed shall be strictly adhered to and monitored on an ongoing basis by the Risk Management Committee.

(b) All top-up loans extended by REs against movable assets which are inherently depreciating in nature, such as vehicles, shall be treated as unsecured loans for credit appraisal, prudential limits and exposure purposes.

**Link - Regulatory measures towards consumer credit and bank credit to NBFCs**

**RBI Update- International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds**

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular dated July 11, 2022, in terms of which an additional arrangement has been put in place for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India.

Further, attention of AD Category-I banks is invited to Para 4.1 of circular dated April 19, 2022 on Opening of Current Accounts and CC/OD Accounts by Banks.

In terms of this provision and in order to provide greater operational flexibility to the exporters, AD Category-I banks maintaining Special Rupee Vostro Account as per the provisions of the Reserve Bank circular dated July 11, 2022 referred above are permitted to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

**Link - International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds**



# Insolvency and Bankruptcy Case Laws

## **Akash Electrotek Engineers Pvt. Ltd. v. NCC Ltd. – NCLT Hyderabad Bench Judgement Date –23rd Nov 2023**

### **Facts of the case**

- This application is filed under Section 9 of IBC by M/s. Akash Electrotek Engineers Pvt. Ltd., being the Operational Creditor (the Petitioner) seeking to initiate the CIRP against M/s. NCC Ltd., (Respondent-1) and M/s Airport Authority of India, (Respondent-2) for the alleged default in discharging the debt that is due to the Petitioner.
- The Petitioner, functioning as a sub-contractor to Respondent-1, assumed responsibility for specific electrical tasks within a project at Lucknow Airport, commissioned by Respondent-2. A tri-partite contract involving the Petitioner, Respondent-1, and Respondent-2 was entered into. As per the agreement, Respondent-1 was mandated to make payments to the Petitioner upon the satisfactory completion of different stages of work undertaken by the Petitioner.
- Being the main party, it was the duty of Respondent-2 to pay the due amount, the Petitioner has asserted in their application. The Petitioner had therefore written to Respondent-2 on 25.09.2021 and requested for release of Rs 1.68 crores which was due, and also sent a reminder on 08.10.2021. Respondent-2 on their part sent an email on 12.10.2021 to Adani's, their successors in the project, who in turn reverted to the Petitioner on 16.10.2021 with a copy marked to Respondent-1, stating that they had noted the complaint and forwarded the same to the concerned authorities for action. The lament of the Petitioner is that nothing came out of this correspondence and the Respondent Corporate Debtors (Respondent-1 & R-2) have not paid its dues.
- The main grievance of the Petitioner is against Respondent-2 (AAI). Apparently, Respondent-1 (NCC) has been impleaded, as according to the Tripartite contract, it was to make payments to the Petitioner at different stages on completion of work for Respondent-2 (AAI). In fact, Section 8 Notice in Form 3 mentions AAI as the first Respondent and NCC Ltd as second.

### **Decision of the Adjudicating Authority**

- It has rightly been pointed out by Respondent-1 in its counter reply that AAI (Respondent-2) being a statutory body created under Airport Authority of India Act, 1944, does not come under the definition of 'corporate person' under Section 3(7) of IBC.
- Therefore, proceedings under IBC could not have been initiated against them. Considering that AAI is the main party against whom the Application is directed, it suffers from a fatal flaw by impleading AAI as the defaulting Corporate Debtor. Another contention, about filing of single application against two different Corporate Debtors, being not maintainable, is also not without merit.
- Without specifying who actually is responsible for the debt incurred, the Application is rendered ambiguous and thus liable for rejection.

# Insolvency and Bankruptcy Case Laws

## Decision of the Adjudicating Authority

- In the present proceedings, which are summary in nature, we are not to decide upon the disputes which existed between the parties. All we need to see is whether disputes in respect of goods or services existed, when the Demand Notice in Form-3 was sent by the Petitioner to Respondent-1 & Respondent-2.
- Moreover, it is essential to acknowledge that the principal objective of the Insolvency and Bankruptcy Code (IBC) is not intended to be a tool for recovering disputed debts. Instead, its primary purpose is to facilitate the resolution of insolvency for corporate entities. Issues pertaining to non-payment for services rendered cannot be addressed through the initiation of insolvency proceedings under the IBC.
- In order to recover outstanding dues, if any, the Petitioner could have pursued legal recourse through the appropriate Civil Court, which possesses jurisdiction to determine the validity of the outstanding dues.
- As a result, the Petition is dismissed.

## **Mr. Rakesh Bothra v. Mr. Alok Kailash Saksena – NCLT Mumbai Bench** **Judgement Date – 21st Nov 2023**

### Facts of the case

- This Application IA 812/2023 is filed by the Resolution Professional of Makalu Trading Ltd. i.e. Sh. Rakesh Bothra (Applicant), in the CIRP of TopworthUrja & Metals Ltd. (Corporate Debtor) u/s. 60(5) of the Insolvency & Bankruptcy Code, 2016 for directions to the Interim Resolution Professional (Respondent No. 1 or IRP) to accept the interest claim for Rs. 6,32,30,108/- which has been rejected by him vide letter dated 23.1.2023.
- The Applicant had discounted the invoices raised upon MSEDCL by the Corporate Debtor, and whereby the Applicant paid the money due from MSEDCL to the Corporate Debtor, and the payment was to be received from MSEDCL by the Applicant.
- The Corporate Debtor had paid the interest to the Applicant in the past, which is evidenced from the TDS entries appearing in form 26AS u/s 194A of the Income Tax Act, 1961, which pertains to deduction of tax at source on interest, and this fact is also evidenced from a letter dated 1.3.2016 written by the Corporate Debtor to the applicant certifying that an amount of Rs. 79,92,329/- has been paid towards interest.
- The Corporate Debtor had acknowledged a sum of Rs. 9,46,20,985/- as due and payable to the Applicant on 29.3.2017 when the Applicant had sought the confirmation of amount of balance of Rs. 10,48,51,970/-, and also submitted the ledger account of the Applicant as appearing in their books.

# Insolvency and Bankruptcy Case Laws

## Decision of the Adjudicating Authority

- Substance of a transaction is important rather than its form, and accounting entries cannot determine the character and nature of a transaction. The evidence placed before show demonstrate that the Applicant had advanced money from time to time and the same was repayable along with interest in the form of realisation from MSEDCL, and in case of default, the same was to be repaid by the Corporate Debtor, a fact which is acknowledged in the books of accounts also.
- The Section 5(8) of the Code includes *“receivables sold or discounted other than any receivables sold on nonrecourse basis”* under the definition of financial debt. There is no dispute that the money was disbursed to the Corporate Debtor in consideration of assignment of such invoices and assignment of such invoices was not on nonrecourse basis, which is evidenced from the principal being acknowledged and paid by the Corporate during the course of pendency of Section 7 application filed by the Applicant.
- There is no agreement in place to demonstrate the rate of interest on such facility. Accordingly, the Respondent is directed to deduce the rate of interest from the ledger entries and the period upto which such interest was provided in the books of the Corporate Debtor.
- On this basis, he is directed to admit any interest as discernible from the books of account of the corporate debtor remaining remaining unaccounted. The Applicant shall provide copy of ledger account with narration in its books of account to the Corporate Debtor to assist him to make necessary inquiry for verification.
- With the aforesaid directions, disposed of IA 812/2023.



## Co., directors & CS penalized by ROC for violating rights of members in conducting the AGM – A Case Study

### Right of members to copies of audited financial statements

Under the provisions of the Companies Act 2013, the copies of the audited financial statements (defined under sub-section (40) of section 2 of the Act) are mandatorily required to be sent to the members of the company. The Companies Act 2013, further provides under its chapter IX titled as Account of companies about the modality of sending the financial statements, time limit and other additional compliances related on this subject. Rule 11 of the Companies (Accounts) Rules 2014 in its sub-section (1) spells out the list of documents that are required to be sent i.e. (a) financial statements; (b) consolidated financial statements (where applicable); auditor's report; and (d) other documents required by law which are to be attached to the financial statements. These documents are required to be laid before the members at the annual general meeting for adoption.

### Provisions of Companies Act 2013 pertaining to this case

2. Given below are the relevant provisions of Companies Act 2013 relating to this particular case relating to the members rights at the time of conducting the annual general meeting of the company.

Companies Act 2013 Chapter IX – Accounts of companies Section 136 – Right of member to copies of audited financial statement	
Section	Provision
136 (1)	Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.
Secretarial Standard – 2 on general meetings	

Secretarial standard 2 is mandatory for general meetings of all types of companies incorporated under the Companies Act 2013 except One Person Company (OPC). Hence, all private limited companies and limited companies would be required to follow secretarial standard 2 while conducting general meetings. For determining the persons to whom the financial statements are to be sent, recourse may be had to para 1.2.1 of the secretarial standard-2 read with subsection (3) of section 101 dealing with sending of notices to members. Upon going through the provisions one would come to a conclusion that the notice is required to be sent to (a) member of the company – either member himself or in case of joint holders, to the first holder. In case of death of a member, nominee of the single holder/ the surviving first joint holder/ the nominee appointed by all the joint holders/ legal representative as the case may be and in case of insolvency/ winding up, assignee/ liquidator as the case may be. The provisions relating to the documents along with the notice is already governed by sub-section (1) of section 136 as stated above.

### **Companies (Accounts) Rules 2014**

Rule 11 (1)

Documents to be sent to all companies.

Listed companies

Additional compliance in case of listed companies (any security listed) and companies having foreign subsidiaries.

#### **Documents to be sent by all companies**

Financial statements audited

Consolidated financial statements audited (where applicable)

Auditor's report

Other documents required by law to be attached to the financial statements which could be:

Board report

Conservation of Energy, Technology Absorption and Foreign Exchange Earnings and Outgo pursuant to the provisions of section 134(3)(m) of the Companies Act, 2013 read with Rule 8(3) of the Companies (Accounts) Rules 2014

Particulars of Employees and Related Disclosures – Information pursuant to section 197(12) of Companies Act 2013 read with Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014

Secretarial Audit Report for the financial year (where applicable) by a practicing company secretary – Pursuant to section 204(1) of the Companies Act 2013 and rule No.9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014.

Annual report on Corporate Social Responsibility (CSR) activities for the financial year – where applicable

#### **Additional documents in case of listed companies**

Certificate of non-disqualification of directors – pursuant to Regulation 34(3) and Schedule V Para C clause (10) (i) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.

Secretarial compliance report for the year – pursuant to Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

Report on corporate governance

Declaration regarding compliance by board members and senior management personnel with the company's business code of conduct & ethics

Compliance of corporate governance requirement certificate by a practicing professional.

Management discussions and analysis report

Business responsibility and sustainability reporting

#### **Companies Act 2013 Chapter IX – Accounts of companies**

#### **Penal provision for default / non-compliance**

**136 (3)**

If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

# Knowledge Sharing Article

## Consequences of any default

3. To understand the impact of non-compliance / default committed, if any, by a company, by not sending the financial statements along with the auditor's report and other annexures attached to the financial statements to the members of the company while issuing the notice calling for the annual general meeting pursuant to section 136 of the Companies Act 2013, let us go through the decided case law on this matter decided by the Registrar of Companies of NCT of Delhi & Haryana on 9 th August 2023, in the matter of Blue Sapphire Healthcares Private Limited.

## The relevant case law

4. We shall go through order passed by the Registrar of Companies, NCT of Delhi & Haryana order dated 9 th August 2023 bearing no ROC/D/Adj/.section 136/Blue Sapphire/3136-3142 - order of penalty pursuant to section 136 of the Companies Act, 2013 in the matter of adjudication of Blue Sapphire Healthcares Private Limited on this matter to understand the impact of penalty on the company and its officers in default.

## Company details

5. M/s. Blue Sapphire Healthcares Private Limited is a registered on 23 rd February 2007 company under the provisions of section 7 of the Companies Act, 1956 having its registered office as per Ministry of Corporate Portal registry at address Level 10, Hindustan Times House, 18-20 Kasturba Gandhi Marg, Connaught Place, New Delhi, Central Delhi. The company falls under the jurisdiction of the Registrar of Companies of NCT of Delhi & Haryana and the Registrar of Company is situated at New Delhi. The company currently have six directors on its board consisting of one managing director, three whole time directors, one non-whole-time director, one nominee director. The company also have a whole-time company secretary in its employment. Blue Sapphire Healthcares Private Limited provides health care services and offers palliative and cardiac care, cardio, vascular surgery programs, open heart and valvular heart surgery, and angiography services.

### 5.1. Financial details of the company (FY 2021-22)

The financial & other details of the subject company for the financial year 2021-22 as available on Ministry of Corporate portal is stated as under: -

S. No	Particulars	Details Rs. In lacs
1	Paid up capital	5,963.03
2	Turnover – Financial Year 2021-22	
	a. Revenue from operation	33,171.83
	b. Other Income	465.33
	c. Profit for the period	(1,906.02)

3	Holding Company	No
4	Subsidiary Company	Yes
5	Whether company registered under sec. 8 of the Act?	No
6	Whether company registered u/r any other special Act?	No

### **Reply from the company**

**9.** The company officials had replied to the query letter by providing the necessary clarifications vide its letter dated 5 th June 2023. The company in its reply admitted the violation committed by the company. Further the company submitted in its reply that the company had conducted its 15th AGM on 28 th September 2021 and the shorter notice for the same was circulated on 24 th September 2021 but the company failed to send copy of financial statements and auditor's report along with the notice of AGM to members of the company. The company also stated that it was a bona fide mistake on the part of the company and the company did not commit the violation with any mala fide / wilful intention.

### **Issue of show cause notice by the Registrar of Companies**

**10.** The Registrar had issued a show cause notice to the company and its defaulting officers on 21st July 2023 for violation of section 136 of the Companies Act, 2013 read with rules made thereunder directing the company to show cause as to why penal action could not be initiated against the company and its defaulting officers.

### **Response by the company**

**11.** The company submitted its reply to the show cause notice on 26th July 2023 and in its reply the company reiterated that company circulated shorter notice of AGM on 24th September 2021 but failed to send copy of financial statements and auditor's report along with the notice of AGM to members of the company which was a bona-fide mistake and admitted the default omitted by the company and its officers.

### **Conclusions reached by the Registrar of Companies / Adjudicating Officer**

**12.** The Registrar of Companies and Adjudicating Officer after having considered the facts and circumstances of the case and the submissions made by the company and its directors, took note that as per application filed by the company and the reply submitted, the company had admittedly failed to send copy of financial statements and auditor's report along with the notice of the annual general meeting to members of the company, hence provision of section 136 had not been complied with by the company and its directors / officers and therefore, the company and its defaulting officers were liable for penalty.



# Knowledge Sharing Article

## As regards to imposing lesser penalty

**13.** The Registrar of Companies / Adjudicating Officer, after going through the financials statements of the company for the financial year ended as at 31 st March 2022, ascertained that the company did not get covered under the purview of small company as defined under sub-section (85) of section 2 of the Companies Act 2013. Hence, the benefit of section 446B for levying the reduced penalty would not be applicable on the company.

## Order passed by the Registrar of Companies / Adjudicating Officer

**14.** The Registrar of Companies, in exercise of the powers conferred on him vide notification dated 24th March, 2015 and having considered the reply submitted on 26 th July 2023 in response to the notice issued vide letter dated 21 st July 2023 imposed the penalty on the company and its officers in default as per table below for violation of section 136 of the Companies Act 2013. Issue of show cause notice by the Registrar of Companies

Violation section	Penalty imposed on company / Officers	Penalty specified under section 136 of the Companies Act 2013 (Rupees)
(a)	(b)	(c)
Section 136 of the Companies Act 2013	Company	25,000
	Managing Director	5,000
	Whole time Director -1	5,000
	Whole time Director -2	5,000
	Whole time Director -3	5,000
	Company Secretary	5,000
	Total Penalty	50,000

# Knowledge Sharing Article

- a.** The order directed the company and its directors / officers to make the penalty payment so imposed as per column (c) through Ministry of Corporate Affairs portal only and the order further stated that in case of parties other than the company, such penalty amount was required to be paid out of their own funds.
- b.** The order directed that the parties to make the amount of penalty through the online by using the website [www.mca.gov.in](http://www.mca.gov.in) (Misc. head) in favour of "Pay & Accounts Officer,
- c.** The order furthered stated that an appeal against this order may be filed in writing with the Regional Director (Northern Region), Ministry of Corporate Affairs, B-2, Wing, 2nd Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi, 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. [Section 454(5) & 454 (6) of the Act read with Companies (Adjudication of Penalties) Rules, 2014].
- d.** The order also drawn the attention of the company and its directors to section 454(8) of the Act regarding consequences of non-payment of penalty within the prescribed time limit.

## 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 defaulting directors & officers. Copy of the order was also to Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi

## Complete order for reading

**16.** The readers may like to read the complete order passed by the Registrar of Companies, NCT of Delhi & Haryana order dated 9 th August 2023 bearing no ROC/D/Adj/.section 136/Blue Sapphire/3136-3142 - order of penalty pursuant to section 136 of the Companies Act, 2013 in the matter of adjudication of Blue Sapphire Healthcares Private Limited and the relevant website <https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/roc-adjudication-orders.html>

## Conclusion

**17.** In this particular case, for the default committed by the company, the company secretary and all other executive directors had been penalized. In this respect we could recall the order-in appeal passed by the Regional Director of Southern Region on 29th November 2022 in the case of M/s. Madras Fertilizers Limited wherein the order spelled out Categorically that as per the provisions of section 205 (1) (b) of the Companies Act 2013, one of the functions of the company secretary shall be to ensure that the company complies with the applicable Secretarial Standards.

## Knowledge Sharing Article

Further the order also stated that it is admittedly the primary duty of the company secretary to ensure that the general meetings including annual general meetings and board meetings are held in accordance with law and also recognizes the fact that the whole time company secretary of a specified company is a KMP in terms of section 203 of the Companies Act 2013. The order-in-appeal further stated that the company secretary alone will be held responsible for the default committed in ensuring the Secretarial Standards and it is the duty of the company secretary to take utmost care that the company complies with all the Secretarial Standards. Finally the order spelt out that in terms of provisions of section 2 (60) of the Companies Act 2013, the section recognizes that the company secretary who is a KMP as a liable person for such compliances.

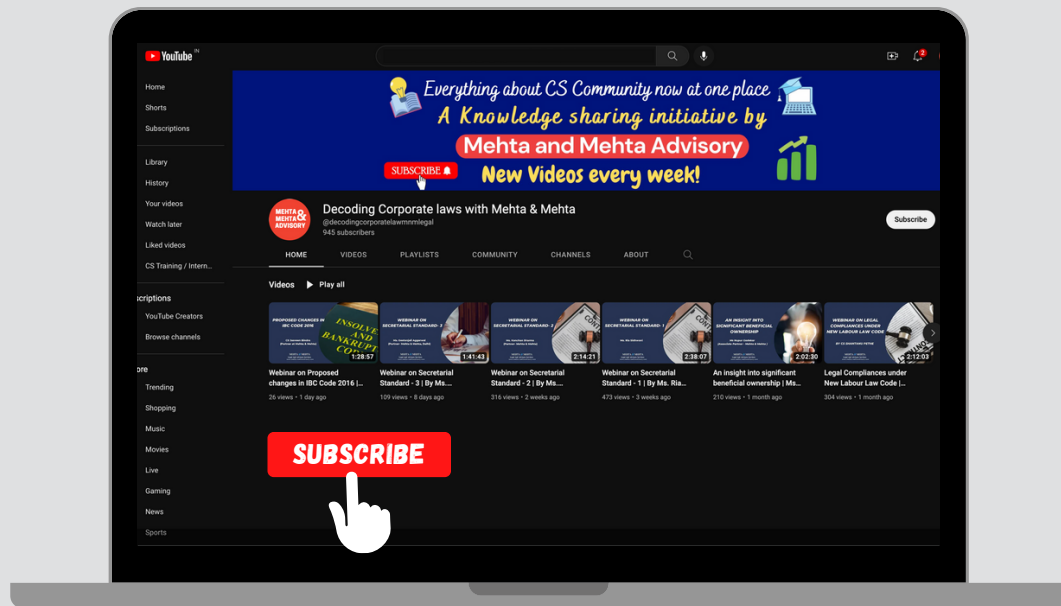
What is important is that the required compliances are to be ensured in order to avoid any violation followed by penal actions by the regulators. The last but not the least, the wording used in sub-section (11) of section 118 of the Companies Act 2013 is that if any default is made in complying with the provisions of section 118, in respect of any meeting, the company shall be liable to a penalty of twenty five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees. When the section says every officer – obviously it refers to the company secretary and he is the person responsible for compliance. We can conclude in saying that it is abundantly clear that the company has to ensure compliance and the company secretary has to be vigilant in complying with all the required provisions of the Companies Act 2013 read with relevant rules and also with the secretarial standards. In the case of companies, where the company secretary is not required to be appointed, the directors are required to ensure the compliance requirement by taking the help / advice of the professionals in the field such as practicing company secretaries.

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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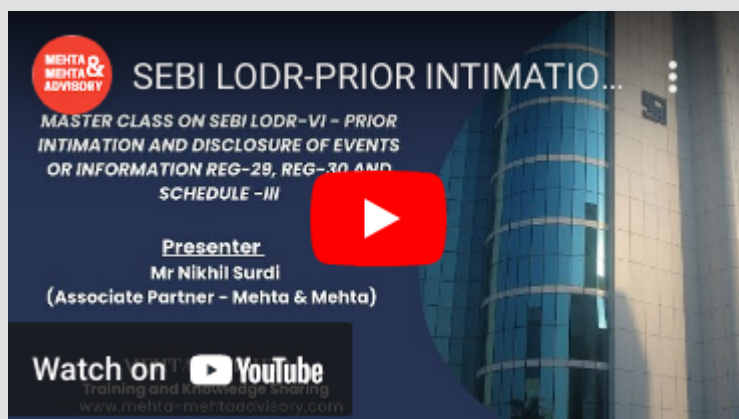
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