

VEDANAM

Newsletter by Mehta & Mehta



Why Vedanam?

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

We hereby release our February 2024 issue.

Stay informed and empowered with our comprehensive legal Newsletter "Vedanam" for the year 2024, 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

SEBI Update – Guidelines for returning of draft offer document and its resubmission

Draft offer documents / draft letter of offer filed with the Board for public issue / rights issue of securities (hereinafter “draft offer document”) are found lacking in compliance with respect to instructions provided under Schedule VI of ICDR Regulations. Such documents require revisions/changes and thus lead to a longer processing time.

In order to ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, it has been decided to issue ‘Guidelines for returning of draft offer document and its resubmission

Accordingly, the draft offer document shall be scrutinized based on the broad guidelines and such documents which are not compliant with the instructions provided under Schedule VI of ICDR Regulations and guidelines provided hereunder, shall be returned to the issuer.

Broad guidelines for returning of draft offer documents and its resubmission are placed.

In order to enhance ease of doing business for issuers, where draft offer document is returned in terms of these guidelines, there shall be no requirement for payment of any fees on account of resubmission of draft offer document.

[Link – Guidelines for returning of draft offer document and its resubmission](#)

Update: SEBI

1. SEBI:

Revised Pricing Methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust (InvIT)

Any subsequent issue of units after initial public offer may be by way of institutional placement, in addition to other mechanisms as provided in the Regulation 14(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (‘InvIT Regulations’).

The pricing for listed InvITs stand modified as under:

Paragraph 7.9.1 of the SEBI Master Circular for InvITs dated July 06, 2023, is modified as given below:

The institutional placement by public InvIT shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Insertion of Paragraph 7.9.2 to the SEBI Master Circular for InvITs dated July 06, 2023:

“The institutional placement by privately placed InvIT shall be made at a price not less than the NAV per unit, based on the full valuation of all existing InvIT assets conducted in terms of InvIT Regulations as per Paragraph 7.9.1 of the SEBI Master Circular for InvITs

This circular shall be applicable with immediate effect.

[Link – SEBI](#)

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[Link - Revised Pricing Methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust \(InvIT\)](#)

SEBI Update: Centralization of certifications under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies (KRAs)

1. Ministry of Finance state that the reporting financial institution (RFI) [as defined under rule 114F(7) of Income Tax Rules,1962] shall obtain a self-certification from the client, as part of the account opening documentation, to determine the client's residence for tax purpose as per SEBI circulars CIR/MIRSD/2/2015 dated August 26, 2015 and CIR/MIRSD/3/2015 dated September 10, 2015, and guidance note on FATCA and CRS norms issued by the Department of Revenue.

The pricing for listed InvITs stand modified as under :

2. The regulators are, inter alia, required to issue necessary instructions and guidelines to provide the procedure and manner of maintaining the information by the RFI in terms of rule 114G(11)(a) of Income Tax Rules,1962.

3. It is decided that the intermediaries, who are RFI, shall upload the FATCA and CRS certifications obtained from the clients onto the system of KRAs with effect from July 01, 2024 for ease of doing business and compliance reporting.

4. The existing certifications obtained from clients prior to July 01, 2024 shall be uploaded by the intermediaries onto the systems of KRAs within a period of 90 days of implementation of the circular.

5. The onus of obtaining and reporting the FATCA and CRS certification and related compliances shall lie with the respective intermediaries.

[Link - Centralization of certifications under Foreign Account Tax Compliance Act \(FATCA\) and Common Reporting Standard \(CRS\) at KYC Registration Agencies \(KRAs\)](#)

RBI Update - Streamlining of Internal Compliance monitoring function - leveraging use of technology

RBI had recently carried out an assessment in select Supervised Entities (SEs) of the prevailing system in place for internal monitoring of compliance with regulatory instructions and the extent of usage of technological solutions to support this function. It is seen that SEs have adopted varying levels of automation to support this function, ranging from use of macro-enabled spreadsheets to workflow-based software solutions. The review brought out that automation of the compliance monitoring process in SEs remains a work in progress with various aspects of this function being carried out with significant manual intervention. There is, thus, a need to implement comprehensive, integrated, enterprise-wide and workflow-based solutions/ tools to enhance the effectiveness of this function.

Such a solution/ tool should, among other things, provide for effective communication and collaboration among all the stakeholders (by bringing business, compliance and IT teams, Senior Management, etc. on one platform); have processes for identifying, assessing, monitoring and managing compliance requirements; escalate issues of non-compliance, if any; require recording approval of competent authority for deviations/ delay in compliance submission; and have a unified dashboard view to Senior Management on compliance position of the Regulated Entity (RE) as a whole. The RE, based on the size and complexity of its operations, may decide on the tools/ mechanism it would prefer to deploy for monitoring of compliance and development of the unified dashboard.

Accordingly, REs are advised to carry out a comprehensive review of the existing internal compliance tracking and monitoring processes and institute necessary changes to existing systems or implement new systems latest by June 30, 2024.

[Link - Streamlining of Internal Compliance monitoring function - leveraging use of technology](#)

RBI Update - Guidelines on import of gold by Tariff Rate Quota (TRQ) holders under the India-UAE CEPA as notified by-The International Financial Services Centres Authority (IFSCA)

It has been decided that , AD Category-I banks may allow valid Tariff Rate Quota (TRQ) holders under the India-UAE CEPA to remit advance payment for eleven days for import of gold through IIBX against the TRQ.

[Link - Guidelines on import of gold by Tariff Rate Quota \(TRQ\) holders under the India-UAE CEPA as notified by-The International Financial Services Centres Authority \(IFSCA\)](#)

Update: RBI

Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 85 Entries

RESERVE BANK OF INDIA UPDATES

Section 51 of Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967 and amendments thereto, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

In this connection, Ministry of External Affairs (MEA), Government of India has informed about the UNSC press release SC/15581 dated February 07, 2024 wherein the entries below on the ISIL (Da'esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban, and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) were amended following the 2022 Annual Review conducted in accordance with paragraphs 90 and 91 of resolution 2610 (2021).

List of amended 85 entries is mentioned in RBI Circular.

Further, as per MHA's instructions, any request for de-listing received by any RE is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration. Individuals, groups, undertakings or entities seeking to be removed from the Security Council's ISIL (Da'esh) and Al-Qaida Sanctions List can submit their request for delisting to an independent and impartial Ombudsperson who has been appointed by the United Nations Secretary-General.

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

[Link of the Circular](#)

RBI Update: Review of Fixed Remuneration granted to Non-Executive Directors (NEDs)

Banks are advised to revise the ceiling limit of remuneration of NEDs from Rs. 20 lakh per annum to Rs. 30 lakhs per annum in order to further enable the banks to sufficiently attract qualified competent individuals on their Boards.

The banks are required to have suitable criteria for granting fixed remuneration to its NEDs, with the approval of its Board before any review of the extant remuneration. The Board of the bank may fix a lower amount within the ceiling limit of ₹30 lakh per annum depending upon the size of the bank, experience of the NED and other relevant factors.

Banks are required to make disclosure on remuneration paid to the directors on an annual basis at a minimum, in their Annual Financial Statements.

The instructions would be applicable to all the Private Sector Banks including Small Finance Banks (SFBs) and Payment Banks (PBs) as also the wholly owned subsidiaries of Foreign Banks.

The instructions would come into force with immediate effect.

Link of the Circular:

[Review of Fixed Remuneration granted to Non-Executive Directors \(NEDs\)](#)

RESERVE BANK OF INDIA UPDATES

RBI Update: Participation of Indian Banks on India International Bullion Exchange IFSC Limited (IIBX)

It has been decided to allow:

a) Branch/subsidiary/joint venture of an Indian bank in GIFT-IFSC to act as a Trading Member (TM)/Trading and Clearing Member (TCM) of IIBX, and

b) Indian banks authorized to import gold/silver to act as Special Category Client] (SCC) of IIBX.

Banks are required to make disclosure on remuneration paid to the directors on an annual basis at a minimum, in their Annual Financial Statements.

2. These instructions are issued in exercise of the powers conferred on the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949. In the event of non-compliance with extant guidelines, or if the Reserve Bank is satisfied that it is necessary and expedient in the public interest to do so, it may issue further necessary directions (including revocation of approval) and/or impose additional conditions, as it deems fit.

This circular is applicable to all Scheduled Commercial Banks (other than Regional Rural Banks).

This circular shall be applicable with immediate effect.

Link of the Circular:

Participation of Indian Banks on India International Bullion Exchange IFSC Limited (IIBX)

RBI Update: Exclusion of “Rupee Co-operative Bank Limited” from the Second Schedule to the Reserve Bank of India Act, 1934

It is advised that “Rupee Co-operative Bank Limited” has been excluded from the Second Schedule to the Reserve Bank of India Act, 1934 vide Notification DoR.REG/LIC.No.S4847/07.12.000/2023-24 dated November 29, 2023, which is published in the Gazette of India (Part III - Section 4) dated December 26, 2023.

Link of the Circular

Link - Exclusion of “Rupee Co-operative Bank Limited” from the Second Schedule to the Reserve Bank of India Act, 1934

RBI Update: Formation of new district in the State of Assam – Assignment of Lead Bank Responsibility

The Government of Assam has notified formation of a new district, viz., Hojai in the state of Assam vide Gazette Notification ECF.No.367433/28 dated September 07, 2023. Accordingly, it has been decided to designate the Lead Bank of the new district as below:

Sr No	Newly Created District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Hojai	State Bank of India	409 (to be read as 'numeral four, numeral zero, numeral nine')

2. There is no change in the Lead Banks of the other districts in the state of Assam.

Link of the Circular:

Formation of new district in the State of Assam – Assignment of Lead Bank Responsibility

RBI Update: Inclusion of Clearing Corporation of India Limited as a Financial Information Provider under Account Aggregator Framework

Please find the following update under RBI:

1. RBI launched the Retail Direct Scheme ('Scheme') on November 12, 2021 to facilitate retail investors to invest in Government Securities. The Scheme enables individuals to open Retail Direct Gilt Accounts with the Bank and access the Government Securities market - both primary and secondary. To enable aggregation of financial information on Government Securities held by retail investors in their Retail Direct Gilt accounts under the Scheme, Clearing Corporation of India Limited has been included as a Financial Information Provider.

2. The Master Direction – Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016 is being modified accordingly.

Link of the Circular:

Inclusion of Clearing Corporation of India Limited as a Financial Information Provider under Account Aggregator Framework

RBI Update: Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit

Kindly refer to the instructions issued vide DOR.STR.REC.93/04.0 2.001/2021-22 dated March 8, 2022 and DOR.STR.REC.39/04.02.001/2022-23 dated May 31, 2022.

1. Government of India has allowed for extension of the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') up to June 30, 2024. The rate of interest equalization shall be 2% for Manufacturers and Merchant Exporters exporting under specified 410 HS lines and 3% to the MSME manufacturers exporting under any HS line.

2. Further, Government has advised the following modifications to the scheme:

1. **Average interest rate:** With effect from FY 2023-24, the banks which have priced the loans covered under this scheme at an average interest rate of greater than Repo Rate + 4% prior to subvention would be subjected to certain restrictions under the scheme. Based on an assessment undertaken for FY 2023-24, Director General of Foreign Trade (DGFT) will identify the banks which are in breach of the above provision. Such banks shall be restricted from participating in the scheme till they furnish an undertaking to DGFT. Any further breach as assessed by DGFT thereafter may lead to debarment from the scheme.

2. Cap on subvention amount: The annual net subvention amount has been already capped at Rs 10 Cr per Importer-Exporter Code (IEC) in a given financial year and the same has been communicated to the trade & industry and banks vide DGFT Trade Notice No.05 dated May 25, 2023. Accordingly, all disbursement from April 1, 2023 shall be reckoned for this purpose.

3. All other provisions of the aforesaid circulars shall remain unchanged.

Link of the Circular: **Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit**

RBI Update: Amendment to Master Direction on Prepaid Payment Instruments

Kindly refer to the instructions issued vide DOR.STR.REC.93/04.0 2.001/2021-22 dated March 8, 2022 and DOR.STR.REC.39/04.02.001/2022-23 dated May 31, 2022.

1. This has reference to the Master Directions CO.DPSS.POLC.No.S-479/02.14.006/2021-22 dated August 27, 2021 on Prepaid Payment Instruments (MD-PPIs) (as amended from time to time), which prescribes, inter alia, the various types of PPIs which banks and non-banks can issue after obtaining necessary approval / authorisation from RBI.

2. Public transport systems across the country cater to a multitude of commuters on a daily basis. To provide convenience, speed, affordability, and safety of digital modes of payment to commuters for transit services, it has been decided to permit authorised bank and non-bank PPI issuers to issue PPIs for making payments across various public transport systems. The MD-PPIs has been updated by revising paragraph 10.2 thereof.

3. These instructions are issued under Section 18 read with Section 10 (2) of Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

These instructions shall come into effect immediately.

Link of the Circular

Amendment to Master Direction on Prepaid Payment Instruments

RBI Update: Appointment/re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies

1. ARCs are required to obtain prior approval of the Reserve Bank for appointment/re-appointment of any Director, Managing Director or Chief Executive Officer in terms of Section 3(6) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the guidelines contained in Para 5(i) of the Annex to the circular No. DoR.SIG.FIN.REC.75/26.03.001/2022-23 dated October 11, 2022 on 'Review of Regulatory Framework for Asset Reconstruction Companies (ARCs)',

2. In order to have uniformity in the information submitted by ARCs for obtaining such approvals, a form for furnishing the requisite information about the candidate and an indicative list of documents required to be submitted along with the application are enclosed as Annex I and Annex II, respectively. ARCs are advised to submit applications, complete in all respect, along with duly signed Annex I and the documents/information mentioned in Annex II to this Department] at least ninety days before the vacancy arises / the proposed date of appointment or re-appointment. Reserve Bank may call for additional information/documents for processing the application, if required.

3. These instructions shall come into force with immediate effect.

Link of the Circular

Appointment/re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies

RBI Update: Master Direction – Reserve Bank of India (Filing of Supervisory Returns) Directions - 2024

1. This has been reference to paragraph 4 of Statement on Developmental and Regulatory Policies dated August 10, 2023. All Supervised Entities (SEs) are required to submit certain supervisory returns to the Reserve Bank as per various directions / circulars/ notifications issued by the Bank from time to time.

2. All the relevant instructions have been rationalised and consolidated into a single Master Direction in order to create a single reference for all Supervisory Returns and to harmonize the timelines for filing of returns, . In exercise of powers conferred under sub section (2) of section 27 and section 35A of the Banking Regulation Act, 1949 as amended from time to time; Section 56 of the Banking Regulation Act, 1949 and extant provisions of The Banking Regulations (Co-operative Societies) Rules, 1966; extant provisions of Chapters IIIA and IIIB of the Reserve Bank of India Act, 1934; and pursuant to section 12 A of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest to do so, hereby issues this Master Direction hereinafter specified.

3. These instructions shall come into force with immediate effect.

3. The summary of changes introduced in this Direction over the extant instructions is given in Annex I. The list of underlying notifications / circulars which form the basis of this Master Direction and are hereby being repealed (whole or in part) is furnished in Annex II. The set of applicable returns to be filed by SEs and the general description of the returns are compiled and presented in Annex III, with the alternate timelines for returns submission enlisted in Annex IV. Guidance on filing of these returns are available on Bank's Website under the 'Regulatory Reporting' tab. Details of online portals for filing of applicable returns by SEs are given in Annex V. The list of abbreviations used in this Master Direction is provided in Annex VI.

4. It is clarified that submission of other regulatory/statutory returns will not be affected by these Directions.

Link of the Circular:

[Master Direction – Reserve Bank of India \(Filing of Supervisory Returns\) Directions - 2024](#)

RBI Update: Capital Adequacy Guidelines – Review of Trading Book

1. This has been reference to Master Circular – Basel III Capital Regulations dated May 12, 2023, and Master Direction – Prudential Norms on Capital Adequacy for Local Area Banks (Directions), 2021 dated October 26, 2021 (hereinafter together referred to as 'capital adequacy guidelines').

2. The Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023 dated September 12, 2023 (hereinafter referred as 'MD on Investment') inter alia provides a clearly identifiable trading book under 'Held for Trading (HFT)' accounting sub-classification and introduces AFS-reserve which would be part of regulatory capital. In view of the changes cited above, it has been decided to amend the capital adequacy guidelines in alignment with the MD on Investment.

3. Accordingly, the provisions of Master Circular - Basel III Capital Regulations have been modified as provided in Annex 1.

4. It may be noted that 'Draft Guidelines on Minimum Capital Requirements for Market Risk - under Basel III' providing inter alia 'Definition of trading book' and 'Market Risk Capital Requirements - Simplified Standardised Approach' were released on February 17, 2023 for public comments. While the revised definition of trading book for the purpose of capital adequacy will be as provided in Annex I of MD on Investment, the final guidelines on 'Market Risk Capital Requirements - Simplified Standardised Approach' will be implemented at a later date and detailed guidelines will be issued separately.

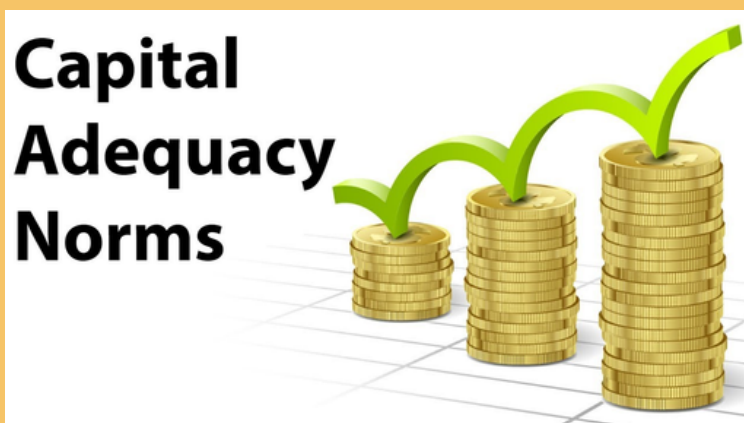
5. Considering the transition to 'Market Risk Capital Requirements - Simplified Standardised Approach', the extant market risk capital requirements have also been recalibrated by introducing intermediate scalars. Banks should keep this in view while reviewing their strategies and capital planning measures.

6. Further, the provisions of Master Direction - Prudential Norms on Capital Adequacy for Local Area Banks (Directions), 2021 have been modified as provided in Annex 2.

7. These instructions shall be applicable from April 1, 2024 to all Commercial Banks (excluding Regional Rural Banks).

Link of the Circular:

[Capital Adequacy Guidelines - Review of Trading Book](#)



Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Reg 2B Compromise or arrangement. Second Proviso	Provided further that where the recommendation to explore proposal of compromise or arrangement has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall file the proposal within thirty days of the order of liquidation	Provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016: Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date."	The liquidator shall file the proposal of compromise or arrangement only in cases where the Committee of Creditors made such a recommendation during the CIRP and such proposal shall not be filed after the expiry of thirty days from the liquidation commencement date.
Reg 14. Early dissolution.	He may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.	He shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority	Prior to applying for early dissolution, the liquidator must seek the SCC's views and recommendations, providing a detailed report in the application to the Adjudicating Authority (AA)

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Reg 31A. Stakeholders' consultation committee. in sub-regulation (1)		<p>after clause (e), the following clauses shall be inserted, namely:-</p> <p>(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;</p> <p>(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;</p> <p>(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice."</p>	<p>The stakeholder consultation committee should also advise on the following</p> <p>(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;</p> <p>(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;</p> <p>(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice."</p>
in sub-regulation (6) new proviso is inserted		<p>Provided further that the liquidator shall convene subsequent meetings within thirty days of the previous meeting, unless the consultation committee has extended the period between such meetings:</p> <p>Provided further that there shall be at least one meeting in each quarter."</p>	<p>Liquidators are mandated to convene SCC meetings with a maximum interval of 30 days, to ensure timely decisions and oversight. However, the SCC may reduce the frequency of meetings if deemed necessary, provided that at least a minimum of one meeting is held per quarter</p>

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Sub-regulation 6A is inserted		In all cases where the liquidator proposes to continue or initiate any legal proceeding, he shall, after presenting the economic rationale for the proposal, seek the advice of the consultation committee	The liquidator shall seek the advice of consultation in all case where he continue or initiate any legal proceeding, he shall, after presenting the economic rationale for the proposal.
Sub-regulation 6B is inserted		In every meeting, the liquidator shall present to the consultation committee: (a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any; (b) the consolidated status of all the legal proceedings; and (c) the progress made in the process.	The liquidator must disclose the following in consultation meeting (a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any; (b) the consolidated status of all the legal proceedings; and (c) the progress made in the process.
In sub-regulation (9) Explanation is inserted		Explanation: For the purpose of this sub-regulation, the term „voting“ shall mean voting cast by the representatives of the consultation committee.	the term „voting“ shall mean voting cast by the representatives of the consultation committee

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Reg 32A Sale as a going concern in sub-regulation (4) Explanation is inserted after sub-regulation (4) new		<p>Explanation: For the purpose of this sub-regulation, it is hereby clarified that the sale of the corporate debtor under clause (e) of regulation 32 cannot be offered as the only option for bidders after the first auction</p> <p>Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he shall consult the consultation committee and only on its advice he shall run the affairs of the corporate debtor as a going concern to the extent approved</p>	The liquidator, upon considering the viability, must consult the SCC before deciding to run the affairs of the corporate debtor as a going concern. Further, the sale of the CD as a going concern cannot be put on an auction exclusively after the first auction, and in case of a failed auction, the liquidator shall review the marketing strategy in consultation with the SCC.
Reg 33 Mode of sale. in sub-regulation (2),	The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-	The liquidator may sell the assets of the corporate debtor by means private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I	The liquidator may sell the assets of the corporate debtor by means of private sale only after prior consultation with consultation committee.

Insolvency and Bankruptcy Case Laws

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Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
in sub-regulation (2), in clause (b),	the asset is likely to deteriorate in value significantly if not sold immediately	the asset is likely to deteriorate in value significantly if not sold immediately or	the word "or", shall be inserted.
in sub-regulation (2), in clause (c),	the asset is sold at a price higher than the reserve price of a failed auction; or		clause (c) shall be omitted

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Reg - 35. Valuation of assets intended to be sold. in sub-regulation (2)	In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor	In cases not covered under sub-regulation (1) or where the liquidator after consultation with the consultation committee under regulation 31A, is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor.	The words, "where the liquidator is of the opinion", the words, "where the liquidator after consultation with the consultation committee under regulation 31A, is of the opinion", shall be substituted.
after sub-regulation (4) sub regulation (5) is inserted		Where valuation is undertaken as per sub-regulation (2), the liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the consultation committee before finalisation of valuation reports.	For fresh asset valuations, liquidators are required to facilitate meetings where registered valuers explain their methodology and reasons for significant deviations, if any, from the CIRP valuations. Further, the liquidator shall share the valuation reports with the SCC members after obtaining a confidentiality undertaking.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
sub regulation (6) is inserted		<p>The liquidator shall share the valuation reports with the members of the consultation committee after obtaining an undertaking that they shall maintain the confidentiality of such reports and shall not use these reports to cause an undue gain or undue loss to itself or any other person.</p> <p>In case there is deviation of twenty five percent in the valuation of an asset class under sub-regulation (2) from valuation under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall facilitate a meeting wherein the registered valuers shall explain the reasons for the difference to the consultation committee.</p>	<p>In case there is deviation of twenty five percent in the valuation of an asset class the liquidator shall facilitate a meeting wherein the registered valuers shall explain the reasons for the difference to the consultation committee.</p>

<p>Reg 46 Corporate Liquidation Account sub- regulation (7)</p>	<p>A stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the Board in Form J for an order for withdrawal of the amount</p>	<p>Prior to dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount</p>	<p>A stakeholder who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount</p>
<p>sub- regulation (7A)</p>		<p>On receipt of request under sub-regulation (7), the liquidator after verification of the claim, shall request the Board for release of amount to him for onward distribution.</p>	<p>The liquidator on the receipt of request after verification of claim shall request the Board for release of amount to him for onward distribution.</p>
<p>sub- regulation (7B)</p>		<p>The Board on receipt of request under sub-regulation (7A) may release the amount to the liquidator.</p>	<p>On receipt of request the Board may release the amount to the liquidator</p>
<p>sub- regulation (7C)</p>		<p>The liquidator shall, after making the distribution to the stakeholder, shall intimate the Adjudicating Authority of such distribution.</p>	<p>The liquidator shall, after making the distribution to the stakeholder, shall intimate the Adjudicating Authority of such distribution</p>
<p>sub- regulation (7D)</p>		<p>After dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited in the Corporate Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.</p>	<p>The stakeholder after dissolution of the corporate person who claims to be entitled to any amount deposited in the Corporate Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.</p>

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
sub-regulation (7E)		If any person other than the stakeholder claims to be entitled to any amount deposited to the Corporate Liquidation Account, he shall submit evidence to satisfy the liquidator or the Board, as the case may be, that he is so entitled	The person other than stakeholder claim has to submit the evidence to satisfy the liquidator or the Board as the case may be
Reg 46 A Exclusion of certain assets from the liquidation estate. New Reg inserted		For the purposes of clause (e) of sub-section (4) of section 36, wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor	Wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Schedule I in clause 3, new proviso inserted	A stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the Board in Form J for an order for withdrawal of the amount	Prior to dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount.	A stakeholder who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount.
sub-regulation (7A)		On receipt of request under sub-regulation (7), the liquidator after verification of the claim, shall request the Board for release of amount to him for onward distribution.	The liquidator on the receipt of request after verification of claim shall request the Board for release of amount to him for onward distribution.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
sub-regulation (7B)		The Board on receipt of request under sub-regulation (7A) may release the amount to the liquidator	On receipt of request the Board may release the amount to the liquidator.
sub-regulation (7C)		The liquidator shall, after making the distribution to the stakeholder, shall intimate the Adjudicating Authority of such distribution.	The liquidator shall, after making the distribution to the stakeholder, shall intimate the Adjudicating Authority of such distribution.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
sub-regulation (7D)		After dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited in the Corporate Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.	The stakeholder after dissolution of the corporate person who claims to be entitled to any amount deposited in the Corporate Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.
sub-regulation (7E)		If any person other than the stakeholder claims to be entitled to any amount deposited to the Corporate Liquidation Account, he shall submit evidence to satisfy the liquidator or the Board, as the case may be, that he is so entitled	The person other than stakeholder claim has to submit the evidence to satisfy the liquidator or the Board as the case may be
Reg 46 A Exclusion of certain assets from the liquidation estate. New Reg inserted		For the purposes of clause (e) of sub-section (4) of section 36, wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.	Wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Schedule I in clause 3, new proviso inserted		Provided further that the liquidator shall mention in the auction notice, the period extended under clause (h) of sub-regulation (1) of regulation 31A.	
for clause (4), clause (4A) and clause (4B)	<p>The reserve price shall be the value of the asset arrived at in accordance with regulation 35.</p> <p>(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.</p> <p>(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.</p>	<p>The reserve price shall be the value of the asset arrived at in accordance with regulation 35 and where an auction fails, the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time: Provided that in cases where the reserve price of the failed auction of the asset was fixed as per the valuation under sub-regulation (1) of regulation 35, the liquidator may, on the advice of the consultation committee, reduce the reserve price up to twenty-five percent, once during the process</p>	<p>The liquidator may reduce the reserve price by up to 25% for assets with existing valuation of the Corporate Insolvency Resolution Process (CIRP) on one occasion with the approval of the Stakeholders' Consultation Committee (SCC) at any time during the process. For assets where fresh valuation is conducted during liquidation, the reserve price can be reduced by up to 10% in subsequent auctions with SCC's approval.</p>

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
clause (12)	On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand: Provided that payments made after thirty days shall attract interest at the rate of 12%: Provided further that the sale shall be cancelled if the payment is not received within ninety days	On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days or such period as mentioned in the auction notice under clause 3, of the date of such demand: Provided that payments made after thirty days shall attract interest at the rate of twelve percent.: Provided further that the sale shall be cancelled if the payment is not received within the period provided under this clause."	The liquidator may extend the payment period of balance sale consideration beyond ninety days, after consultation with the SCC
Schedule I, in para 2, after clause (3)		The private sale shall be confirmed to the buyer after consultation with the consultation committee under regulation 33."	
Schedule II		Form A shall be substituted	The Form A for reporting consultation with the stakeholders has been modified to capture the meetings details such as the interval between two meetings, dissent by the SCC.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Regulation 4D. Operating separate bank account for each real estate project. Newly Inserted		Where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.	IRP or the RP as the case may be shall operate a separate bank account for each real estate project.
Regulation 18. Meetings of the committee. Sub-regulation (1)	A resolution professional may convene a meeting of the committee as and when he considers necessary	A resolution professional shall convene a meeting of the committee before lapse of thirty days from the last meeting: Provided that the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter	RP shall conduct the meeting of COC before the lapse of 30 days from the last meeting. COC may extend the interval but there shall be at least one meeting in each quarter.
Regulation - 25. Voting by the committee sub-regulation (5), for clause (b)	seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.	seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days:	To seek vote from the members who did not vote on the matter with twenty-four hours as decided by committee shall not exceed seven days. Further if the extension is made by creditor the voting widow shall be extended for twenty-four hour period.

Insolvency and Bankruptcy Case Laws

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
		<p>Provided that on a request for extension made by a creditor, the voting window shall be extended in increments of twenty-four hours period:</p> <p>Provided further that the resolution professional shall not extend the voting window where the matters listed for voting have already received the requisite majority vote and one extension has been given after the receipt of requisite majority vote</p>	<p>Resolution professional shall not extend the voting window where already majority vote and one extension has been given after receipt of the requisite vote.</p>
<p>Regulation - 31B. Approval of committee for insolvency resolution process cost New Regulation inserted</p>		<p>The insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process cost</p>	<p>Each meeting of the committee the insolvency resolution professional has to place the operational status of the corporate debtor and take the approval of all cost which are part of insolvency resolution process cost.</p>
<p>Regulation - 35 Fair value and Liquidation value in sub-regulation (1), after clause (a)</p>		<p>Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates</p>	<p>Resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates</p>

Insolvency and Bankruptcy Case Laws

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Regulation – 35 Fair value and Liquidation value sub-regulation (2)	After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:	After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value, the liquidation value and valuation reports to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value, the liquidation value and valuation reports and shall not use the information contained in the valuation reports to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29."	The resolution professional after the receipt of resolution plan shall provide fair value liquidation value and valuation report to the COC in electronic form after taking the undertaking and declaration from the COC members that they will maintain confidentiality
Regulation 36. Information memorandum. in sub-regulation (2), after clause (k)		(ka) fair value: Provided that the committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution process	Fair value should also be given in information memorandum. Further committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution
		Provided that the	

Insolvency and Bankruptcy Case Laws

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Regulation 36A. Invitation for expression of interest. after sub-regulation (1) the clarification is inserted		The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor	Resolution professional after the approval of committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor
Regulation 38- Mandatory contents of the resolution plan. after sub-regulation (3)		<p>(4) The committee may consider the requirement of a monitoring committee for the implementation of the resolution plan.</p> <p>(5) Where the committee considers that a monitoring committee for the implementation of the resolution plan is required, it may, while approving the resolution plan, decide to constitute the same with the resolution professional or propose another insolvency professional, or any other person as its members</p>	<p>COC should consider the monitoring committee requirements for implementing the resolution plan.</p> <p>Where the committee considers that a monitoring committee for the implementation of the resolution plan is required, it may, while approving the resolution plan, decide to constitute the same with the resolution professional or propose another insolvency professional, or any other person as its members.</p>
		Provided that where the resolution professional is proposed to be part of the monitoring committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process	The resolution professional is proposed to be part of the monitoring committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process

Insolvency and Bankruptcy Case Laws

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.	Comments
Regulation 40. Extension of the corporate insolvency resolution process period after sub-regulation (2) clarification is inserted		It is clarified that the resolution professional shall continue to discharge his responsibilities under the corporate insolvency resolution process, till the application for extension is decided by the Adjudicating Authority.”	Resolution professional shall continue to discharge his responsibilities under the corporate insolvency resolution process, till the application for extension is decided by the Adjudicating Authority

ROC penalizes company signatory for defective E-form PAS-3 filing and PCS for wrong certification – A Case Study

A small brief about this case

1. This is a case involving defective e-form Pas- 3 (return of allotment) filled with incorrect details by the company officials and also certified for its correctness by a practicing company secretary, the certifying professional of e-form PAS-3 for its correctness before the same is filed. The defect as pointed out by the Registrar of Companies / Adjudication Officer was that in the attachment to the board resolution to the PAS-3 e-form, the total consideration was stated as Rs. 8,86,06,610 instead of Rs. 8,86,06,800 for the allotment 2,21,517 shares. The company upon realizing the defective form which was duly certified was filed with the Registrar of Companies, filed an application for adjudication suo-moto to the Registrar of Companies seeking to adjudicate the matter. The Registrar accordingly followed the procedure of issuing the adjudication notice for which the signatories to the e-form PAS-3 i.e., the authorised signatory of the company i.e. the managing director who signed the form and the practicing company secretary who erroneously certified the e-form PAS-3 both accepted the violation committed by them in terms of Rule 8(3) of the Companies (Registration Offices and Fees) Rules 2014. The Adjudication officer passed the adjudication order on this matter by levying a penalty on both the signatories of the form. Let us go through this case in detail in order to understand the provisions of the Companies Act 2013 read with the relevant rules and consequences of default / non-compliance.

Provisions relating to this case under the Companies Act 2013.

2. The following are the relevant provisions under the Companies Act 2013, relevant to this case as given below.

**Companies (Prospectus and Allotment of Securities) Rules 2014 Rule 12 –
Return of Allotment**

Rule 12(1)

Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules 2014

Rule 12 (2)

There shall be attached to the form PAS-3, a list of allottees stating their names, addresses, occupations, if any, and the number of securities allotted to each of the allottees and the list shall be certified by the signatory of the form PAS-3, as being complete and correct as per the records of the company.

**Companies (Registration Offices and Fees) Rules 2014 Rule 8 –
Authentication of documents**

Rule 8(3)

The authorised signatory and the professional, if any, who certifies the e-form shall be responsible for the correctness of the contents of the e-form and the correctness of the enclosures attached to the electronic form.

Companies Act 2013 Chapter XXIX – Miscellaneous Section 450 – Punishment where
no specific penalty or punishment is provided

Penal section for non-compliance / default if an

450

if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction direction or exemption in relation to any matter has been accorded, given or granted and for which no penalty or punishment is provided elsewhere in the Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees and in case of continuing contravention with further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lac rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Consequences of default/violation - action from the Regulator

3. To understand the consequences of any default / non-compliance relating to Rule 8(3) of the Companies (Registration Offices and Fees) Rules 2014 in filing the e-form PAS-3 (Return of allotment) let us go through the decided case law on this matter decided by the Registrar of Companies of NCT of Delhi & Haryana on 9th February 2024.

The relevant case law on this matter

4. We shall go through the adjudication order bearing no. ROC/D/Adyorder/718-721 passed by the Registrar of Companies, NCT of Delhi & Haryana on 9 th February 2024 in the matter of M/s. Drishtee Development and Communication Limited - order of penalty pursuant to Rule 8(3) of the Companies (Registration Offices and Fees) Rules 2014.

Details of the company

5. M/s. Drishtee Development and Communication Limited was incorporated on 10 th August 2000 under the provisions of the Companies Act 1956 having its registered office at 19/21, Shakti Nagar, NewDelhi in the union territory of Delhi. The company falls under the jurisdiction of the Registrar of Companies of NCT of Delhi & Haryana and the office of the Registrar is situated at Delhi. The company, as per the details shown at the MCA portal has three directors on its board out of which one of them is a managing director. The company had established kiosks that offer affordable Internet access, consumer products and community services to rural Indian villages.

Financial details of the company

5.1. The financial & other details of the company for the immediately preceding financial year 2022-23 as available on the Ministry of corporate portal is as below:

Sr. No	Particulars	Details F.Y 2022-23 Rupees in Lakh
1	Paid up capital	82.23
2	Revenue from operation	3,537.53
	Other Income	79.91
	Profit for the Period	360.02
3	Holding Company	No
4	Subsidiary Company	YES
5	Whether company registered under section 8 of the Companies Act 2013?	No
6	Whether company registered under any other special Act?	No

6. The following were the facts and events that took place relating to this case.

The company had passed a board resolution for allotment of 2,21,517 shares amounting to Rs. 8,86,06,800 in its board meeting held.

ii. After the allotment of the shares, the company filed the return of allotment in e-form PAS-3 pursuant to section 39(4) and 42(9) of the Companies Act 2013 and Rule 12 and 14 of Companies (Prospectus and Allotment of Securities) Rules 2014 on 11 th December 2023. iii. In the attachment to the board resolution to the PAS-3 e-form, the total consideration as stated as Rs. 8,86,06,610 instead of Rs. 8,86,06,800.

iv. The e-form PAS-3 containing the incorrect details was signed by the managing director of the company as the authorised signatory by the company.

v. The e-form was duly certified by one of the practicing company secretaries (PCS). The above facts reveal that the company had filed the PAS-3 form with incorrect/defective details which was also duly certified by the practicing company secretary.

Action taken by the company

7. Upon realizing that the company had committed the default in filing the incorrect details in the e-form PAS-3 pertaining to the return of allotment, decided to file an adjudication application to the Registrar of Companies for adjudicating the matter. Accordingly, the company filed the adjudication application on 30 th December through the e-form GNL-1 seeking the adjudication of penalties for a defect in filing e-form PAS-3 which was filed by the company on 11 th December 2023 for the allotment of 221517 shares amounting Rs. 8,86,06,800.

6. The following were the facts and events that took place relating to this case.

The company had passed a board resolution for allotment of 2,21,517 shares amounting to Rs. 8,86,06,800 in its board meeting held.

ii. After the allotment of the shares, the company filed the return of allotment in e-form PAS-3 pursuant to section 39(4) and 42(9) of the Companies Act 2013 and Rule 12 and 14 of Companies (Prospectus and Allotment of Securities) Rules 2014 on 11 th December 2023. iii. In the attachment to the board resolution to the PAS-3 e-form, the total consideration as stated as Rs. 8,86,06,610 instead of Rs. 8,86,06,800.

iv. The e-form PAS-3 containing the incorrect details was signed by the managing director of the company as the authorised signatory by the company.

v. The e-form was duly certified by one of the practicing company secretaries (PCS). The above facts reveal that the company had filed the PAS-3 form with incorrect/defective details which was also duly certified by the practicing company secretary.

Action taken by the Registrar of Companies / Adjudication Officer

8. Upon receipt of the adjudication application from the company, the Registrar of Companies, on the examination of the document /information submitted to him observed that the managing director of the company and a practicing company secretary – the certifying professional had filed e-form PAS-3 with wrong attachment. The Registrar of Companies, therefore, issued a show cause notice dated 30 th January 2024 to the company's managing director who was the signatory of the e-form PAS-3 and also to the practicing company secretary who certified the e-form stating that the details to be correct as stated in the e-form. The show cause directed the company's managing director and the practicing company secretary to show cause as to why penal action could not be taken against them for defective filling and certifying the e-form for filing.

Response from the company / PCS

9. In response to the show cause notice, the company and certifying professional both submitted a reply vide email dated 6 th February 2024 wherein the above-mentioned default had been admitted and both had accordingly requested to adjudicate the matter by taking a lenient view on this matter.

Personal hearing notice was not issued

10. Since the managing director of the company and the certifying professional i.e. the practicing company secretary had accepted the default committed by them and made a request to the authorities, no personal hearing notice was issued and based on the submissions made by signatories to the PAS-3 form, the Adjudication Officer proceeded on this matter and passed the adjudication order under the provisions of section 450 of the Companies Act 2013.

Conclusions reached by the Registrar of Companies / Adjudication Officer

11. With respect to the facts of the case and submissions made by the parties, the Adjudication Officer noted that the managing director – the authorised signatory of the company and the certifying professional i.e. the practicing company secretary both had filed the e-form PAS-3 on 11th December 2023 with incorrect attachments. Therefore, pursuant to Rule 8 of the Companies (Registration Offices and Fees) Rules 2014 read with section 450 of the Companies Act 2013 signatories of the e-form PAS-3 were liable for the correctness of the content of e-form PAS-3 and enclosures attached therewith. Accordingly, signatories were liable for penalty under the provisions of the Companies Act for the default committed by them.

Knowledge Sharing Article

Applicability of lesser penalty by virtue of small company

12. Section 446B of the Companies Act 2013 states that if a penalty is payable for non-compliance with any of the provisions of this Act by a One Person Company (OPC), small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be. As per sub-section (85) of section 2 of the Companies Act 2013, a small company means a company whose paid-up capital and turnover shall not exceed rupees four crores and rupees forty crores respectively. The Registrar of Companies after considering the above provision came to the conclusion that the company did not get covered under the purview of a small company as defined under section 2(85) of the Companies Act 2013 and hence, the benefit of section 446B of the Companies Act 2013 would not be applicable on the company. Therefore he passed the adjudication order accordingly.

Adjudication order passed by the Registrar of Companies / Adjudication Officer

13. The Registrar of Companies / Adjudication Officer, in exercise of the powers conferred on him vide Notification dated 24th March 2015 and having considered the reply submitted on 6th February 2024 in response to the notice issued vide letter dated 30th January 2024, imposed the penalty on the signatories for defect in e-form PAS-3 pursuant to Rule 8(3) of the Companies (Registration Offices and Fees) Rules 2014 read with section 450 of the Companies Act 2013.

Violation of Rules committed by the signatory and certifying PCS	Penalty imposed on signatory & certifying PCS	Penalty imposed
A	B	C
Rule 8(3) of the Companies (Registration Offices and Fees) Rules, 2014	Managing director - signatory of e-form PAS-3 from the company	10000
	Certifying PCS professional of e-form PAS-3	10000
	Total penal	20,000

Knowledge Sharing Article

- a.** The order directed the parties as mentioned in the table above to pay the penalty amount as per column no. 'C' therein and stated that in the case of parties other than the company, such amount was required to be paid out of their own funds.
- b.** The order also stated that the amount of penalty shall have to be paid online by using the website www.mca.gov.in (Misc. head) in favour of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi, within 90 days of receipt of this order, and directed the persons to intimate the office of the Registrar of Companies with proof of penalty paid
- c.** The order also spelt out that an appeal against this order may be filed with the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi within a period of sixty days from the date of receipt of this order, in Form ADJ [available on Ministry website www.mca.gov.in] setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. [section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules 2014].
- d.** The order concluded by inviting the attention to section 454(8) of the Companies Act 2013 in the event of non-compliance with this order.

Despatch of the order

14. The order was sent by the Registrar of Companies, NCT of Delhi & Haryana 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 i.e. M/s Drishtee Development and Communication Limited, to its managing director and to the concerned practicing company secretary who certified the e-form PAS-3 in default and copies to the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi

The complete order for reading

15. The readers may like to read the complete adjudication order passed by the Registrar of Companies, NCT of Delhi & Haryana on 9 th February 2024 - adjudication order bearing no. ROC/D/Adyorder/718-721 in the matter of M/s. Drishtee Development and Communication Limited - order of penalty pursuant to Rule 8(3) of the Companies (Registration Offices and Fees) Rules 2014 at the MCA website at [https:// www.mca.gov.in/ content/ mca/ global/en/ data-and-reports/ rd-roc-info /roc- adjudication-orders.html](https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/roc-adjudication-orders.html). (the order is uploaded on 9 th February 2024 under ROC -Delhi titled as adjudication order

Knowledge Sharing Article

- a.** The order directed the parties as mentioned in the table above to pay the penalty amount as per column no. 'C' therein and stated that in the case of parties other than the company, such amount was required to be paid out of their own funds.
- b.** The order also stated that the amount of penalty shall have to be paid online by using the website www.mca.gov.in (Misc. head) in favour of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi, within 90 days of receipt of this order, and directed the persons to intimate the office of the Registrar of Companies with proof of penalty paid
- c.** The order also spelt out that an appeal against this order may be filed with the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi within a period of sixty days from the date of receipt of this order, in Form ADJ [available on Ministry website www.mca.gov.in] setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. [section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules 2014].
- d.** The order concluded by inviting the attention to section 454(8) of the Companies Act 2013 in the event of non-compliance with this order.

Despatch of the order

14. The order was sent by the Registrar of Companies, NCT of Delhi & Haryana 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 i.e. M/s Drishtee Development and Communication Limited, to its managing director and to the concerned practicing company secretary who certified the e-form PAS-3 in default and copies to the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi

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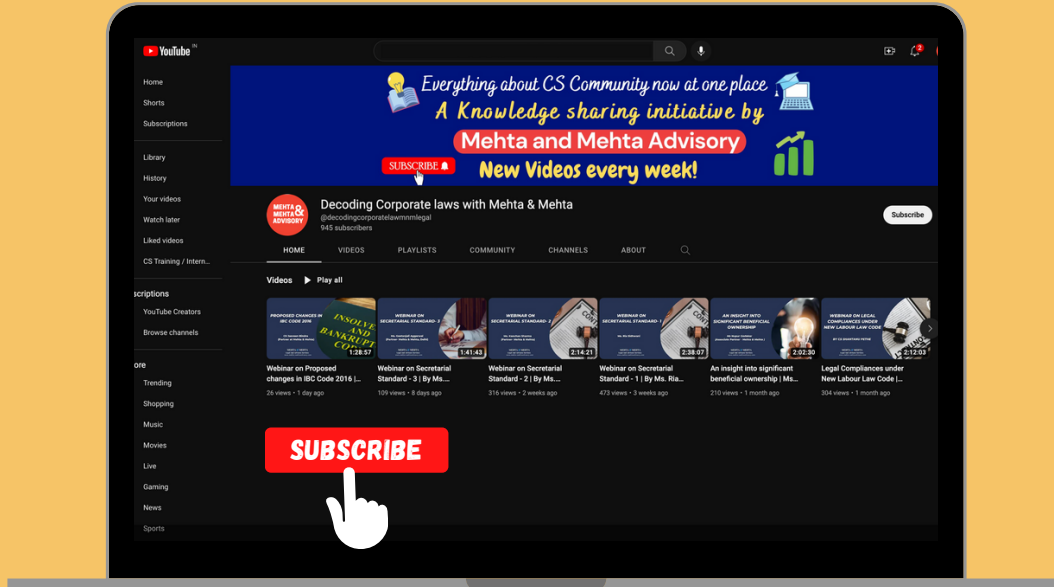
Conclusion:

16. As seen in this case, the managing director of the company and the practicing company secretary – the certifying professional both had to pay a penalty for filling up the incorrect details and certifying the e-form to be correct while filing the return of allotment form PAS-3. This case emphasises the importance of strict compliance as mandated under the provisions of the Companies Act 2013 read with the relevant rules and therefore the company's directors / authorized signatory of the company should ensure the absolute required compliance with the applicable legal provisions and especially exercise diligently before filing any form, returns, documents etc., on the certification, authentication aspect and ensure that the required certifications are in place. Similarly, the certifying professional i.e. the practicing company secretary needs to ensure the correctness of the form in all aspects before certifying the same. Rule 8 (3) of Companies (Registration Offices and Fees) Rules 2014 spells out that the authorised signatory and the professional, if any, who certify the e-form shall be responsible for the correctness of the contents of the e-form and the correctness of the enclosures attached with the electronic form.

We could conclude by saying that the company need to put a proper mechanism to ensure compliance by having a proper checklist and also adopting the principle maker-checker system in place in the company in order to avoid any penal actions by ensuring absolute compliance and on the other hand, the certifying professional needs to exercise his due diligence and his professional skills to ensure the correct certification of the form before it is filed.

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