

VEDANAM

JANUARY, 2024 | ISSUE

NEWSLETTER BY MEHTA & MEHTA

Mehta & Mehta

Corporate Legal firm



TABLE OF CONTENT

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

Our Social Media:



[mnmlegals](#)



[Mehta&Mehta](#)



[mehtaandmehta](#)

Why Vedanam?

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

We hereby release our January 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.



mehta-mehtaadvisory.com

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 – Framework for Short Selling

The Securities and Exchange Board of India (SEBI) has issued a circular, dated January 05, 2024. This circular introduces a comprehensive framework for short selling in the Indian securities market.

Detailed Analysis:

1. Definition of Short Selling: SEBI's circular defines "short selling" as the act of selling a stock that the seller does not own at the time of the trade. This establishes a foundational understanding for the subsequent regulations.

2. Permitted Investors and Classes: The circular permits all classes of investors, including retail and institutional investors, to engage in short selling activities.

3. Prohibition of Naked Short Selling: Naked short selling is strictly prohibited in the Indian securities market. All investors are mandated to honor their obligation of delivering securities during settlement.

4. Institutional Investor Regulations: Institutional investors are restricted from day trading, requiring them to fulfill their obligations on a gross basis. The custodians will settle deliveries on a net basis with the stock exchanges.

5. Provisions for Failure to Deliver: Stock exchanges are mandated to frame deterrent provisions against brokers failing to deliver securities during settlement, ensuring a robust mechanism to prevent failures.

6. Securities Lending and Borrowing Scheme: A Securities Lending and Borrowing (SLB) scheme will be implemented simultaneously with the introduction of short selling by institutional investors, providing impetus to short selling.

7. Eligibility of Stocks for Short Selling: Stocks traded in the Futures and Options (F&O) segment are eligible for short selling. SEBI retains the authority to review the list of eligible stocks periodically.

The revised framework shall be applicable with effect from April 1, 2024.

8. Disclosure Requirements: Institutional investors must disclose upfront whether a transaction is a short sale. Retail investors can make a similar disclosure by the end of the trading day. Brokers are mandated to collect and disclose scrip-wise short sell positions to stock exchanges.

[Link – Framework for Short Selling](#)

SEBI Update – Foreign investment in Alternative Investment Funds (AIFs)

The amendments to the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, para 4.1.2. under Chapter 4 of SEBI Master Circular dated July 31, 2023 for AIFs stands modified as mentioned below:

The investor, or its beneficial owner as determined in terms of sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, is not the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as – (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

(ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

In case an investor who has been already on-boarded to the scheme of an AIF, does not meet the revised condition as specified the manager of the AIF shall not draw down any further capital contribution from such investor for making investment, until the investor meets the said condition.

The provisions of this circular shall come into force with immediate effect

[Link - Foreign investment in Alternative Investment Funds \(AIFs\)](#)

SEBI Update - Ease of Doing Investments by Investors- Facility of voluntary freezing/blocking of Trading Accounts by Clients

In consultation with the Brokers' Industry Standards Forum (ISF) and to enhance ease of doing business and ease of investment, it has been decided that the framework for Trading Members to provide the facility of voluntary freezing/blocking the online access of the trading account to their clients on account of suspicious activities shall be laid down on or before April 01, 2024, by the ISF, under the aegis of stock exchanges, in consultation with SEBI and the same shall, inter-alia, contain necessary guidelines with respect to the following:

Detailed policy for voluntary freezing/ blocking the online access of the trading account of the client including the following:

modes through which a client can request/communicate to the Trading Member for voluntarily blocking the trading accounts;

issuing of acknowledgement to the clients on receipt of message;

time period within which the request shall be processed and the trading account shall be frozen/blocked

Action to be taken by the Trading Member pursuant to the receipt of request for freezing/blocking of the trading account;

Process for re-enabling the client for trading/transfers;

Intimation to be provided by the trading member to the clients w.r.t. introduction of the facility to block the trading accounts.

The Stock Exchanges shall ensure that the guidelines so issued under the aforesaid Framework are implemented by Trading Members with effect from July 01, 2024. Stock Exchanges shall also put in place an appropriate reporting requirement by Trading Members to enforce the above system. A compliance report to this effect shall be submitted to SEBI by Stock Exchanges latest by August 31, 2024.

[Link - Ease of Doing Investments by Investors- Facility of voluntary freezing/blocking of Trading Accounts by Clients](#)

SEBI Update - Ease of doing business- Changes in reporting

SEBI received representations from various stakeholders citing inefficiencies due to duplication of monitoring mechanisms and difficulties in uploading data to exchanges. In order to address the issue, SEBI advised the industry associations to consult with MIs under the aegis of Broker's Industry Standards Forum (ISF) and submit a proposal to SEBI. The ISF has recommended that some of the reports can be discontinued.

Clause 15.5.2 stands deleted.

Clause 15.5.3 stands modified whereby G principle is reiterated as follows: 15.5.3 Stock exchanges shall put in place a mechanism for monitoring of clients' funds ('G' principle) lying with the stock brokers on the principle enumerated below:

G Principle: The total available funds i.e. cash and cash equivalent with the stock broker and with the clearing corporation/clearing member should always be equal to or greater than clients' funds as per the ledger balance.

Table 5, 6 and Table 7 stands deleted.

The provisions of this circular shall come into force with immediate effect.

[Link - Ease of doing business- Changes in reporting](#)

SEBI Update - Guidelines for AIFs with respect to holding their investments in dematerialised form and appointment of custodian

Holding investments of AIFs in dematerialised form

In terms of Regulation 15(1)(i) of AIF Regulations, AIFs shall hold their investments in dematerialised form, subject to such conditions as may be specified by the Board from time to time. The said requirement does not apply, inter-alia, to such investments by AIFs and such schemes of AIFs as may be specified by the Board from time to time.

Appointment of custodian for AIFs

In terms of Regulation 20(11) of AIF Regulations, the Sponsor or Manager of the AIF shall appoint a custodian registered with the Board for safekeeping of the securities of the AIF, in the manner as may be specified by the Board from time to time.

Reporting of investments of AIFs under custody

In terms of Regulation 20(11) of AIF Regulations, the custodian shall report or disclose such information regarding investments of the AIF in such manner as may be specified by the Board from time to time.

[Link - Guidelines for AIFs with respect to holding their investments in dematerialised form and appointment of custodian](#)

SEBI Update - Streamlining of Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians

It has been decided that the following reports shall henceforth be submitted on the SEBI Intermediary Portal (SI Portal) by DDPs and Custodians

SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

Sr No	Reporting Requirements	Periodicity	Sr No	Reporting Requirements	Periodicity
1	Annual audit reports on internal controls of DDPs under Regulation 31(6) of SEBI (Foreign Portfolio Investors) Regulations, 2019	Annual	6	FPI General Information to assess the eligibility under Regulation 4 of FPI Regulations, 2019	Quarterly
2	Annual review report of the systems, procedures & controls of the Custodian by an expert under Regulation 14 (2) of Custodian Regulations read with Clause 8 of Chapter IV of the Master Circular for Custodians.		7	NRI/OCI/RI requirements under Clause 1(ii) of Part A of Master Circular for FPIs and DDPs dated December 19, 2022	
3	Audited Annual report along with Net worth certificate under Clause 7 of Chapter IV of the Master Circular for Custodians		8	FPIs non-compliant with Legal entity identifier requirements under circular dated July 27, 2023	
4	AI / ML report under Clause 9 (v) of Chapter IV of the Master Circular for Custodians	Half yearly	9	FPIs who have not submitted granular BO details under circular dated August 24, 2023	
5	Custodian Quarterly report under Clause 6 of Chapter IV of the Master Circular for Custodians.		Quarterly	10	
				11	Change in material information where there is a delay of 6 months as provided under Clause 14(iii) of Part A of the Master Circular for FPIs and DDPs
			12	Report of short sales by FPIs under Clause 4 of Chapter IV of the Master Circular for Custodians.	

Timelines for submission of reports.

These reports shall be submitted by DDPs and Custodians on the SI portal on monthly, quarterly, half yearly and annual basis as specified. The monthly and quarterly reports shall be uploaded within 15 calendar days from the end of each month and quarter, respectively.

The provisions of this Circular shall come into effect from month ending February - 2024 onwards

Link - https://www.sebi.gov.in/legal/circulars/jan-2024/streamlining-of-regulatory-reporting-by-designated-depository-participants-ddps-and-custodians_80869.html

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

The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) inter-alia requires top 100 listed entities by market capitalization and thereafter the top 250 listed entities by market capitalization to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI. Further, SEBI vide Circular no. SEBI/HO/CFD/CFDPoD-1/P/CIR/2023/162 dated September 30, 2023, has made the said provision applicable to top 100 listed entities by market capitalization from February 1, 2024 and to top 250 listed entities by market capitalization from August 1, 2024.

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

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

Mandatory verification of market rumours by listed entities

VERIFICATION

Mehta & Mehta
Corporate Legal firm

RESERVE BANK OF INDIA UPDATES

RBI Update - Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023

The RBI issued the Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023.

Applicability

(1) These Directions shall apply to

(a) Banks as defined under clause 3(1)(a) of these Directions and having 10 or more banking outlets in India, whether such bank is incorporated in India or outside India;

(b) NBFCs as defined under clause 3(1)(j) of these Directions and fulfilling the following criteria as on date:

1. Deposit-taking NBFCs (NBFCs-D) with 10 or more branches;

2. Non-Deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above and having public customer interface;

(c) All NBSPs as defined in Clause 3(1)(k) of these Directions with more than one crore Pre-paid Payment Instruments outstanding as on March 31, 2023, or thereafter. However, the Scheme shall continue to be applicable even if the number of Pre-paid Payment Instruments outstanding falls below the threshold at a later date;

(c) All NBSPs as defined in Clause 3(1)(k) of these Directions with more than one crore Pre-paid Payment Instruments outstanding as on March 31, 2023, or thereafter. However, the Scheme shall continue to be applicable even if the number of Pre-paid Payment Instruments outstanding falls below the threshold at a later date;

(d) All Credit Information Companies as defined under clause 3(1)(e).

(2) Any regulated entity, subsequent to the issue of these Directions, reaching the threshold/s prescribed under clause 4(1) shall come under the ambit of these Directions and hence would be required to put in place an Internal Ombudsman framework within six months of reaching the threshold.

(3) The Reserve Bank, if it is satisfied in public interest, may, by order, direct any regulated entity to appoint an Internal Ombudsman and these directions shall apply to that regulated entity.

[Link - Master Direction - Reserve Bank of India \(Internal Ombudsman for Regulated Entities\) Directions, 2023](#)

RBI Update - Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR) - Review of National Development Banks

it has been decided that the other All India Financial Institutions (AIFIs) i.e. EXIM Bank and National Bank for Financing Infrastructure and Development (NaBFID) shall also be considered as National Development Banks (NDBs) for NSFR computation.

Further, unencumbered loans to NDBs with a residual maturity of one year or more that would qualify for a 35 per cent or lower risk weight under the Standardised Approach for credit risk shall be assigned a Required Stable Funding (RSF) factor of 65 per cent (as against 100 per cent currently).

[Link - Basel III Framework on Liquidity Standards - Net Stable Funding Ratio \(NSFR\) - Review of National Development Banks](#)

RBI Update - Review of Instructions on Bulk Deposits for Urban Co-operative Banks (UCBs)

It has been decided to enhance the bulk deposit limit for Scheduled Primary (Urban) Co-operative Banks, in Tier 3 and 4, to Rupees one crore and above. Accordingly, "Bulk Deposit" for Primary (Urban) Co-operative Banks would now mean:

- Single Rupee term deposits of Rupees one crore and above for Scheduled UCBs categorised as Tier 3 and 4 UCBs under the revised regulatory framework.
- Single Rupee term deposits of Rupees fifteen lakh and above for all other UCBs (i.e., other than Scheduled UCBs in Tier 3 and 4).

Link - Review of Instructions on Bulk Deposits for Urban Co-operative Banks (UCBs)

RBI Update - Inoperative Accounts /Unclaimed Deposits in Banks- Revised Instructions

It has been decided to issue comprehensive guidelines on the measures to be put in place by the banks covering various aspects of classifying accounts and deposits as inoperative accounts and unclaimed deposits, as the case may be, periodic review of such accounts and deposits, measures to prevent fraud in such accounts/deposits, grievance redressal mechanism for expeditious resolution of complaints, steps to be taken for tracing the customers of inoperative accounts/ unclaimed deposits including their nominees/ legal heirs for re-activation of accounts, settlement of claims or closure and the process to be followed by them.

This circular is applicable to all Commercial Banks (including RRBs) and all Co-operative Banks.

The revised instructions shall come into effect from April 1, 2024.

Link - Inoperative Accounts /Unclaimed Deposits in Banks- Revised Instructions

RBI Update - Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024

RBI on January 03, 2024 has issued revised Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024. The master directions provides the following reporting requirements:

Primary issuances: Details of all issuances in primary markets of the CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of issuance.

Secondary market transactions: All secondary market transactions in CPs and NCDs, executed in the OTC market and/or on the recognised stock exchanges, shall be reported with time stamp within 15 minutes of execution (the time when price is agreed) on the F-TRAC platform by each counterparty to the transaction.

Buybacks: Details of buybacks of CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the buyback date.

Default: Instances of default and repayment of defaulted obligation shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of default or the day of repayment of defaulted obligations, as the case may be.

RESERVE BANK OF INDIA UPDATES

Reporting by depositories: The depositories shall report to the Reserve Bank, the details of the CPs and NCDs held with them in the dematerialised form, in the prescribed format furnished in Annex II, at fortnightly intervals (on the 15th day and on the last day of the month) or as and when called upon to do so by the Reserve Bank.

Reporting by Debenture Trustee: The Debenture Trustee shall report the details of the outstanding amount of NCDs and the particulars of default in repayment of NCD, at quarterly intervals (within 15 days from the end of the quarter), in the format prescribed in Annex III to the Reserve Bank through e-mail (reportfmd@rbi.org.in).

The roles and responsibilities of the IPA, Debenture Trustee and Credit Rating Agency (CRA) with respect to the operations in CP and NCD markets are set out in the directions.

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

RBI Update - Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk

The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (First Amendment) Regulations, 2020 (Notification dated February 18, 2020) and A. P. (DIR Series) circular dated April 07, 2020 (which came into effect from September 01, 2020) were issued after a comprehensive review and public consultation.

The foreign exchange risk management facilities have been further reviewed based on the feedback received from market participants and experience gained since the revised framework came into force.

Also, the Directions in respect of all types of foreign exchange transactions (including cash, tom and spot) have been consolidated. Further, the Directions contained in the Currency Futures (Reserve Bank) Directions, 2008 (Notification dated August 06, 2008), as amended from time to time, and Exchange Traded Currency Options (Reserve Bank) Directions, 2010 (Notification dated July 30, 2010), as amended from time to time, are now being incorporated in the Master Direction – Risk Management and Inter-Bank Dealings.

The revised Directions are provided at Annex-I to this circular. These Directions shall come into effect from April 05, 2024, replacing the existing Directions in Part A (Section I) of the Master Direction – Risk Management and Interbank Dealings dated July 5, 2016, as amended from time to time, and in supersession of the notifications listed in the Annex-II.

[Link - Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk](#)

RBI Update - Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)

Please refer to Section 52 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which, inter alia “Regulated Entities (REs) shall ensure meticulous compliance with the “Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005” laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated September 01, 2023, by the Ministry of Finance, Government of India (Annex III of the Master Direction on Know Your Customer).”

RESERVE BANK OF INDIA UPDATES

Further, in terms of Section 53 of our MD on KYC, "the REs shall verify every day, the 'UNSCR 1718 Sanctions List of Designated Individuals and Entities', as available at <https://www.mea.gov.in/Implementation-of-UNSCR-Sanctions-DPRK.htm>, to take into account any modifications to the list in terms of additions, deletions or other changes and also ensure compliance with the 'Implementation of Security Council Resolution on Democratic People's Republic of Korea Order, 2017', as amended from time to time by the Central Government".

A reference is also invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated List of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation. Certain amendments to the entries in the List were notified vide our circulars DOR. AML.REC.24/14.06.001/2023-24 dated July 04, 2023 and DOR. AML.REC.33/14.06.001/2023-24 dated August 18, 2023, respectively.

Ministry of External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718(2006) has enacted the amendments, specified with strikethrough and/or underline in certain entries on its Sanctions List of individuals and entities (enclosed with this circular). Hence, the '**designated list**' as referred in Para 2.1 and other relevant paras of the aforementioned Order dated September 01, 2023 is amended in accordance with the changes in these relevant entries.

The latest version of the UNSC Sanctions lists on DPRK is accessible on the UN Security Council's website at the following URLs:

<https://www.un.org/securitycouncil/sanctions/1718/materials>

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

[Link – Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems \(Prohibition of Unlawful Activities\) Act, 2005: Designated List \(Amendments\)](#)

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.

RESERVE BANK OF INDIA UPDATES

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 \(IFSCA\)](#)



Insolvency and Bankruptcy Case Laws

UV ASSET RECONSTRUCTION COMPANY LTD. V. ELECTROSTEEL CASTINGS LTD.

NCLAT

Order dated 24th January 2024

Facts:

Electrosteel Steels Ltd. (ESL) was sanctioned a Financial Assistance by SREI Infrastructure Finance Ltd. (SREI) for a sum of Rs.500 crores on 26.07.2011.

Electrosteel Castings Ltd. (ECL), Promoter of the ESL, holding 34.40% shareholding in ESL entered into a Deed of Undertaking on 27.07.2011, which was entered between ESL, SREI and ECL, where the ECL was defined as 'Obligor' and Clause 2.2 of the Deed of Undertaking provided that in the event the Borrower is not in a position to comply with the Financial Covenants provided in the Financing Documents, or has breached such Financial Covenants, the Obligors will arrange for the infusion of such amount of fund into the Borrower such that the Borrower is in a position to comply with the abovementioned Financial Covenants.

A Supplementary Agreement was also entered into on 21.11.2011 among ESL, SREI and ECL whereunder ECL was referred to as 'Obligor' and agreed to create a mortgage on its land in favour of SREI.

On 21.07.2017, Section 7 Application filed by State Bank of India against ESL was admitted by NCLT, Kolkata and the Adjudicating Authority vide order dated 17.04.2018 approved the Resolution Plan submitted by Vedanta Ltd. in respect of ESL, SREI received an amount of INR 241.71 crores as upfront payment under the Resolution Plan.

On 30.06.2018, SREI executed an Assignment Deed in favour of UV Asset Reconstruction Company Ltd. (Appellant herein) assigning the loans (i.e. all Amounts in or payable under the Financing Documents by ESL to SREI) as also all rights, title and interest in respect of Financing Documents.

ECL (the Respondent) after coming to know about the Assignment, wrote the Appellant that entire debt owed by ESL to SREI stood discharged as a result of payment in cash and equity transfer in favour of SREI in terms of the approved Resolution Plan.

On 24.04.2021, UV Asset Reconstruction Company Ltd./Appellant filed an Application under Section 7 against ECL before the NCLT, Cuttack Bench.

The Adjudicating Authority by the impugned order dated 24.06.2022, rejected Section 7 Application on the ground that:

- ECL was not a guarantor to the facilities availed by ESL from SREI and as such there was no financial debt, which was owed by the ECL to the Appellant.
- Due to approval of Resolution Plan of ESL and payment of debt to Financial Creditors under the Resolution Plan, liability of ECL has also extinguished.

Insolvency and Bankruptcy Case Laws

Order

Hon'ble NCLAT holds that:

- (i) After the approval of the Resolution Plan, entire debt of the Corporate Debtor against the Financial Creditor stand discharged and after approval of Resolution Plan, Financial Creditor can have no further recourse against the Corporate Debtor.
- (ii) Law on extinguishment of claim against personal guarantor and third party on approval of Resolution Plan has been settled by Hon'ble Supreme Court in its judgment in Lalit Kumar Jain v. Union of India & Ors. (2021) SC, where the Hon'ble Supreme Court held that approval of resolution plan does not ipso facto discharge a personal guarantor (of a Corporate Debtor) of her or his liabilities under the contract of guarantee.
- (iii) The law laid down by the Hon'ble Supreme Court is categorical that approval of a Resolution Plan does not ipso facto discharge a personal guarantor.
- (iv) We have to look into the Resolution Plan to find out as to whether approval of Resolution Plan discharge guarantor or third parties or not.
- (v) There is no finding recorded by the Adjudicating Authority in the impugned order that after approval of the Resolution Plan, it would lead to extinguishment and effacement of the entire debt of third party including the Corporate Debtor.

Insolvency and Bankruptcy Case Laws

SUDHIR DARODE V. ICICI BANK LTD. AND ANR.

ORDER DATED 25TH JANUARY 2024

Facts:

·The Adjudicating Authority has admitted the Section 7 application filed by ICICI Bank Ltd. – Financial Creditor for admission of CIRP against Darode Jog Realities Pvt. Ltd.–Corporate Debtor. Aggrieved by the impugned order, the present appeal has been filed by the suspended director of the Corporate Debtor.

·Due to outbreak of covid, the business of the CD was affected, resulting in loss of revenue. Hence, the CD faced difficulties in making payments of to the FC. The Adjudicating Authority on being apprised that the parties had reached an out of court amicable settlement, the Adjudicating Authority permitted the Financial Creditor to withdraw the Section 7 application vide its order dated 29.03.2023.

Further, pursuant to the Settlement Agreement, the FC was supposed to issue NOC to the CD. In spite of several reminders, the FC did not issue NOC. Rather, filed a restoration application to restore the company petition filed under sec 7. Said Restoration Application was allowed by AA without granting the Corporate Debtor an opportunity to file a reply.

The NCLAT submitted that in perusal of the Settlement Agreement, said SA does not make any mention of any form of NoC to be provided by the Financial Creditor with respect to mortgaged properties or any release of security by the Financial Creditor before the payment of the settlement amount.

Order:

In the appeal against Sec. 7 application, Hon'ble NCLAT holds that the Hon'ble Apex Court in the case of Innoventive Industries Ltd. v. ICICI Bank & Anr., has laid down the guiding principles to admit or reject an application filed under Section 7 of the IBC. Under the ambit of Section 7 of the Code, the Adjudicating Authority is to only determine whether a default has occurred and whether the debt, which may still be disputed, was due and remained unpaid.

It is a well settled proposition of law that only two alternative courses of action are available to the Adjudicating Authority under Section 7(5) of the IBC which is to either admit the application under Section 7(5)(a) or reject the petition under Section 7(5)(b). The moment the Adjudicating Authority is satisfied that a default has occurred, the Application is to be admitted unless it is incomplete.

ROC Imposes Rs. 16.9 Lakhs Penalty on Company and MD for Non-filing of eForm MSME-1 and Non-reporting of MSME Dues

Micro, Small and Medium Enterprises Development (MSMED) Act 2006

1. The Micro, Small and Medium Enterprises Development (MSMED) Act was notified in 2006 to address policy issues affecting MSMEs and the Act also seeks to facilitate the development of these enterprises and enhance their competitiveness. The act also protects the Micro, Small and Medium Enterprises for getting their payment well within the date and in case of delay, the buyer has to make payment with interest. Besides the above protection, there is also a disclosure requirement in section 22 of the MSMED Act that the buyer need to disclose the unpaid amount with interest in the annual statements of the company. The act further provides that the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues are actually paid to the small enterprise. Relating to the determination of dues to Micro, Small and Medium Enterprises, payable to MSME, the same is required to be determined by identifying the Micro, Small and Medium Enterprises based on the information available with the Company. It is obligatory and mandated by law that necessary disclosures are required to be made in the annual financial statement of the company as per the provisions of the MSMED Act.

Relevant provisions under the Companies Act 2013

2. As per the provisions of sub-section (1) of section 405 of the Companies Act, the Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

Sub-section (2) of section 405 of the Companies Act 2013 states that every order under sub-section (1) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be. Sub-section (3) of section 405 of the Companies Act 2013 states that for the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-section (1) is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary. Further to the above, sub-section (5) of section 405 of the Companies Act 2013, states that where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

Relevant notification issued on this matter by the concerned Ministry

3. The Ministry of Micro, Small and Medium Enterprises, New Delhi had notified the following two notifications which are applicable in case of micro, small and medium enterprises.

3.1 S.O 5622 (E) dated 2 nd November 2018 The Ministry of Micro, Small and Medium Enterprises, New Delhi vide its notification bearing no S.O 5622 (E) dated 2 nd November 2018 has stated that in exercise of powers conferred by section 9 of the Micro, Small and Medium Enterprises Development Act, the Central Government hereby directs that all companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise supplies exceeds forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to the Ministry of Corporate Affairs stating the (a) the amount of payments due and (b) the reasons of the delay

3.2 S.O 368 (E) dated 22 nd January 2019 The Ministry of Micro, Small and Medium Enterprises, New Delhi vide its notification bearing no S.O 368 (E) dated 22 nd January 2019 under section 405 of the Companies Act 2013, the addressee company is required to file MSME form No.1 pursuant to section 405(1) of the Companies Act 2013 which reads that the Central Government may, by order, require, companies generally, or any class of companies or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

Penal provisions for non-compliance/ default under this section

4. The non-compliance with filing of MSME FORM I by such companies will attract a penalty under Section 405(4) of the Companies Act, 2013. As per Section 405(4) of the Act, if any company fails to file MSME-I, the company and every officer of the company who is in default shall be liable to the penalty of twenty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.

Regulatory actions

5. To understand the regulatory action in cases of non-compliance relating to the MSME-I form submission, it would be worthwhile to go through a decided case law on this matter. The case law which is being discussed is a very interesting case – order delivered by the Registrar of Companies / Adjudicating Officer of Kerala and Lakshadweep in the matter of Blissful Garments Private Limited on 29th December 2023.

The relevant case law

6. The case law is relating to Blissful Garments Private Limited situated at Ottappalam, Palakkad in the State of Kerala – order passed by the Registrar of Companies adjudication order bearing No. ROC/K/PC03/Blissful/01/2023 – order dated 29 th December 2023 – adjudication order under section 454 of the Companies Act 2013 read with Rule 3(2) of Companies (Adjudication of Penalties) Rules 2014 for the violation of section 405 (4) of the Companies Act 2013 read with Companies (Furnishing of about Payment to Micro and Small Enterprise Suppliers) order 2019.

Details of the company

7. M/s. Blissful Garments Private Limited is a company incorporated on 19 th May 2016 under the provisions of the Companies Act 2013 having its registered office at SDF 01, Kinfra Integrated Industries park, Lakkidi Koottupatha, Ottappalam Palakkad in the state of Kerala. The company falls under the jurisdiction of Registrar of Companies of Kerala and Lakshadweep and the Registrar of Company is situated at Ernakulum. The company is in the manufacture of textile business. The company is having two directors on its board and one of them is a managing director.

Fact about of the case

8. The Registrar of Companies received a complaint letter dated 6 th April 2023 from M/s Tulip Elastics Private Limited, Noida of Uttar Pradesh inter-alia stating that the company was a registered as a MSME in the business of manufacture of materialized yarn or crimped yarn etc. and pursuant to an order placed by M/s Blissful Garments Private Limited, M/s Tulip Elastics Private Limited had supplied goods and had raised invoices and that the company M/s M/s Blissful Garments Private Limited which was obliged to file MSME-1 form indicating the outstanding amount to M/s. Tulip Elastics Private Limited along with the number of days of delays had not filed the same in the portal of Ministry of Corporate Affairs. The complaint received by the Registrar of Companies was registered with IDs 10085387. The complaint was sent to the company and its managing director by the Registrar of Companies through a letter dated 19 th June 2023 and also on 14th November 2023. The Registrar of Companies thereafter ran a check on the Ministry of Corporate Affairs portal and noticed that the company had not filed the required MSME-1 form till the date of scrutiny done by the regulator and therefore the Registrar had come to a conclusion that the company and its managing director attracted the penal actions for the failure to file the form pursuant to section 405(4) of the Companies Act 2013.

Action taken by the Registrar of Companies

9. The copies of the complaint the complaint was sent to the company (i.e. M/s Blissful Garments Private Limited) and its managing director vide the letters dated 10 th December 2023. The Registrar also took note that the letters sent to the company and its managing director both were received by them as per the postal track on 26 th December 2023. The Registrar of Companies sought the explanation from the company for the non-submission of the MSME-1 form and also stated to explain the company as to why the penal action could not be initiated against them for the failure to submit the required form as per the provisions of the Companies Act 2013.

Response from the company to the Registrar of Companies

10. The company had responded to the communication received from the Registrar of Companies stating the following:- (i) The company admitted that the complainant (i.e. M/s M/s Tulip Elastics Private Limited) was one the company's supplier and that the company had done a business deal worth of Rs.18,58,689 during the period October 2020. (ii) The company stated that they subsequently paid an of Rs. 8,56,689 via cheque dated 23 rd November 2020 and again an amount of Rs. 1,33,875 on 24 th November 2020 and a further payment of Rs. 8,50,000 on 22 nd September 2021. (iii) The company further stated that the complainant company initiated a judicial proceedings before the Honourable Judicial Magistrate Court of Hyderabad (Case No. NACT/1534/2021) though the company was ready to settle the balance amount of due amount outside the Court, if the complainant was ready to withdraw the judicial proceedings.

Knowledge Sharing Article

Observations made by the Registrar of Companies

11. The Registrar of Companies after going through the reply submitted by the company took note that the company had not offered any explanation as to why the e-form MSME-1 had not been filed as required under the provisions of the Companies Act 2013 except narrating about the details of the case. The Registrar of Companies also took note that though there may be a judicial proceedings, since the company had admitted that the transaction, nothing prevented the company from filing the required MSME-1 form indicating the admitted amount as per its calculations that was due to the complainant company along with the reasons for the delay for the payments. The MSME form-1 is required to be filed by every specified company giving the details of all outstanding dues to micro or small enterprises suppliers existing as on the date of notification of the order issued by the Government i.e. as on 22nd January 2019 within 30 days from the date of deployed on Ministry of Corporate Affairs portal (within 30 days from 1st May 2019). Thereafter the companies are required to file the return as per MSME-1 by 31st October for the period from April to September and by 30th April for the period from October to March of each year.

Conclusions reached by the Registrar of Companies / Adjudicating Officer

12. The Registrar of Companies / Adjudicating Officer came to the conclusion after going through documents available on the record of the MCA portal and also based on the submissions made by the company that the company had violated the provisions of section 405 of the Companies Act 2013 in as much as the company and the directors failed to file the MSME-1 form as required under the provisions of the Companies Act 2013 on half yearly basis as required and hence the company and its managing director were liable for penal actions. Accordingly, the Registrar of Companies / Adjudication Officer proceeded with passing the adjudication order for the failure committed by the company and its managing director pursuant to sub-section (4) of section 405 of the Companies Act 2013.

Applicability of levying lesser penalty

14. The Registrar of Companies / Adjudication Officer took note that the company was a small company and hence decided to apply the benefit as provided under section 446B of the Companies Act 2013 while imposing the penalty. As per the provisions of section 446B of the Companies Act 2013, lesser monetary penalties are applicable for Small Companies, One Person Companies, Producer Companies and Start-up Companies, for non-compliance of provisions of the Companies Act 2013. Penalty for such companies and its officer in default shall not be more than one-half of the penalty specified in relevant provisions subject to a maximum of Rs. 2,00,000 in case of such company and Rs. 1,00,000 in case of an officer who is in default or any other person, as the case may be.

The order passed by the Adjudicating Officer

15. The Registrar of Companies / Adjudicating Officer passed the order imposing penalty as prescribed under sub-section (4) of section 405 of the Companies Act 2013 read with 446B of the Companies Act 2013 on the company and its managing director as per the table below.

Knowledge Sharing Article

Sr. No	Company / Director	Number of days default	Penalty for default		Penalty imposed (Max. amount)
			Rupees	Rupees	
		Days	Rupees	Rupees	Rupees
1	Company	972 days default for period ending 30.04.2021	20,000	972*1,000 = 9,72,000	2,00,000
2	Managing Director	972 days default for period ending 30.04.2021	20,000	972*1,000 = 9,72,000	1,00,000
3	Company	789 days default for period ending 30.09.2021	20,000	789*1,000 = 7,89,000	2,00,000
4	Managing Director	789 days default for period ending 30.09.2021	20,000	789*1,000 = 7,89,000	1,00,000
5	Company	607 days default for period ending 30.04.2022	20,000	607*1,000 = 6,07,000	2,00,000
6	Managing Director	607 days default for period ending 30.04.2022	20,000	607*1,000 = 6,07,000	1,00,000
7	Company	454 days default for period ending 30.09. 2022	20,000	454*1,000 = 4,54,000	2,00,000

Knowledge Sharing Article

8	Managing Director	454 days default for period ending 30.09.2022	20,000	$454 * 1,000 = 4,54,000$	1,00,000
9	Company	242 days default for period ending 30.04.2023	20,000	$242 * 1,000 = 2,42,000$	2,00,000
10	Managing Director	242 days default for period ending 30.09.2023	20,000	$242 * 1,000 = 2,42,000$	1,00,000
11	Company	89 days default for period ending 30.09.2023	20,000	$89 * 1,000 = 89,000$	54,500
12	Managing Director	89 days default for period ending 30.04.2023	20,000	$89 * 1,000 = 89,000$	54,500
Total Penalty					16,09,000

Knowledge Sharing Article

(a) The order stated that the adjudicating officer was of the opinion that the penalty was commensurate with the above said failure committed by the company and the managing director and the penalty imposed on the managing director shall have to be paid from his personal sources / income.

(b) The order directed the company and its managing director to make the payment of the penalty within a period of ninety days from the date of the receipt of the order copy as said in section 454 (8) of the Companies Act 2013 and through the Ministry of Corporate Affairs portal only as per the provisions of Rule 3 (14) of the Companies (Adjudication of Penalties) Rules 2014 under intimation to the officer of the Registrar of Companies.

(c) The order further stated that an appeal against this order, if aggrieved may be filed with the Regional Director (Southern Region), 26, Haddows Road, Nungambakkam, Chennai as provided in section 454 (5) and 454(6) of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014.

(d) The order also drew the attention that as per section 454(8) (i) of the Companies Act 2013, which states that in case of non-payment of the penalty amount the company shall be punishable with fine which shall not be less than twenty-five thousand rupees which may extend to five lakh rupees and officer in default shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or with both.

Despatch of the order

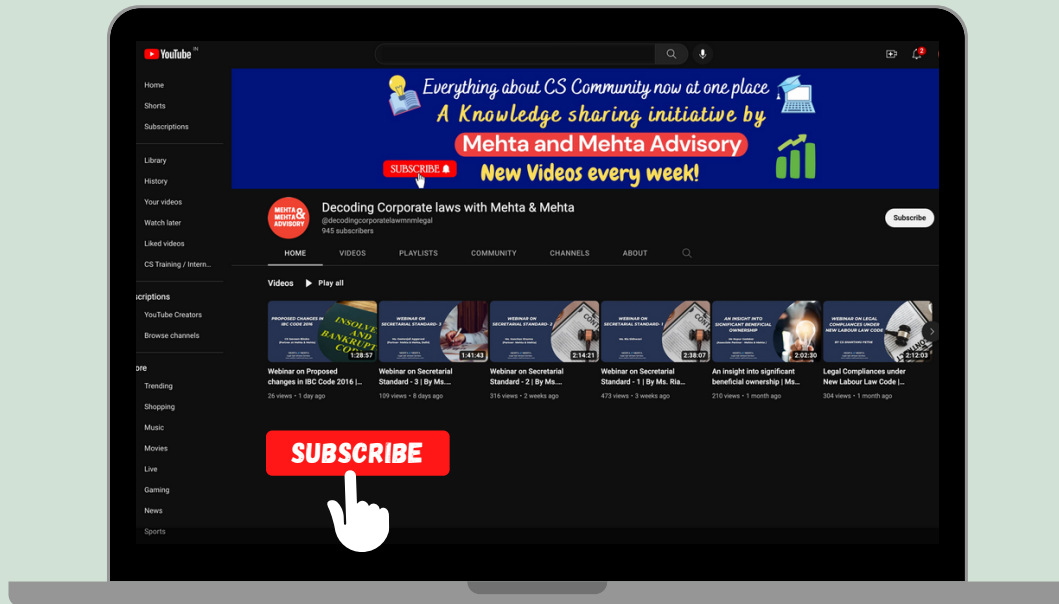
16. The order was sent by the Registrar of Companies in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the company and its managing director and also to the Regional Director, (Southern Region) Ministry of corporate Affairs, at No 26 Haddows Road, Nungambakkam, Chennai. Complete order for reading 17. The complete order passed by the Registrar of Companies of Kerala & Lakshadweep, Kochi bearing No. ROC/K/PC-03/Blissful/01/2023 - order dated 29 th December 2023 - adjudication order under section 454 of the Companies Act 2013 read with Rule 3 (2) of Companies (Adjudication of Penalties) Rules 2014 for the violation of section 405 (4) of the Companies Act 2013 read with Companies (Furnishing of about Payment to Micro and Small Enterprise Suppliers) order 2019 in the matter of Blissfull Garments Private Limited can be read by the readers who are interested at the website of Ministry of Corporate Affairs and the relevant website is as provided below:- <https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-rocinfo/roc-adjudication-orders.html> a(order uploaded on 12th January 2024 under ROC - Ernakulum captioned as Adjudication order - section 405(4) of the Companies Act 2013 in the matter of Blissful Garments Private Limited) Conclusion 18. The compliance requirement is an important aspect and the company and its directors need to ensure the same at all cost and remain a complaint company. In this particular case, as evident from the penalty imposed by the Registrar of Companies / Adjudication Officer, one can understand the importance of timely compliance of filing the required form (in this case the MSM-1 form) ensuring the transparency and compliance as envisaged under the provisions of the Companies Act 2013. We could conclude that the company should take utmost care in adhering to the statutory requirements and ensure the absolute compliance in order to avoid severe penalties coupled with legal consequences. Needless to mention that understanding the specifics of MSME reporting and acting in accordance with the mandatory regulatory compliance requirements remains imperative for all companies to maintain trust with its stakeholders and above all avoid the legal complications.

A splendid seminar by our Chief Consultant Sudhakar Sir in Bengaluru and Kolkata in the month of January 2024

Glimpse at the pictures from the event



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



CLICK HERE TO WATCH OUR LATEST WEBINARS



Webinar on the "Master Class on LLP - I Introduction to LLP and Incorporation Compliance"



Master Class on LLP - II



**Master Class on LLP - III
Audit, Accounts and Investigation**