Issue:

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Monthly Newsletter

by Mehta & Mehta

VEDANAM वेदनम्

KNOWLEDGE SHARED IS WISDOM MULTIPLIED...

WHY VEDANAM?

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

We hereby release our **April 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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Mehta & Mehta
Corporate Legal firm

Find the latest updates about our webinars and circulars, notifications and updates published by SEBI, MCA, RBI, IBBI and other official government sites.

SEBI UPDATE: ENTITIES ALLOWED TO USE E-KYC AADHAAR AUTHENTICATION SERVICE OF UIDAIIN SECURITIES MARKET AS SUB-KUA

The Master Circular on Know Your Client (KYC) norms for the securities market SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169 dated October 12, 2023 inter alia has detailed the provision for the adaptation of Aadhaar based e-KYC process and e-KYC Authentication facility for Resident Investors under section 11A of the Prevention Of Money Laundering Act, 2002 in securities market as sub-KUA and on-boarding process of sub-KUA by UIDAI.

Department of Revenue, Ministry of Finance (DoR-MoF) has from time to time issued gazette notifications notifying entities, to undertake Aadhaar authentication service of UIDAI under Section 11A of the Prevention of Money Laundering Act, 2002.

DoR-MoF has vide Gazette Notification S.O. 801(E) dated February 20, 2024, notified 24 entities which are permitted to use Aadhaar authentication services of UIDAI under section 11A of the Prevention of Money-laundering Act, 2002. A copy of the notification is attached at Annexure A.

The above mentioned entities shall follow the process as detailed in SEBI circular dated October 12, 2023 and as may be prescribed by UIDAI from time to time. The KUAs shall facilitate the on-boarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

Link: Entities allowed to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as sub-KUA

SEBI UPDATE: CIRCULAR ON STANDARDIZATION OF THE PRIVATE PLACEMENT MEMORANDUM (PPM)AUDIT REPORT

In terms of Regulation 28 of SEBI (AIF) Regulations, 2012 and Clause 2.4 of SEBI Master Circular SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023(Master Circular)it is mandatory for AIFs to carry out an annual audit of compliance with the terms of Private Placement Memorandum (PPM).In terms of Clause 2.4.2 of Master Circular, AIFs are required to submit Annual PPM Audit Reports to the Trustee or Board of Directors or Designated Partners of the AIF, Board of directors or Designated Partners of the Manager and SEBI, within 6 months from the end of the Financial Year.

In order to have uniform

compliance standards and for ease of compliance reporting, standard reporting format for PPM Audit Report applicable to various categories of AIF has been prepared in consultation with pilot Standard Setting Forum for AIFs (SFA).

The said reporting format shall be hosted on the websites of the AIF Associations which are part of SFA within 2 working days of issuance of this circular. The associations shall assist all AIFs in understanding the reporting requirements and in clarifying or resolving any issues which may arise in connection with reporting to ensure accurate and timely reporting.

The PPM audit reports shall be submitted to SEBI by AIFs online on the SEBI Intermediary Portal (SI Portal) as per the aforesaid format.

In terms of Clause 2.4.1 of Master Circular audit of sections of PPM relating to 'Risk Factors', 'Legal, Regulatory and Tax Considerations' and 'Track Record of First Time Managers' shall be optional. In addition, 'Illustration of Fees and Expenses' and 'Glossary and Terms' shall also be optional.

All other provisions with respect to the filing of the PPM audit report specified in the Master circular shall remain unchanged.

The reporting requirement mentioned at paragraph 3 above shall be applicable for PPM audit reports to be filed for the Financial Year ending March 31, 2024 onwards.

Link: Standardization of the Private Placement Memorandum (PPM) Audit Report

SEBI UPDATE: CROSS MARGIN BENEFITS FOR OFFSETTING POSITIONS HAVING DIFFERENT EXPIRY DATES

Chapter 5 of SEBI Master Circular dated October 16, 2023 for Stock Exchanges and Clearing Corporations inter-alia provides stipulations for cross margin between index futures position and constituent stock futures position in derivatives segment (Clause 1.2.9) as well as cross margin in respect of offsetting positions in correlated equity indices (Clause 1.2.10). At present, the aforesaid cross margin benefits are provided if both the correlated indices or an index and its constituents, as the case may be, have same expiry day.

In discussion with stock exchanges, Clearing Corporations and Risk Management Review Committee of SEBI, it has been decided to extend the cross margin benefit on offsetting positions having different expiry dates subject to the following:

- A spread margin of 40%

would be levied in case of offsetting positions in correlated indices having different expiry dates. Spread margin of 30% would continue to get levied in case of same expiry date (i.e. existing requirement).

- A spread margin of 35% would be levied in case of offsetting positions in index and its constituents having expiry date different from index. While the expiry date of index futures can be different from that of its constituents, the expiry date of futures contracts of all constituents should be same in order to obtain the aforesaid cross margin benefit. Further, spread margin of 25% would continue to get levied in case of same expiry date of index and constituents (i.e. existing requirement).
- The aforesaid spread margin benefit would be revoked at the beginning of the expiry day of the position which expires first (i.e. first of the expiring indices or constituents) in case the expiry dates of both legs of the position are different.
- Exchanges / Clearing Corporations to put in place suitable monitoring mechanism to keep track of cross margin activities of participants.
- All other requirements pertaining to cross margin remain unchanged and applicable.

Link: Cross Margin benefits for offsetting positions having different expiry dates

SEBI UPDATE: EASE OF DOING BUSINESS: TEXT ON CONTRACT NOTE WITH RESPECT TO FIT AND PROPER STATUS OF SHAREHOLDERS

SEBI has received representations from market participants through the Industry Standards Forum (ISF) to relax the requirement, under chapter 6 at Para 2.4.2.2.2 of the Master Circular (Stock Exchanges and Clearing Corporations) dated October 16, 2023, of publishing the text pertaining to 'fit and proper' on the contract note in terms of Regulation 19 and 20 of the SEBI (Securities Contract (Regulation) (Stock Exchanges and Clearing Corporation) Regulations, 2018 (i.e. SCR (SECC) Regulations, 2018).

As a step towards ease of doing business, the requirement to publishing the text of Regulation 19 of the SCR(SECC) Regulations, 2018 on the contract notes is no longer required and Clause 2.4.2.2.2 under Chapter 6 of the Master Circular (Stock Exchanges and Clearing Corporations) dated October 16, 2023 stands amended as under:

"In the post listing scenario, in lieu of text only a reference of the

applicable regulation with regard to fit and proper (by mentioning the URL/weblink of Regulation 19 and 20 of the SCR(SECC) Regulations, 2018) shall be made part of the contract note."

Link: Ease of Doing Business: Text on Contract Note with respect to Fit and Proper status of shareholders

SEBI UPDATE: FLEXIBILITY TO ALTERNATIVE INVESTMENT FUNDS (AIFS) AND THEIR INVESTORS TO DEAL WITH UNLIQUIDATED INVESTMENTS OF THEIR SCHEMES

Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations 2024 ("AIF Regulations Amendment"), have been notified , inter alia, to provide additional flexibility to AIFs and their investors to deal with unliquidated investments of their schemes.

The following has been stated

With respect to dissolution period it has been stated

Before seeking the requisite investor consent, the AIF / manager shall arrange a bid for a minimum of 25% of the value of its unliquidated investments.

Mandatory in-specie distribution of unliquidated investments it has been stated as

During the Liquidation Period, if the AIF fails to obtain requisite investor consent for entering into Dissolution Period or in-specie distribution, then the unliquidated investments shall be mandatorily distributed to investors in-specie, without requirement of obtaining consent of 75% of investors by value of their investment in the scheme of the AIF.

Link: Flexibility to Alternative Investment Funds (AIFs) and their investors to deal with unliquidated investments of their schemes

SEBI UPDATE: FRAMEWORK FOR CATEGORY I AND II ALTERNATIVE INVESTMENT FUNDS (AIFS) TO CREATE ENCUMBRANCE ON THEIR HOLDING OF EQUITY OF INVESTEE COMPANIES

The SEBI notified Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies

The following has been stated

Existing schemes of Category I or Category II AIFs who have not on-boarded any investors prior to April 25, 2024, may create encumbrance on equity of

investee company with explicit disclosure with respect to creation of such encumbrance in this regard and disclosure of associated risks in their Private Placement Memorandums (PPMs).

Any encumbrances already created by a scheme of Category I or Category II AIF prior to April 25, 2024, on the securities of investee company for the purpose of borrowing of such investee company, may continue

Investor consent is that encumbrances created on securities of an investee company without explicit disclosure require investor consent by October 24, 2024 or must be removed by January 24,2025.

Category I or Category II AIFs shall ensure that the borrowings made by the investee company against the equity investments encumbered by the AIFs are utilised only for the purpose of development, operation or management of the investee company.

The duration of encumbrance created on the equity investments shall not be greater than the residual tenure of the scheme of the Category I or Category II AIFs.

In case of default by the borrower investee company, Category I or Category II AIF shall ensure that the fund or its investors are not subject to any liability over and above the equity of the borrower investee company encumbered by the AIF.

Link: Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies

RBI UPDATE: MASTER CIRCULAR - BOARD OF DIRECTORS – UCBS

RBI has issued master circular for the Board of Directors which states the following

1. Constitution of Board of Directors

The directors on the boards of UCBs must be knowledgeable and persons of high integrity. To ensure professionalism in the Board, banks should, at all times, have at least two professional directors, i.e., persons with suitable banking experience (at middle/senior management level) or with relevant professional qualification in the fields of law, accountancy or finance. Banks should also have a suitable provision in their byelaws to ensure this. However, these instructions would not be insisted upon in case of Salary Earners' Banks in view of the nature of their membership.

UCBs (other than those having deposit size less than Rs.100 crore and salary earners' banks) are also required to constitute a Board of Management (BoM) to facilitate professional management.

2. Role of directors

The Board of Directors (BOD or Board) is primarily concerned with formulation of policies keeping in view the applicable statutory provisions and the guidelines issued by the RBI. The Board should also exercise overall supervision and control over the functioning of the bank, leaving the day-to-day administration to the Managing Director (MD) / Chief Executive Officer (CEO).

Link: Master Circular - Board of Directors – UCBs

RBI UPDATE: MASTER CIRCULAR – LEAD BANK SCHEME

RBI has issued master circular for the Lead Bank Scheme which states the following:

1. Introduction

(i) Originating from the Gadgil Study Group, the Lead Bank Scheme (LBS) aimed to address the rural banking gap, proposing an 'Area Approach' for rural development.
(ii) Following endorsement by the Nariman Committee, the LBS was initiated in December 1969, assigning lead bank responsibilities to facilitate banking in specific districts.
(iii) Implemented by the Reserve Bank of India (RBI), the LBS aimed to enhance banking in priority sectors, assigning a lead bank for each district.
(iv) Last reviewed in 2009 by a committee led by Usha Thorat, the LBS adapted to evolving financial landscapes.

(v) Recognizing its impact, recommendations from stakeholders led to continued LBS implementation, emphasizing private sector bank involvement and technological integration.

2. Fora under Lead Bank Scheme

The Block Level Bankers' Committee (BLBC), chaired by the Lead District Manager (LDM), coordinates credit institutions and development agencies at the block level, holding quarterly meetings to review the Block Credit Plan with branch managers' mandatory attendance and selective involvement of controlling heads and NABARD's District Development Managers.

DCCs, chaired by the District Collector, coordinate banks and government agencies at the district level, convening quarterly meetings to address district-specific issues, contributing to financial inclusion and overall development, with feedback to State Level Bankers' Committee (SLBC).

Link: Master Circular – Lead Bank Scheme

RBI UPDATE: MASTER CIRCULAR - GUARANTEES AND CO-ACCEPTANCES

RBI has issued master circular for Guarantees and Co-acceptances which states the following:

General Guidelines:

1. As regards the purpose of the guarantee, as a general rule, the banks should confine themselves to the provision of financial guarantees and exercise due caution with regard to performance guarantee business.

2. As regards maturity, as a rule, banks should guarantee shorter maturities and leave longer maturities to be guaranteed by other institutions.

3. No bank guarantee should normally have a maturity of more than 10 years. However, where banks extend long term loans for periods longer than 10 years for various projects, it has been decided to allow banks to also issue guarantees for periods beyond 10 years. While issuing such guarantees, banks are advised to take into account the impact of very long duration guarantees on their Asset Liability Management. Further, banks may evolve a policy on issuance of guarantees beyond 10 years as considered appropriate with the approval of their Board of Directors.

4. Banks should, in general, refrain from issuing non-fund based facilities to/on behalf of constituents who do not enjoy credit facilities with them. However, banks are permitted to grant non-fund based facilities, including partial credit enhancement1, to those customers, who do not avail any

any fund based facility from any bank in India. Provision of such facilities shall be in terms of a comprehensive Board approved policy for grant of non-fund based facility to such borrowers. The banks shall ensure that the borrower has not availed any fund based facility from any bank operating in India. However, at the time of granting non-fund based facilities, banks shall obtain declaration from the customer about the non- fund based credit facilities already enjoyed by them from other banks. Banks shall undertake the same level of credit appraisal as has been laid down for fund based facilities. The instructions related to KYC / AML / CFT, submission of credit information to Credit Information Companies and other prudential norms applicable to banks, including exposure norms, issued by RBI from time to time, shall be adhered to in respect of all such facility. However, banks are prohibited from negotiating unrestricted LCs of non-constituents. In cases where negotiation of bills drawn under LC is restricted to a particular bank and the beneficiary of the LC is not a constituent of that bank, the bank shall have the option to negotiate such LCs, subject to the condition that the proceeds are remitted to the regular banker of the beneficiary.

Further, BG /LC may be issued by scheduled commercial banks to clients of co-operative banks against counter guarantee of the co-operative bank as permitted hitherto. In such cases, banks shall be guided by the provisions of paragraph 2.3.8.2 of the Master Circular on Loans and Advances-Statutory and Other Restrictions dated July 1, 2015 as amended from time to time. Further, in such cases banks must satisfy themselves that the concerned co-operative banks have sound credit appraisal and monitoring systems as well as robust Know Your Customer (KYC) regime. Before issuing BG/LCs to specific constituents of co-operative banks, they must satisfy themselves that KYC check has been done properly in these cases.

6. The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.

Link: Master Circular - Guarantees and Co-acceptances

RBI UPDATE: MASTER DIRECTION – SCHEME OF PENALTIES FOR BANK BRANCHES AND CURRENCY CHESTS FOR DEFICIENCY IN RENDERING CUSTOMER SERVICE TO THE MEMBERS OF PUBLIC

RBI has issued master direction on Scheme of Penalties for bank branches and Currency Chests for

for deficiency in rendering customer service to the members of public which states the following:

The Scheme of Penalties for bank branches including currency chests has been formulated in order to ensure that all bank branches / currency chests provide proper customer service to the members of public / linked bank branches keeping in view the objectives of Clean Note Policy and enhancing operational efficiency.

Link: Master Direction – Scheme of Penalties for bank branches and Currency Chests for deficiency in rendering customer service to the members of public

RBI UPDATE: MASTER DIRECTION ON FRAMEWORK OF INCENTIVES FOR CURRENCY DISTRIBUTION & EXCHANGE SCHEME FOR BANK BRANCHES INCLUDING CURRENCY CHESTS

RBI has issued master direction on Framework of incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests which states the following:

1. The framework of incentives, titled Currency Distribution & Exchange Scheme (CDES) for bank branches including Currency Chests (CCs), based on performance in rendering customer service to the members of public has been formulated to encourage all the bank branches to provide better customer service to the members of public keeping in view the objectives of Clean Note Policy.

2. Incentives

As per the scheme, banks are eligible for certain financial incentives / service charges for setting up requisite infrastructure and facilitating exchange / distribution of notes and coins. All the details are given in the circular.

Link: Master Direction on Framework of incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests

RBI UPDATE: MASTER CIRCULAR - GUARANTEES, CO-ACCEPTANCES & LETTERS OF CREDIT - UCBS

RBI has issued master circular for Guarantees, Co-Acceptances & Letters of Credit - UCBs which states the following:

1. Guarantees

In view of the risks involved in the business of issuance of guarantees, the Primary (Urban)

should extend guarantees within restricted limits so that their financial position is not impaired. The banks should follow certain broad guidelines in respect of their guarantee business.

2. Co-acceptance of Bills

In view of the above, banks should keep in view the following safeguards:

(i) While sanctioning co-acceptance limits to their customers, the need therefore should be ascertained and such limits should be extended only to their customers enjoying other limits with the bank.

(ii) Only genuine trade bills should be co-accepted and the banks should ensure that the goods covered by bills co-accepted are actually received in the stock accounts of the borrowers.

(iii) The valuation of the goods as mentioned in the accompanying invoice should also be verified to see that there is no over valuation of stocks.

(iv) The banks should not extend their co-acceptance to house bills / accommodation bills drawn by group concerns on one another.

(v) The powers to co-accept bills, beyond a stipulated limit, must be exercised by two authorised officials jointly.

(vi) Proper records of the bills co-accepted for each customer should be maintained so that the commitments for each customer and the total commitments at a branch can be readily ascertained and these should be scrutinised by internal inspectors and commented upon in their reports.

(vii) Proper periodical returns may be prescribed so that the Branch Managers report such co-acceptance commitments entered into by them to the controlling offices. Such returns should also reveal the position of bills that have become overdue and which the bank had to meet under the co- acceptance obligation. This will enable the controlling offices to monitor such co-acceptances furnished by the branches and take suitable action in time, in difficult cases.

Link: Master Circular - Guarantees, Co-Acceptances & Letters of Credit - UCBs

RBI UPDATE: MASTER DIRECTION ON PENAL PROVISIONS IN REPORTING OF TRANSACTIONS / BALANCES AT CURRENCY CHESTS

RBI has issued master direction on Penal Provisions in reporting of transactions / balances at Currency Chests which states the following:

1. Reporting Procedure

1.1 Reporting of Currency Chest (CC) Transactions

The minimum amount of deposit into / withdrawal from currency chest shall be ₹1,00,000/- and thereafter, in multiples of ₹50,000/-.

1.2 Time Limit for Reporting

1.2.1 The currency chests shall invariably report all transactions through CyM-CC portal on the same day by 7 pm.

1.2.2 Opening of Currency Chests on Sundays or Holidays – Reporting in CyM

In case CyM CC portal is available on the day a specific CC is permitted to operate (i.e. on a local holiday), the CC shall report the transactions in CyM on the same day. In case CyM-CC portal is not available on the said day (i.e. on a global holiday / 2nd or 4th Saturdays of the month / Sunday), the CC shall report denomination-wise consolidated deposit and/ or withdrawal amount and denomination-wise chest closing balance of the day by 7 pm to the concerned Issue Office of RBI by e-mail and report day's transactions on CyM on the next working day.

1.2.3 Relaxation in Respect of Strike in Banks

Relaxation in the reporting period on account of strike situation shall be considered on case-to-case basis.

Link: Master Direction on Penal Provisions in reporting of transactions / balances at Currency Chests

RBI UPDATE: MASTER CIRCULAR ON SHG-BANK LINKAGE PROGRAMME

RBI has issued master circular on SHG-Bank Linkage Programme which states the following:

Self Help Groups have the potential to bring together the formal banking structure and the rural poor for mutual benefit. Studies conducted by NABARD in a few states to assess the impact of the linkage project have brought out encouraging and positive features like increase in loan volume of the SHGs, definite shift in the loaning pattern of the members from non-income generating activities to production activities, nearly 100 per cent recovery performance, significant reduction in the transaction costs for both the banks and the borrowers etc., besides leading to a gradual increase in the income level of the SHG members. Another significant feature observed in the linkage project is that about 85 per cent of the groups linked with banks were formed exclusively by women.

Recognizing the importance of SHG Bank linkage, banks have

been advised to meet the entire credit requirements of SHG members, as envisaged in Paragraph 93 of the Union Budget announcement for the year 2008-09, made by the Honorable Finance Minister, wherein it was stated as under: "Banks will be encouraged to embrace the concept of Total Financial Inclusion. Government will request all scheduled commercial banks to follow the example set by some public sector banks and meet the entire credit requirements of SHG members, namely, (a) income generation activities, (b) social needs like housing, education, marriage, etc. and (c) debt swapping". Linking of SHGs with banks has thus been emphasized in the Monetary Policy Statements of Reserve Bank of India and Union Budget announcements from time to time and various guidelines have been issued to banks in this regard.

Link: Master Circular on SHG-Bank Linkage Programme

RBI UPDATE: MASTER CIRCULAR - DISBURSEMENT OF GOVERNMENT PENSION BY AGENCY BANKS

RBI has issued master circular on SHG-Bank Linkage Programme which states the following:

Payment of pension to retired government employees, including payment of basic pension, increased dearness relief (DR), and other benefits, as and when announced by the governments, is governed by the relevant schemes prepared by concerned Ministries/Departments of the Government of India and State Governments. This Master Circular consolidates important instructions on the subject issued by the Reserve Bank of India till March 31, 2024 (listed in Appendix). It does not replace or supersede any existing government instructions on the matter. The instructions issued by Pension Sanctioning Authority of the Central and State Governments and circulated by RBI in the past will continue to remain in operation subject to changes being made by the competent authority. In case of any doubt or apparent contradiction, agency banks may be guided by the relevant government instructions. Contents of various circulars issued in this connection by the Reserve Bank of India are summarized hereunder.

Link: Master Circular - Disbursement of Government Pension by Agency Banks

RBI UPDATE: MASTER CIRCULAR ON CONDUCT OF GOVERNMENT BUSINESS BY AGENCY BANKS - PAYMENT OF AGENCY COMMISSION

RBI has issued master circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission which states the following:

1. The Reserve Bank of India carries out the general banking business of the Central and State Governments through its own offices and through the offices of the agency banks appointed under Section 45 of the RBI Act, 1934, by mutual agreement. RBI pays agency commission to the agency banks for the government business handled by them. This Master Circular consolidates the instructions contained in the circulars listed in Annex 1.

2. Transactions relating to the following government business undertaken by agency banks are eligible for agency commission paid by RBI:

1. Revenue receipts and payments on behalf of the Central/State Governments
2. Pension payments in respect of Central / State Governments and
3. Any other item of work specifically advised by Reserve Bank as eligible for agency commission

3. The Agency banks also undertake the work related to Small Savings Schemes (SSS) the commission for which is borne by Government of India. Though the settlement of commission on such SSS is processed by RBI and settled at Central Accounts Section (CAS), Nagpur, the rates of agency commission related to SSS transactions are decided by Government of India. Agency commission claims on Special Deposit Scheme (SDS) related transactions (where mirror accounts are maintained in RBI) are also settled at CAS, Nagpur.

Link: Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission

RBI UPDATE: MASTER CIRCULAR – BASEL III CAPITAL REGULATIONS

RBI has issued master circular on Basel III Capital Regulations which states the following:

Please refer to the Master Circular No. DOR.CAP.REC.15/21.06.201/2023-24 dated May 12, 2023, consolidating therein the prudential guidelines on Basel III capital adequacy issued to banks till that date.

The instructions contained in the aforesaid Master Circular have been suitably updated / amended by incorporating

relevant guidelines, issued as on date. A list of circulars consolidated in this Master Circular is contained in Annex 26.

Small Finance Banks and Payments Banks may refer to their respective licensing guidelines and operating guidelines issued by Reserve Bank, for prudential guidelines on capital adequacy.

Link: Master Circular – Basel III Capital Regulations

RBI UPDATE: UNAUTHORISED FOREIGN EXCHANGE TRANSACTIONS

In exercise of the powers conferred under Section 35A and Section 56 of the Banking Regulation Act, 1949, the Reserve Bank of India (RBI) being satisfied that it is necessary and expedient in the public interest to do so, hereby, issues the Directions hereinafter specified.

1. Authority to Impound Counterfeit Notes

The Counterfeit Notes can be impounded by:

1. All banks
2. Issue Offices of RBI

2. Detection of Counterfeit Notes

2.1 Banknotes tendered over the counter shall be examined for authenticity through machines. Similarly, banknotes received directly at the back office / currency chest through bulk tenders shall also be examined through machines.

2.2 No credit to customer's account is to be given for Counterfeit Notes, if any, detected in the tender received over the counter or at the back-office / currency chest.

2.3 In no case, the Counterfeit Notes shall be returned to the tenderer or destroyed by the bank branches. Failure of the banks to impound Counterfeit Notes detected at their end will be construed as wilful involvement of the bank concerned in circulating Counterfeit Notes and penalty will be imposed.

Link: Unauthorised foreign exchange transactions

MASTER CIRCULAR - PRUDENTIAL NORMS ON CAPITAL ADEQUACY - PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)

RBI has issued master circular on Prudential Norms on Capital Adequacy - Primary (Urban) Co-operative Banks (UCBs) which states the following:

1. Introduction
Capital acts as a buffer in times of

bank. Sufficiency of capital also instills depositors' confidence. As such, adequacy of capital is one of the pre-conditions for licensing of a new bank as well as its continuance in business.

2. Statutory Requirements

In terms of the provisions contained in Section 11 of Banking Regulation Act (AACS), no co-operative bank shall commence or carry on banking business unless the aggregate value of its paid-up capital and reserves is not less than one lakh of rupees. In addition, under Section 22(3)(d) of the above Act, the Reserve Bank prescribes the minimum entry point capital (entry point norms) from time to time, for setting-up of a new Primary (Urban) Cooperative Bank.

3. Net Worth

UCBs shall have minimum net worth as under:

- Tier 11 UCBs operating in a single district shall have minimum net worth of ₹2 crore.
- All other UCBs (of all tiers) shall have minimum net worth of ₹5 crore.
- UCBs which currently do not meet the minimum net worth requirement, as above, shall achieve the minimum net worth of ₹2 crore or ₹5 crore (as applicable) in a phased manner. Such UCBs shall achieve at least 50 per cent of the applicable minimum net worth on or before March 31, 2026 and the entire stipulated minimum net worth on or before March 31, 2028.

Link: Master Circular - Prudential Norms on Capital Adequacy - Primary (Urban) Co-operative Banks (UCBs)

RBI UPDATE: MASTER CIRCULAR - HOUSING FINANCE FOR UCBS

RBI has issued master circular on Housing Finance for UCBs which states the following:

1.General

1.1 The role of primary (urban) co-operative banks (UCBs) in providing housing finance has been reviewed from time to time. These banks, with their vast network, occupy a very strategic position in the financial system and have an important role to play in providing credit to the housing sector. Further, housing finance to specified categories up to prescribed limits is treated as priority sector lending, and the need for UCBs providing credit to priority sector has come to be increasingly recognised consistent with the social objectives placed before the banking system.

1.2 Therefore, with a view to enabling the UCBs to play a more positive role in providing finance for housing schemes, particularly to the weaker sections of the

community, these banks are permitted to grant loans for housing schemes up to certain limits from their own resources subject to the guidelines detailed hereunder.

1.3 Bigger banks that have large surplus resources may undertake larger lending for housing, as this will provide a remunerative avenue for investment of their surplus funds.

1.4 Wherever banks are still required to obtain special permission of the Registrar for financing housing societies, it is suggested that these banks should obtain general permission to finance housing societies subject to such terms and conditions as may be prescribed for the purpose.

Link: Master Circular - Housing Finance for UCBs

RBI UPDATE: MASTER CIRCULAR – HOUSING FINANCE

RBI has issued master circular on Housing Finance which states the following:

1. Introduction

Banks, with their vast branch network throughout the length and breadth of the country, occupy a very strategic position in the financial system and have an important role to play in

2. Various Regulations

While formulating their policies, banks have to take into account the following RBI guidelines and ensure that bank credit is used for production, constructions activities and not for activities connected with speculation in real estate.

Link: Master Circular – Housing Finance

RBI UPDATE: MASTER CIRCULAR - PRUDENTIAL NORMS ON INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES

RBI has issued master circular on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances which states the following:

1. GENERAL

1.1 In line with the international practices and as per the recommendations made by the Committee on the Financial System (Chairman Shri M. Narasimham), the Reserve Bank of India has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances

portfolio of the banks so as to move towards greater consistency and transparency in the published accounts.

1.2 The policy of income recognition should be objective and based on record of recovery rather than on any subjective considerations. Likewise, the classification of assets of banks has to be done on the basis of objective criteria which would ensure a uniform and consistent application of the norms. Also, the provisioning should be made on the basis of the classification of assets based on the period for which the asset has remained non-performing and the availability of security and the realisable value thereof.

1.3 Banks are urged to ensure that while granting loans and advances, realistic repayment schedules may be fixed on the basis of cash flows with borrowers. This would go a long way to facilitate prompt repayment by the borrowers and thus improve the record of recovery in advances.

Link: Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

RBI UPDATE: MASTER CIRCULAR - INCOME RECOGNITION, ASSET CLASSIFICATION, PROVISIONING AND OTHER RELATED MATTERS - UCBS

RBI has issued master circular on Income Recognition, Asset Classification, Provisioning and Other Related Matters - UCBs which states the following:

1. General

1.1 In order to reflect a bank's actual financial health in its balance sheet and as per the recommendations made by the Committee on Financial System (Chairman Shri M. Narasimham), the Reserve Bank has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks.

1.2 Broadly, the policy of income recognition should be objective and based on record of recovery rather than on any subjective considerations. Likewise, the classification of assets of banks has to be done on the basis of objective criteria, which would ensure a uniform and consistent application of the norms. The provisioning should generally be made on the basis of the classification of assets into different categories.

1.3 The requirements of the State

Co-operative Societies Acts and / or rules made thereunder or other statutory enactments may continue to be followed, if they are more stringent than those prescribed hereby.

Link: Master Circular - Income Recognition, Asset Classification, Provisioning and Other Related Matters - UCBs

RBI UPDATE: CIMS PROJECT IMPLEMENTATION - SUBMISSION OF STATUTORY RETURNS (FORM A, FORM VIII AND FORM IX) ON CIMS PORTAL

In terms of Para 29 of the Master Direction - Reserve Bank of India [Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR)] Directions - 2021 (Updated as on September 25, 2023), banks submit the statutory Form A, Form VIII and Form IX (on unclaimed deposits) Returns in electronic form on the eXtensible Business Reporting Language (XBRL) Portal.

Following the launch of Reserve Bank's next generation data warehouse, viz., the Centralised Information Management System (CIMS), it has been decided to shift the submission of Form A, Form VIII and Form IX Returns from the XBRL Portal to the CIMS Portal. Banks shall, accordingly, submit the fortnightly Form A Return from the Reporting Friday June 14, 2024, monthly Form VIII Return from May 2024 and the annual Form IX Return from December 31, 2024 respectively on the CIMS Portal only.

Banks shall continue to submit Form A & Form VIII both on XBRL as well as CIMS portals concurrently till the date/month indicated above.

Link: CIMS Project Implementation - Submission of Statutory Returns (Form A, Form VIII and Form IX) on CIMS Portal

RBI UPDATE: HEDGING OF GOLD PRICE RISK IN OVERSEAS MARKETS

Hedging of Gold Price Risk in Overseas Markets:

Please refer to Paragraph 2 of the Statement on Developmental and Regulatory Policies announced as a part of the Bi-monthly Monetary Policy Statement for 2023-24 dated February 08, 2024, regarding hedging of price risk of gold in overseas markets. Attention is also invited to the Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022.

Resident entities were permitted to hedge their exposure to price risk of gold on exchanges in the International Financial Services Centre (IFSC) recognised by the

International Financial Services Centres Authority (IFSCA) vide A. P. (DIR Series) Circular No. 19 dated December 12, 2022. To provide further flexibility to resident entities to hedge their exposures to price risk of gold, it has now been decided to permit resident entities to hedge their exposures to price risk of gold using OTC derivatives in the IFSC in addition to the derivatives on the exchanges in the IFSC, subject to the stipulations set out in the Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022, as amended from time to time.

3. These instructions shall be applicable with immediate effect. The Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 has been updated accordingly.

Link: Hedging of Gold Price Risk in Overseas Markets

RBI UPDATE: KEY FACTS STATEMENT (KFS) FOR LOANS & ADVANCES

Please refer to our instructions on Key Facts Statement (KFS) and disclosure of Annual Percentage Rate (APR) as contained in paragraph 2 of Circular on 'Display of information by banks' dated January 22, 2015; paragraph 6 of Master Direction on 'Regulatory Framework for Microfinance Loans' dated March 14, 2022; and paragraph 5 of 'Guidelines on Digital Lending' dated September 2, 2022.

As announced in the Statement on Developmental and Regulatory Policies dated February 8, 2024, it has been decided to harmonize the instructions on the subject. This is being done in order to enhance transparency and reduce information asymmetry on financial products being offered by different regulated entities, thereby empowering borrowers for making an informed financial decision. The harmonised instructions shall be applicable in cases of all retail and MSME term loan products extended by all regulated entities (REs).

Link: Key Facts Statement (KFS) for Loans & Advances

RBI UPDATE: MASTER CIRCULAR - CREDIT FACILITIES TO SCHEDULED CASTES (SCS) & SCHEDULED TRIBES (STS)

RBI has issued master circular on Credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs) which states the following:

Banks should take the measures indicated below to step up their advances to SCs/STs.

Planning Process

1. The District Level Consultative Committees formed under the Lead Bank Scheme should continue to be the principal mechanism of co-ordination between banks and development agencies in this regard. The district credit plans formulated by the Lead Banks should clearly indicate the linkage of credit with employment and development schemes.

2. Banks will have to establish closer liaison with the District Industries Centres, which have been set up in different districts for promoting self-employment.

3. At the block level, a certain weightage is to be given to SCs/STs in the planning process. Accordingly, the credit planning should be weighted in their favour and special bankable schemes suited to them should be drawn up to ensure their participation and larger flow of credit to them for self-employment. It will be necessary for the banks to consider their loan proposals with utmost sympathy and understanding.

4. Banks should periodically review their lending procedures and policies to see that loans are sanctioned in time, are adequate and production-oriented and that they generate incremental income to make them self-liquidating.

5. While formulating the Block / District Credit Plan, special focus may be given to villages with sizeable population of SC/ST communities/ specific localities (bastis) in the towns/villages having a concentration of these communities.

Link: Master Circular - Credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs)

RBI UPDATE: MASTER CIRCULAR – DEENDAYAL ANTYODAYA YOJANA - NATIONAL RURAL LIVELIHOODS MISSION (DAY-NRLM)

RBI has issued master circular on Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM) which states the following:

1. The Ministry of Rural Development (MoRD), Government of India launched the National Rural Livelihood Mission (NRLM) by restructuring Swarnajayanti Gram Swarojgar Yojana (SGSY) with effect from 01st April 2013 (RBI Circular No. RBI/2012-13/559 dated 27 June 2013).

2. **Women SHGs and their Federations**

2.1 DAY-NRLM promotes affinity-based women Self Help Groups (SHGs). However, only in case of groups to be formed with persons with disabilities

other special categories like elders and transgenders, DAY-NRLM may have both men and women in the Self-Help Groups.

2.2 Women SHGs under DAY-NRLM consist of 10-20 members. In case of special SHGs i.e., groups in the difficult areas, groups with disabled persons, and groups formed in remote tribal areas, this number may be a minimum of 5 members.

2.3 Federations of Self Help Groups formed at village, gram panchayat, cluster or higher level may be registered under appropriate Acts prevailing in their respective states.

Link: Master Circular – Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM)

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)."

2. 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-UNSC-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"

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: DEALING IN RUPEE INTEREST RATE DERIVATIVE PRODUCTS - SMALL FINANCE BANKS

1. Please refer to paragraph 4 of Statement on Developmental and Regulatory Policies issued as a part of the Bi-monthly Monetary Policy Statement for 2024-25 dated April 05, 2024 read with Paragraph 1.10 of the 'Operating Guidelines for Small Finance Banks' dated October 6, 2016.

2. Extant guidelines permit Small Finance Banks (SFBs) to use only Interest Rate Futures (IRFs) for the purpose of proprietary hedging. In order to expand the avenues available to the SFBs for hedging interest rate risk in their balance sheet and commercial operations more effectively as well as with a view to provide them with greater flexibility, it has now been decided to allow them to deal in permissible rupee interest rate derivative products for hedging interest rate risk in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019 dated June 26, 2019, as amended from time to time.

Applicability

3. This circular is applicable to all Small Finance Banks.

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

Link: Dealing in Rupee Interest Rate Derivative products - Small Finance Banks

RBI UPDATE: UNAUTHORISED FOREIGN EXCHANGE TRANSACTIONS

The Reserve Bank of India (RBI) has come across instances of unauthorised entities offering foreign exchange (forex) trading facilities to Indian residents with promises of disproportionate/ exorbitant returns.

In this context, attention of Authorised Dealer Category-I (AD Cat-I) banks is invited to:

1. Section 3 (a) of the Foreign Exchange Management Act (FEMA), 1999, in terms of which, no person shall deal in or transfer any foreign exchange or foreign security to any person not being an ‘Authorised Person’, unless under general or special permission of the Reserve Bank;

2. Regulation 4 read with Schedule I of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification No. FEMA 25/2000-RB dated May 3, 2000), as amended from time to time, in terms of which, a person, whether resident in India or resident outside India, may enter into a foreign exchange derivative contract with an authorised dealer or on recognised exchanges, only;

3. Para 3 (1) of the Electronic Trading Platforms (Reserve Bank) Directions, 2018 dated October 05, 2018, in terms of which, no entity shall operate an Electronic Trading Platform (ETP) without obtaining prior authorisation of the Reserve Bank;

4. Press releases dated February 03, 2022, September 07, 2022 and February 10, 2023 issued by the Reserve Bank, cautioning against unauthorised forex trading platforms; and

5. 'Alert List' issued by the Reserve Bank containing names of entities which are neither authorised to deal in forex under FEMA, 1999 nor authorised to operate ETP for forex transactions under the Electronic Trading Platforms (Reserve Bank) Directions, 2018.

Link: Unauthorised foreign exchange transactions

RBI UPDATE: MASTER CIRCULAR - BANK FINANCE TO NON-BANKING FINANCIAL COMPANIES (NBFCS)

Bank Finance to NBFCs registered with RBI

The ceiling on bank credit linked to Net Owned Fund (NOF) of NBFCs has been withdrawn in respect of all NBFCs which are statutorily registered with RBI and are engaged in principal business of asset financing, loan, factoring and investment activities. Accordingly, banks may extend need based working capital facilities as well as term loans to all NBFCs registered with RBI and engaged in infrastructure financing, equipment leasing, hire-purchase, loan, factoring and investment activities subject to provisions of para 8 of these guidelines.

In the light of the experience gained by NBFCs in financing second hand assets, banks may also extend finance to NBFCs against second hand assets financed by them.

Banks may formulate suitable loan policy with the approval of their Boards of Directors within the prudential guidelines and exposure norms prescribed by the Reserve Bank to extend various kinds of credit facilities to NBFCs subject to the condition that the activities indicated in paragraphs 4 and 6 are not financed by them.

Bank Finance to NBFCs not requiring Registration

In terms of "Master Direction - Exemptions from the provisions of RBI Act, 1934" dated August 25, 2016, as updated from time to time, few categories of non-banking financial companies are exempted from certain provisions of the Reserve Bank of India Act,

1934 (the RBI Act, 1934), including the need for registration with the Reserve Bank. For such NBFCs not needing registration with the Reserve Bank, banks may take their credit decisions on the basis of usual factors like the purpose of credit, nature and quality of underlying assets, repayment capacity of borrowers as also risk perception, etc.

Activities not eligible for Bank Credit

The following activities undertaken by NBFCs, are not eligible for bank credit:

(i) Bills discounted / rediscounted by NBFCs, except for rediscounting of bills discounted by NBFCs arising from sale of -

a. commercial vehicles (including light commercial vehicles), and

b. two wheeler and three wheeler vehicles, subject to the following conditions:

- the bills should have been drawn by the manufacturer on dealers only;
- the bills should represent genuine sale transactions as may be ascertained from the chassis / engine number; and
- Before rediscounting the bills, banks should satisfy themselves about the bona fides and track record of NBFCs which have discounted the bills.

(ii) Investments of NBFCs both of current and long-term nature, in any company / entity by way of shares, debentures, etc. However, Stock Broking Companies may be provided need-based credit against shares and debentures held by them as stock-in-trade.

(iii) Unsecured loans / inter-corporate deposits by NBFCs to / in any company.

(iv) All types of loans and advances by NBFCs to their subsidiaries, group companies / entities.

(v) Finance to NBFCs for further lending to individuals for subscribing to Initial Public Offerings (IPOs) and for purchase of shares from the secondary market.

Leased and Sub-Leased Assets

Other Prohibitions on Bank Finance to NBFCs

- Bridge loans / interim finance
- Advances against collateral security of shares to NBFCs
- Restriction on guarantees for placement of funds with NBFCs

Link: Master Circular - Bank Finance to Non-Banking Financial Companies (NBFCs)

RBI UPDATE: FOREIGN EXCHANGE MANAGEMENT (MODE OF PAYMENT AND REPORTING OF NON-DEBT INSTRUMENTS) (AMENDMENT) REGULATIONS, 2024

These Regulations may be called the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024.

Amendment to Regulation 3.1 of the Principal Regulations

In Regulation 3.1 of the Principal Regulations, after Sl no. IX, the following shall be inserted namely:

X. Schedule XI **(Purchase or Subscription of Equity Shares of Companies Incorporated in India on International Exchanges Scheme by Permissible Holder)**	**A. Mode of Payment** (1) The amount of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange shall be paid, - (i) through banking channels to a foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015, as amended from time to time; or (ii) as inward remittance from abroad through banking channels. Explanation: The proceeds of purchase / subscription of equity shares of an Indian company listed on an International Exchange shall either be remitted to a bank account in India or deposited in a foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015, as amended from time to time. **B. Remittance of sale proceeds** The sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Amendment to Regulation 4 of the Principal Regulations

In sub-regulation (8) of Regulation 4 of the Principal Regulations, the existing provision shall be substituted by the following, namely:
"LEC(FII): (i) The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase / transfer of equity instruments by FPIs on the stock exchanges in India.
(ii) The Investee Indian company through an Authorised Dealer Category I bank shall report to the Reserve Bank in Form LEC (FII) the purchase/subscription of equity shares (where such purchase / subscription is classified as Foreign Portfolio Investment under the rules) by permissible holder, other than transfers between permissible holders, on an International Exchange

Link: Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024

RBI UPDATE: MASTER DIRECTION – RESERVE BANK OF INDIA (ASSET RECONSTRUCTION COMPANIES) DIRECTIONS, 2024

ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions, thereby enhancing the overall health of the financial system. To ensure prudent and efficient functioning of ARCs and to protect the interest of investors, Reserve Bank of India hereby issues the Master Direction – Reserve Bank of India (Asset Reconstruction companies) Directions, 2024 (the Directions), hereinafter specified.

These Directions have been issued in exercise of the powers conferred by Sections 3, 9, 10, 12 and 12A of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Link: Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024

RBI UPDATE: FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) (AMENDMENT) REGULATIONS, 2024

These Regulations may be called the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024

Amendment to Regulation 5 of the Principal Regulations

In sub-regulation (F)(1) of Regulation 5 of the Principal Regulations, the existing provision shall be substituted by the following, namely:
"Subject to compliance with the conditions in regard to raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) or through direct listing of equity shares of companies incorporated in India on International Exchanges, the funds so raised may, pending their utilisation or repatriation to India, be held in foreign currency accounts with a bank outside India."

Link: Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024

RBI UPDATE: VOLUNTARY TRANSITION OF SMALL FINANCE BANKS TO UNIVERSAL BANKS

This circular is applicable to all Small Finance Banks.

Provisions

With the objective of bringing better clarity, the eligibility criteria for an SFB to transition into a Universal bank will now be as follows:

1. scheduled status with a satisfactory track record of performance for a minimum period of five years;
2. shares of the bank should have been listed on a recognised stock exchange;
3. having a minimum net worth of ₹1,000 crore as at the end of the previous quarter (audited);
4. meeting the prescribed CRAR requirements for SFBs;
5. having a net profit in the last two financial years; and
6. having GNPA and NNPA of less than or equal to 3 percent and 1 percent respectively in the last two financial years.

The following conditions shall be applicable with regard to shareholding pattern:

1. There is no mandatory requirement for an eligible SFB to have an identified promoter. However, the existing promoters of the eligible SFB, if any, shall continue as the promoters on transition to Universal Bank.
2. Addition of new promoters or change in promoters shall not be permitted for an eligible SFB while transitioning to Universal Bank.
3. There shall be no new mandatory lock-in requirement of minimum shareholding for existing promoters in the transitioned Universal Bank.
4. There shall be no change to

the promoter shareholding dilution plan already approved by the Reserve Bank.

5. The eligible SFBs having diversified loan portfolios will be preferred.

Link: Voluntary transition of Small Finance Banks to Universal Banks

RBI UPDATE: FAIR PRACTICES CODE FOR LENDERS – CHARGING OF INTEREST

Fair Practices Code for Lenders – Charging of Interest

1. The guidelines on Fair Practices Code issued to various Regulated Entities (REs) since 2003, inter-alia, advocate fairness and transparency in charging of interest by the lenders, while providing adequate freedom to REs as regards their loan pricing policy.

2. During the course of the onsite examination of REs for the period ended March 31, 2023, the Reserve Bank came across instances of lenders resorting to certain unfair practices in charging of interest. Some of the unfair practices observed are briefly explained below:

Charging of interest from the date of sanction of loan or date of execution of loan agreement and not from the date of actual disbursement of the funds to the customer. Similarly, in the case of loans being disbursed by cheque, instances were observed where interest was charged from the date of the cheque whereas the cheque was handed over to the customer several days later.

In the case of disbursal or repayment of loans during the course of the month, some REs were charging interest for the entire month, rather than charging interest only for the period for which the loan was outstanding.

In some cases, it was observed that REs were collecting one or more instalments in advance but reckoning the full loan amount for charging interest.

3. These and other such non-standard practices of charging interest are not in consonance with the spirit of fairness and transparency while dealing with customers. These are matters of serious concern to the Reserve Bank. Wherever such practices have come to light, RBI through its supervisory teams has advised REs to refund such excess interest and other charges to customers. REs are also being encouraged to use online account transfers in lieu of cheques being issued in a few cases for loan disbursal.

4. Therefore, in the interest of fairness and transparency, all REs are directed to review their practices regarding mode of disbursal of loans, application of interest and other charges and take corrective action, including system level changes, as may be necessary, to address the issues highlighted above.

5. This circular takes immediate effect.

Link: Fair Practices Code for Lenders - Charging of Interest

THE DATE WHEN THE CIRP INITIATION APPLICATION IS FILED IS RELEVANT, NOT THE DATE OF GIVING DEMAND NOTICE UNDER SECTION 8 OF IBC – RALCO EXTRUSION PVT. LTD. VS. CENTECH ENGINEERS PVT. LTD. – NCLT MUMBAI BENCH

Brief about the decision:

This Application was filed by Ralco Extrusion Pvt. Ltd., the Operational Creditor on 05.03.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP in respect of Centech Engineers Pvt. Ltd., the Corporate Debtor.

Hon'ble Adjudicating Authority held that:

- At the outset, it is proposed to deal with the preliminary issue of maintainability of the present Application so vociferously raised by the Corporate Debtor in view of the amount in default being far below the minimum threshold limit as mandated under Section 4 of the Code, because it goes to the root of the matter. In this connection, it is noted that the Ministry of Corporate Affairs, exercising its powers had issued a Notification No.1205(E) dated 24.03.2020 by which the pecuniary jurisdiction of this Tribunal to trigger CIRP under the Code was enhanced from Rs.1 lakh to Rs.1 crore. It is a matter of record that the present Application was filed on 05.03.2022 which was nearly two years after the said Notification came into effect. It is noticed from the record that the amount of debt claimed to be in default as per Part-IV of the Application is Rs.21,76,452/- which is much less than the threshold limit of Rs.1 Crore as prescribed under Section 4 of the Code.
- It is now settled that the threshold limit of Rs.1 crore will be applicable for applications filed under Sections 7, 9 and 10 on or after 24.03.2020, even if the debt in default is on a date earlier than 24.03.2020. From the said date of amendment, Part II of the Code can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 crore. Moreover, the threshold of Rs.1 crore has to be fulfilled by an applicant under Section 7 or Section 9 on the date of filing of the application.
- The fact that default was committed prior to 24.03.2020 and the statutory notice under Section 8 was issued and served prior to 24.03.2020 are not determinative or material, although these are conditions precedent for filing an application under Section 9 of the

code. What is relevant for determining the minimum threshold is not the date of giving notice under Section 8 but the date when the application is filed. Thus, Part II of the Code becomes applicable and an operational creditor can initiate CIRP against the corporate debtor w.e.f. 24.03.2020 only when the amount of default is Rs.1 crore or more. No application can be initiated after 24.03.2020 irrespective of the date of default if the minimum threshold of Rs.1 crore is not met.

- Merely because the Demand Notice in the present case was served on the Corporate Debtor on 10.02.2020 i.e., before 24.03.2020, it will not be a relevant or crucial factor in determining the maintainability of the present Application filed on 05.03.2022 i.e., after almost 2 years of the Notification dated 24.03.2020. The amount in default in instant case being less than Rs.1 Crore, we are satisfied that the present Application fails to fulfil the monetary threshold limit laid down under Section 4 of the Code and is accordingly not maintainable under Section 9 of the Code. Hence, it is liable to be dismissed on this ground alone. In view of this position, we do not propose to examine the merits of the case.
- In view of the aforesaid findings, this Application bearing C.P.(IB) No.1219/MB/2022 filed under Section 9 of the Code by Ralco Extrusion Private Limited, the Operational Creditor, for initiating CIRP in respect of Centech Engineers Private Limited, the Corporate Debtor is rejected.

WHETHER ADJUDICATING AUTHORITY (NCLT) NEEDS TO GET INTO THE OTHER CLAIMS AND CONTENTIONS OF PARTIES IN IBC SECTION 9 APPLICATION WHEN THE VERY QUESTION OF LIMITATION IS FOUND AGAINST OPERATIONAL CREDITOR – TRIGGER FACILITY PVT. LTD. VS. LARSEN AND TOUBRO LTD. – NCLT MUMBAI BENCH

Brief about the decision:

Whether Adjudicating Authority needs to get into the other claims and contentions of parties when the very question of limitation is found against the Operational Creditor

- In an application under Section 9 of the IBC, the issue regarding limitation assumes greater importance for admission. When the very root of the Application is cut by the law of limitation, no purpose would be served if we venture into discussing the contentions and rival contentions of parties.
- Although the Limitation Act, 1963 (Act), was made applicable to the IBC by way of insertion of Section 238A w.e.f. 06.06.2018, the Hon'ble Supreme Court had unequivocally declared in B.K. Educational Services Private Limited Vs. Parag Gupta and Associates [(2018) ibclaw.in 32 SC], that the provisions of the Act were applicable from the inception of the IBC.
- Hence, the Adjudicating Authority holds that no purpose would be served in discussing other grounds for admission, when the Application is already hit by Article 137 of the Limitation Act, 1963. It is not the endeavour of this Adjudicating Authority to give new lease of life to time-barred debts. Considering the above, it concludes that this Application is not fit for admission as the claims of the Operational Creditor are time-barred.
- The petition bearing CP (IB) No. 4445/MB/2019 filed by Trigger Facility Pvt. Ltd., the Operational Creditor, under Section 9 of the IBC read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in respect Larsen and Toubro Ltd., the Corporate Debtor, **is rejected**.

MERELY BECAUSE ADJUDICATING AUTHORITY (NCLT) HAS ASKED THE COPIES FROM HIS OWN CHARTERED ACCOUNTANT (CA), NO GROUND TO ENTERTAIN APPEAL – ANKIT METAL & POWER LTD. VS. UCO BANK – NCLAT NEW DELHI

Background:

- An application filed by the UCO Bank under Section 7 of IBC was admitted by an order dated 12.12.2023 against which a Company Appeal was filed by the Suspended Director of the Corporate Debtor, which Appeal has been allowed by this Tribunal vide its order dated 12.03.2024, reported in Subham Bhagat v. Ankit Metal & Power Ltd. and Anr. (2024) ibclaw.in 155 NCLAT where Hon'ble NCLAT took the view that there is miscarriage of justice since Principle of Natural Justice were violated since the Corporate Debtor was not given any opportunity to have its say on the said documents.
- The appeal was allowed and the impugned order was set aside remanding the matter back to the Adjudicating Authority to decide again in accordance with law after hearing all the parties with respect to financial statements which have been submitted by the CA.
- The Adjudicating Authority by order dated 18.04.2024 extended the time for filing the Reply for the further period of 7 days and directed for copies from his CA. This Appeal has been filed against the said Order dated 18.04.2024.

Decision of Appellate Tribunal

- NCLAT when allowed the earlier Appeal and remanded the matter back to the Adjudicating Authority to decide again in accordance with law after hearing all the parties with respect to Financial Statement which has been submitted by the CA. Therefore, Financial Statement which was submitted by the CA are still to be examined and decided by the Adjudicating Authority.(p10)
- The submission of the Counsel for the Appellant that Adjudicating Authority could not have asked for copies from his own CA is beyond the jurisdiction cannot be accepted.(p11)
- Adjudicating Authority is still to take a decision on the Financial Statements after hearing the parties and merely because Adjudicating Authority has asked the copies from his own CA, we do not find any ground to entertain this Appeal at this stage.(p12)
- The Adjudicating Authority as per the remand order has still to take a decision with regard to the Financial Statement which was produced by the Chartered Accountant. The Appeal is dismissed. (p16)

WHETHER AN APPLICATION UNDER SECTION 9 OF IBC CAN SURVIVE IN SO FAR AS THE SAME RELATES TO THE INTEREST PORTION OF THE CLAIM WHEN THE ENTIRE PRINCIPAL AMOUNT HAS BEEN PAID? – ZENITH METALIK ALLOYS LTD. VS. LAMCO INDUSTRIES PVT. LTD. – NCLT HYDERABAD BENCH

Brief about the decision:

Facts of the case

- This company petition is filed under Section 9 of IBC seeking initiation of CIRP on the ground that the respondent has defaulted in payment of the operational debt of a sum exceeding rupees one crore.

- The corporate debtor had paid entire principal amount mentioned in the Company Petition before admission of the above application. Hence the issue was only regarding to interest.

- Decision of Adjudicating Authority

he Adjudicating Authority refers the following decisions:

- *Rohit Motawat V. Madhu Sharma, Proprietor Hind Chem Corporation & Anr. (2023) ibclaw.in 128 NCLAT*

- *Shah Paper Mills Ltd V. Shree Rama Newsprint & Papers Ltd. (2023) ibclaw.in 760 NCLT*

And holds that the present petition squarely applies to the case on hand as in this matter also before the admission of application under section 9 of the Code, the Corporate Debtor paid the total debt. The application is sought to be pursued for realization of interest amount, which according to us is against the principle of the Code, and as per the ruling, supra, it should be treated to be an application pursued by applicant with malicious intent (to realize only interest) for any purpose other than the resolution of insolvency, or liquidation of Corporate Debtor and which is barred in view of section 65 of the Code.

Therefore, the present petition is liable to be rejected. Accordingly, the petition is rejected. No costs.

MR. VELAYUDHAM JAYAVEL, LIQUIDATOR OF IDEB PROJECTS PVT. LTD. VS. IDEB BUILDCON PVT. LTD. AND ORS. – NCLT BENGALURU BENCH

Brief about the decision:

Facts of the case

- Respondent No. 1 is a private company and is a wholly owned subsidiary of IDEB Projects Pvt Ltd (Corporate Debtor).
- CIRP was initiated against the IDEB Projects Pvt. Ltd. vide order dated 29/03/2019 and thereafter, Liquidation proceedings were initiated vide order dated 08/11/2019.
- The Petitioner (Liquidator of IDEB Projects Pvt. Ltd.) issued a requisition notice on 08/06/2022 to the board of directors of the Subsidiary Company (R1) and requested them to call for an EGM on 16/06/2022 for the purpose of appointing new directors for the Subsidiary Company.
- Thereafter, the Subsidiary Company issued letter dated 29/06/2022 to the Liquidator and refused the convene EGM without prior approval and authorisation from NCLT.
- Owing to the above, the Liquidator issued another notice on 19/07/2022 to the Respondent No. 2 & 3 (Erstwhile directors of the Corporate Debtor) and Respondent No. 2, being the only other shareholder failed to attend the said EGM.
- The EGM failed for want of quorum 18/08/2022 because since there are only two Shareholders in the Subsidiary Company, the other shareholder is not attending the meetings and there is no quorum to hold meeting.
- Hence, this Application has been filed on 29/08/2022 by Liquidator of IDEB Projects Pvt. Ltd. u/s 98 of the Companies Act, 2013 r/w Rule 11 of the NCLT Rules, 2016 against IDEB BUILDCON Pvt. Ltd. seeking to direct holding of Extraordinary General Meeting (EGM) of the Subsidiary Company in terms of the proviso to Section 98(1) of the Companies Act, 2013.

Decision of Adjudicating Authority

- The shares of the Corporate Debtor in the Subsidiary Company is a part of the Liquidation estate under Section 36(3)(d) of the IBC and hence power is vested to the Liquidator to take such measures to protect and carry on the business for the benefit of the Corporate Debtor.(p7)

- As such since the Corporate Debtor is a shareholder of the Subsidiary Company, and under Section 100 of the Companies Act, 2013 entitled to call for EGM, the same can be called by the Liquidator who is only acting on behalf of the Corporate Debtor.(p7)
- Under Section 98 of the Companies Act, NCLT has limited power to adjudicate the calling of the EGM and cannot decide on the agenda of calling such EGM, it is observed in the order of Hon'ble High Court of Bombay in Invesco Developing Markets Fund v. Zee Entertainment Enterprises Ltd. (2022) ibclaw.in 287 HC.(p8)
- In the present case, since there are only two Shareholders in the Subsidiary Company, the other shareholder is not attending the meetings and there is no quorum to hold meeting, therefore, the Liquidator has filed the present Application u/s 98 of the Companies Act, 2013 for convening the meeting of the EGM of the Subsidiary Company. It is observed that unless the Tribunal grants the relief sought by the Applicant u/s 98 of the Companies Act, 2013, it would not possible to the Liquidator to hold or to conduct the meeting. (p10)
- Upon considering the facts and circumstances and the pleadings of the present Application, the instant Petition is allowed and the Liquidator is directed to hold an EGM of the Subsidiary Company as specified u/s 98 of the Companies Act, 2013 to make necessary statutory compliance of the Company. For the purpose of quorum, the Applicant who is holding 99.9% shares of the Subsidiary Company shall constitute the quorum of the said meeting either in-person or through proxy.
- Accordingly, C.P.No.50 of 2023 is disposed of.

ROC PENALIZES CO. ITS DIRECTORS FOR ALLOTTING SECURITIES WITHOUT APPROVAL UNDER ESOP SCHEME BEFORE THE VESTING PERIOD OF ONE YEAR – A CASE STUDY

Background of the case

1. In a recent adjudication order passed by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli, in respect of Ms. Krazzy Fin Private Limited, the company and its directors were penalized for violations of section 62(1)(b) of the Companies Act 2013. The order, was passed on 27th March 2024, highlights the regulatory actions taken against the company and its directors in default. The violation committed by the directors and the company was that they had allotted equity shares in excess of the shares approved for allotment under the company's ESOP scheme and the allotment was done even before the vesting period of mandatory one year as required under the provisions of Rule prescribed under the Companies (Share Capital and Debentures) Rules 2014.

The company, in this case had filed a suo-moto compounding application stating that the company had inadvertently allotted 216 equity shares before the completion of the vesting period of one year resulting into a violation of section 62(1) (b) of the Companies Act 2013. While the company sought compounding for the offense, it was deemed by the Registrar of Companies / Adjudication Officer that the same was not maintainable as it fell under the adjudication of penalty jurisdiction. Accordingly the Registrar of Companies / Adjudication Officer proceeded on this matter the adjudication proceedings and passed an order penalizing the company and its directors for the violation committed by them. The company being a small company, the company and its directors ended up paying a penalty of Rs.2.75 lakhs. Let us go through this case in details in order to understand the provisions of the Act read with the relevant rules and also the key findings and observations of the regulators which had finally resulting into the adjudication order.

Relevant provisions of the Companies Act 2013 relating to this case

2. The following are the relevant provisions of the Companies Act 2013 read with rules pertaining to this case.

Companies Act 2013 Chapter IV - Share Capital and Debentures Section 62 – Further issue of Share Capital	
Section	**Provision**
62 (1)	Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—
61(1) (b)	to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or
Companies (Share Capital and Debentures) Rules 2014 Rule 12 - Issue of employee stock options	
Rule	**Provision**
12	A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines 6 shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:—
12 (6) (a)	There shall be a minimum period of one year between the grant of options and vesting of option.

Companies Act 2013 Chapter XXIX – Miscellaneous Section 450 – Punishment where no specific penalty or punishment is provided.	
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 subject to which any approval, sanction, consent, confirmation, recognition, 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 this 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 a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh 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 any default

4. To understand the consequences of any default while in complying with the section of 62 of the Companies Act 2013 relating further issue of share capital and the related procedure thereto, let us go through the decided case law by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli of Ahmedabad on 27th March 2024 - in the matter of M/s. Krazzy Fin Private Limited

The relevant case law on this matter

5. We shall go through the adjudication order by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli of Ahmedabad on 27th March 2024 - in the matter of M/s. Krazzy Fin Private Limited - adjudication order bearing no. ROC /sec-454(4)/sec 62(1)(b)/Krazzy Fin/STA/ MD/ 23-24/6066-70 - order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Amendment Rules 2019 for violation of section 62(1) (b) of the Companies Act 2013

Details of the company

6. M/s. Krazzy Fin Private Limited is a registered company effective from 27th November 2020 under the provisions of the Companies Act 2013 having its registered office at 527, Shivalik Satyamev, Ambali – Bopal Junction beside Vakil Saheb Bridge, Bopal, and Ahmedabad in the state of Gujarat. The Registrar of Company is situated at Ahmedabad. The company currently have four directors on its board and also have a chief financial officer and a company secretary in whole time employment. The company is involved in a wide range of activities, including providing, selling, purchasing, trading, producing, and distributing software in all its forms and perspectives.

The Capital details of the company

6.1 The Authorized Share Capital of the Company was Rs. 30,00,000 /- consisting of three lakh equity shares of Rs. 10/- (Rupees Ten) each and the issued, subscribed capital and paid-up share capital of the company was Rs. 1,81,730/- divided into 18,173/- equity shares of Rs. 10/- (Rupees Ten) each.

Facts of this case

7. The following are the facts relating to this case in the chronological order.

a. The company came up with ESOP scheme named KFPL ESOP 2021 for the issue of 1379 equity shares of the company during the financial year 2021-22 and the necessary approval was given for the scheme on 3rd September 2021.
b. On 13th September 2021, the equity shares of 500 were allotted to shri Abhishek Kandoi under the ESOP scheme @ Rs.10/- per share.
c. Further to the above, on 1st December 2022, the company allotted 200 equity shares to Shri. Abhishek Kandoi and also further allotment of 895 shares to Shri Divyansh Mathur.
d. With the above three allotments, the company had allotted an overall allotment of shares of 1595 under the ESOP scheme.
(500 + 200 + 895 = 1595)
e. Thus, the company had allotted 216 shares in excess of the approval given by the board of directors under the ESOP scheme on 1st December 2022 i.e. allotment of 1595 shares had taken place as against the approval of 1379 shares resulting into excess allotment of 216 shares.
f. The company thereafter had filed the return of allotment in e-form PAS-3 pursuant to Rule 12 and 14 of Companies (Prospectus and Allotment of Securities) Rules 2014 read with the provision of the Companies Act 2013.

The company realized the violation of section 62 (1) (b) of the Companies Act 2013 by allotting the excess shares of 216 under the ESOP scheme before the vetting period of one year and decided to take rectification action.

Action taken by the company – filing of suo-moto compounding application

8 . The company upon realizing the default committed decided to file a suo-moto compounding application and accordingly the company had filed a compounding application in form GNL-1 dated 29th October 2023 and the company mentioned in its compounding application as the company unintentionally allotted 216 equity shares before completion of vesting period of one year under the company's ESOP scheme formulated and approved in the financial year 2021-22. The compounding application was filed by the company and its directors under Section 441 of the Companies Act 2013, for the default committed by them under the provisions of section 62(1) (b) of the Companies Act 2013 read with Rule 12 of the Companies (Share Capital and Debenture) Rule 2014.

Grounds for the company for making the compounding application

9. The company had stated that the company inadvertently violated section 62 (1) (b) of the Companies Act 2013 by allotting 216 equity shares in excess of the shares approved under the ESOP scheme before completion of vesting period of one year under the company's ESOP scheme formulated and approved in the financial year 2021-22. This had resulted into in to the violation of section 61(1)(b) of the Companies Act 2013. The company therefore prepared its compounding application suo-moto upon realizing the violation and submitted the same to the Regional Director North-Western Region, Ahmedabad and served copy of the compounding application to the office of the Registrar of Companies at Ahmedabad.

Regulator's observation upon receipt of the compounding application

10. The Registrar of Companies / Adjudication Officer took note that the compounding application was not maintainable as the offence committed had fallen under the ambit of adjudication of penalty for which Adjudicating Officer could adjudicate the default under the provisions of The Registrar of Companies vide the Companies (Amendment) Act 2019 was entrusted with power to adjudicate penalty as provided under the provisions of the Companies Act 2013 with effect

from 15th May 2023. In this respect, the DGCoA vide letter dated 11th May 2022 had instructed that all cases filed under Companies Act, 1956 and Companies Act 2013 could be considered under "In House Adjudication Penalty Mechanism (IAM). Further, pursuant to the instruction of the Ministry of Corporate Affairs vide letter dated 11th May 2022, the Registrar of Companies were directed that all cases filed under the Companies Act 1956 and also under the Companies Act 2013 can be considered for adjudication process which were decriminalized (earlier prosecutions was required to be filed as provided under the provisions of the Companies Amendment Act effective from 2nd November 2018 which was further Amended in the year 2020 effective from 28th September 2020)

Action taken by the Registrar of Companies / Adjudication Officer

11. The Registrar of Companies /Adjudicating Officer, Ahmedabad issued an adjudication hearing notice to the company and its directors in the interest of natural justice, by giving a reasonable opportunity of being heard to the company and its directors directing them to appear before him on 28th February 2024 and make the submissions on this matter.

On the day of personal hearing

12. On the day of the personal hearing i.e., on 28th February 2024, a duly authorized practicing company secretary attended the personal hearing as a representative of the company and its directors before the authorities and reiterated the stand taken at the time of filing the compounding application and also made the oral submissions on behalf of the company and its directors. During the personal hearing, the authorized representative admitted the violation committed by the company and its directors as already stated in the compounding application filed by the company. The authorized practicing company secretary also provided the details of the shares issued earlier by the company through the approval granted. The practicing company secretary further provided the details of the officers' in-default in this case by providing the names of the director along with their DIN and the date of appointment during the financial years 2021-22 and 2023-23 as shown below.

Sr. No.	Details of Director	Date of Appointment	Date of Resignation
1.	Director -1 & DIN details	27th November 2020	;--
2.	Director -2 & DIN details	27th November 2020	;--
3.	Director -3 & DIN details	27th November 2020	;--

Finally the authorized practicing company secretary had stated that the company was a small company and as such the provisions of levying lesser penalty would be applicable to the company as provided under section 446B of the Companies Act 2013 and ended with the prayer of taking a lenient view on this matter.

Submissions made by the Presenting Officer

13. The Presenting Officer submitted that after going through the compounding application filed by the company and also having considered the submissions made by the practicing company secretary on behalf of the company and its directors that this matter was fit for further proceedings as the company and its directors in default were liable for penalty under section 450 of the companies Act 2013 for non-compliance of section 62(1) ((b) of the Companies Act 2013. The Presenting Officer stated that the company had erred in allotting the excessive shared of 216, even before the vetting period of one year without having the approval in hand.

Conclusion reached by the Registrar of Companies / Adjudication Officer

14. The Registrar of Companies / Adjudication Officer came to a conclusion that there was reasonable ground to believe that the company and its directors in default had violated the provisions of section 62(1) (b) of the Companies Act 2013 as noticed by the company and thereafter the company had filed suo-motto compounding application, which could be considered for adjudication for reasons mentioned herein above. In view of the facts narrated above, the company and its directors in default were liable for penal action under section 450 of the companies Act 2013 read with the relevant rules, made thereunder.

In respect of levying lesser penalty

15. The Registrar of Companies / Adjudication Officer observed from the balance sheet/ financial statement of the company as on 31st March 2022 that the paid-up capital of the company was Rs. 1,81,330 and the turnover was Rs.11,58,023. Hence, as per the Ministry's notification No. G.S.R.7OO (E) dated 15th September 2022, in light of Companies (Specification of definition details) Amendment Rules 2022, with respect to the provisions of Section 2(85) of the companies Act 2013, the company was falling under the ambit of "small company". Therefore, the provisions of imposing lesser penalty as per the provisions of section 446B of the Companies Act 2013 was applicable to the company and accordingly the adjudication order was passed by giving the benefit of applying lesser penalty.

Factors to be considered while adjudicating the quantum of penalty.

16. The Presenting Officer submitted that while adjudging quantum of penalty under section 203(5) of the Companies Act 2013, the Adjudicating Officer shall have due regards to the following factors, namely:-

(a) The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.
(b) The amount of loss caused to an investor or group of investors as a result of the default and
(c) The repetitive nature of default.

The Presenting officer submitted that with regard to the above factors to be considered while determining the quantum of penalty, it was noted that the disproportionate gain or unfair advantage made by the company / its directors or loss caused to the investor as a result of the delay on the part of the notice to redress the investor grievance were not available on the record. Further, it was submitted that that it was difficult to quantify the unfair advantage made by the company and its directors or the loss caused to the investors in a default of this nature.

The order passed by the Registrar of Companies / Adjudicating Officer

17 . The Registrar of Companies / Adjudicating Officer, having considered the facts and circumstances of the case and the submissions made by the company and its directors at the time of hearing and after considering the factors mentioned in the relevant Rules, imposed penalty on the company and its directors for having failed to comply with the provisions of section 62 (1) (b) of the companies Act 2013.

Default for non-compliance under Section 62 (1) (b) of the Companies Act 2013

Violation under Co's Act	Company Directors	Period of violation of section 62 (7) (b) of the Act	Penalty for default (sec. 450 of Act	Penalty to be imposed as per section 450 of the Act.	Max. penalty (section 450 of the Act)	Penalty imposed (section 446B of the Act)
		Days	Rs.	Rs.	Rs.	Rs.
Section 62(1)(B)	Company	454	10,000 plus Rs. 1000 per day	4,64,000	2,00,000	2,00,000
	Director -1	454		4,64,000	50,000	25,000
	Director -2	454		4,64,000	50,000	25,000
	Director -3	454		4,64,000	50,000	25,000
Total amount of Penalty				**18,56,000**	**3,50,000**	**2,75,000**
Note: The default period was from 01st December 2022 to 28th February 2024						
The Adjudication Officer was of the opinion that the penalty was commensurate with the aforesaid default committed by the company and its directors						

a. The company /officers were directed to rectify the default failing which the office of the Registrar of Companies would be proceeding further on this matter, pursuant to section 454A of the companies Act 2013 for the non-compliance of the aforesaid provisions of the Companies Act 2013.

b. The order stated that the Penalty imposed shall have to be paid individually for the company and its directors out of their own pockets by way of form INC-28 of e-payment ((available on Ministry Website www. mac.gov.in) under "Pay miscellaneous fees" category in MCA fee and payment service within ninety days of this order and the Challan /SRN generated after payment of penalty through online mode shall have to be forwarded to this office along with the copy of form No. INC- 28 under the MCA portal without further reference.

c. The order further stated that an appeal if any against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, ROC Bhavan, Opposite Rupal Park, Near Ankur Bus stand, Naranpura, Ahmedabad, Gujarat within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by the certified copy of this order. (Section 454 of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules
d. 2019).

The order also drawn the attention to the section 454(8) (i) and 458 (8) (ii) of the Companies Act 2013 which state that in case of non-payment of penalty amount, the company shall be punishable with fine which shall not less than twenty five thousand rupees but which may extend to five lakhs 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 by
e. which may extend to one lakhs rupees or with both.

Finally the order concluded in saying that the adjudication notice stands disposed off with this order

Despatch of the order

18. The order was sent by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the company and its defaulting directors and also to the Regional Director, North Western Region, Ministry of Corporate Affairs at Ahmedabad.

Complete order for reading

19. The readers may like to read the complete adjudication order passed by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli of Ahmedabad on 27th March 2024 - in the matter of M/s. Krazzy Fin Private Limited - adjudication order bearing no. ROC /sec-454(4)/sec 62(1)(b)/Krazzy Fin/STA/MD/23-24/6066-70 - order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Amendment Rules 2019 for violation of section 62(1) (b) of the Companies Act 2013 and the relevant website is https:// www.mca.gov.in/ content/mca/ global/en/data-and-reports/ rd-roc-info /roc-adjudication-orders.html (order uploaded under ROC of Ahmedabad on 27th March 2024 titled as adjudication order in the matter of Krazzy Fin Private Limited)

Conclusion

20. From the above case law, it is abundantly clear that the company has to ensure compliance and the company and its directors had to be vigilant in complying with all the required provisions of the Companies Act 2013.The adjudication order passed by the Registrar of Companies serves as a reminder of the stringent regulatory framework governing corporate actions, emphasizing compliance with statutory provisions. As seen in this case, any non-compliance is viewed seriously by the regulators and action initiated against the company and its directors and they are being penalized under the provisions of the Act. In this case, the company and its directors were penalized to a tune of Rs.2.75 lakhs and besides paying the penalty the company was to also spent time in resolving the issues by replying the notices issued by the regulators, attending the personal hearing and complying with the order of the regulator and finally making the required filing.

In conclusion we could say that in order to have an effective compliance management of the applicable laws to an organization –

the company and its directors are required to take the help and assistance of the professionals (such as practicing company secretary) and ensure the required compliance is done at all times. Companies may work with a compliance calendar applicable to the company and also work with a check list and ensure the utmost timely compliance done by adopting the principle of "doing things first time right".

Reference:-

- Companies Act 2013
- Companies (Share Capital and Debenture) Rules 2014
- Companies (Adjudication of Penalties) Rules 2014
- Companies (Adjudication of Penalties) Amendment Rules 2019 Adjudication order passed by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli of Ahmedabad on 27 th March 2024 - in the matter of M/s M/s. Krazzy Fin Private Limited - adjudication order bearing no. ROC /sec-454(4)/sec 62(1)(b)/Krazzy Fin/STA/MD/23-24/6066-70 - order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Amendment Rules 2019 for violation of section 62(1) (b) of the Companies Act 2013

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