

V VEDANAM वेदानम्

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WHY VEDANAM?

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

Vedanam is 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.

We hereby release our **July** 2024 issue.

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

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

MCA UPDATE: EXTENSION OF TIME FOR FILING OF PAS-7

In accordance with Rule 9(2)(a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, every public company which had issued share warrants prior to commencement of the Companies Act, 2013 (18 of 2013) and not converted such warrants into shares should have inroi-med the Registrar about the details of such share warrants in Form PAS-7 within a period of three months of the commencement(Tnt of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 . In terms of the said rule, the Ministry of Corporate Affairs has prescribed Web-form PAS-7 for submitting the details of share warrants to the Registrar.

Web-Form PAS-7 Form has now been deployed on MCA-21 Portal. Stakeholders may file requisite details in terms of Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 through this Web-Form without payment of additional fees up t.o 05.08.2024.

Link: [Extension of time for Filing of PAS-7](#)

MCA UPDATE: COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2024.

The Ministry of Corporate Affairs of the Government of India issued a notification amending the Companies (Management and Administration) Rules, 2014 vide Companies (Management and Administration) Amendment Rules, 2024.

Key Changes in the Amendment

Substitution of Form MGT-6 - The most notable change in this amendment is the substitution of the existing Form MGT-6 with a new form. Form MGT-6 pertains to the return to be filed with the Registrar regarding the declaration of beneficial interest in shares. The revised form is designed to provide more detailed and structured information, facilitating better compliance and transparency.

Link: [Companies \(Management and Administration\) Amendment Rules, 2024](#)

MCA UPDATE: SPECIFIED COMPANIES (FURNISHING OF INFORMATION ABOUT PAYMENT TO MICRO AND SMALL ENTERPRISE SUPPLIERS) AMENDMENT ORDER, 2024

The Ministry of Corporate Affairs issued a significant amendment to the Specified Companies Order under the Companies Act 2013 vide Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Amendment Order, 2024.

Key provisions of the amendment include:

1. **Criteria for Reporting:** Only specified companies with overdue payments to MSEs beyond 45 days are mandated to submit information.
2. **Form MSME-1:** The amendment substitutes the existing MSME Form-1

Link: [Specified Companies \(Furnishing of information about payment to micro and small enterprise suppliers\) Amendment Order, 2024](#)

MCA UPDATE: COMPANIES (INCORPORATION) AMENDMENT RULES, 2024

The MCA has issued the Companies (Incorporation) Amendment Rules, 2024, in exercise of powers conferred by the Companies Act, 2013. The rules come into force upon their publication in the Official Gazette. Rule 8A of the Companies (Incorporation) Rules, 2014 is amended by omitting clause (p) containing the word “Nidhi” and by completely removing clause (v)

Link: [Companies \(Management and Administration\) Amendment Rules, 2024](#)

MCA UPDATE: COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2024

The Ministry of Corporate Affairs (MCA) has recently issued a notification introducing amendments to the Companies (Appointment and Qualification of Directors) Rules, 2014.

These rules may be called Companies (Appointment and Qualification of Directors) Amendment Rules, 2024.

The amendments will come into effect on 1st August 2024.

Rule	Companies (Appointment and Qualification of Directors) Rules, 2014.	Companies (Appointment and Qualification of Directors) Amendment Rules, 2024	Comments
Rule 12 A	Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only:	Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only on or before 30th September of the financial year	After the word "only," the words and figures "on or before 30th September of the financial year" have been inserted.
New proviso inserted		Provided also that if an individual intends to update his personal mobile number or the email address again at any time during the financial year in addition to the updation allowed under the third proviso, he shall update the same by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees	If an individual intends to update his personal mobile number or the email address again at any time during the financial year in addition to the updation allowed under the third proviso he shall update the same by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees

Link: [Companies \(Appointment and Qualification of Directors\) Amendment Rules, 2024](#)

MCA UPDATE: INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2024

(1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2024.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (hereinafter referred to as the said rules), –

(a) for the letters and figures, “IEPF-3”, wherever they occur, the letters and figures, “IEPF-4”, shall be substituted;

(b) for the letters and figures, “IEPF-7”, wherever they occur, the letters and figures, “IEPF- 1”, shall be substituted.

Rule	Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016	Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2024	Comments
Rule 6 sub-rule (13)	Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority Form No IEPF -7 within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules, as the case may be.	Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted “ online to the Authority within a period of thirty days from the date such amount becomes due ”; and the details thereof shall be furnished to the Authority Form No IEPF -7 within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules, as the case may be:	for the words, “into the specified account of the IEPF Authority maintained in the Punjab National Bank”, the words “online to the Authority within a period of thirty days from the date such amount becomes due” shall be substituted; the words, “within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules, as the case may be” shall be omitted

<p>Rule 6A sub rule 12</p>	<p>Any amount required to be credited by the companies to the Fund as provided under sub-rules (9), (10) and sub-rule (11) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days from the date of remittance</p>	<p>Any amount required to be credited by the companies to the Fund as provided under sub-rules (9), (10) and sub-rule (11) shall be remitted online to the Authority [and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days such amount becoming due to be credited to the Fund</p>	<p>for the words, “into the specified account of the IEPF Authority maintained in the Punjab National Bank”, the words “online to the Authority” shall be substituted;</p> <p>for the words, “from the date of remittance”, the words “of such amount becoming due to be credited to the Fund” shall be substituted.</p>
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Link: [Investor Education and Protection Fund Authority \(Accounting, Audit, Transfer and Refund\) Amendment Rules, 2024](#)



SEBI UPDATE: FACILITY FOR BASIC SERVICES DEMAT ACCOUNT (BSDA) FOR FINANCIAL INCLUSION AND EASE OF INVESTING

SEBI, vide circular dated August 27, 2012 read with Circular dated April 10, 2019 and Para 1.8.1 to para 1.8.5 of the Master Circular for Depositories dated October 06, 2023 provided for the facility of “Basic Services Demat Account” with a set of defined services for eligible individuals.

In order to further boost participation in securities market, ease of doing investments and based on representations from market participants, the facility has been comprehensively reviewed and the following has been decided:

Eligibility for BSDA An individual shall be eligible to opt for BSDA subject to the following conditions:

- a) The individual has or proposes to have only one demat account where he/she is the sole or first holder.
- b) The individual shall have only one BSDA in his/her name across all depositories.
- c) Value of securities held in the demat account shall not exceed

₹10 Lakhs for debt and other than debt securities combined at any point of time

Opening of BSDA and conversion of existing eligible demat accounts into BSDA

a) The DPs shall open only BSDA for Beneficial Owners (BOs), if such demat accounts are eligible for BSDA, unless such BOs specifically provide their consent by way of email from their email-id registered with the DP to avail the facility of a regular demat account.

b) The DPs shall also reassess the eligibility of all the existing BOs with respect to BSDA within two months from the date of this circular coming into effect and shall convert all such eligible demat accounts into BSDA unless such BOs specifically provide their consent by way of email from their email-id registered with the DP to continue to avail the facility of a regular demat account. Later, this exercise shall be carried out by DPs at the end of every billing cycle.

Link: [Facility for Basic Services Demat Account \(BSDA\) for Financial Inclusion and Ease of Investing](#)



SEBI UPDATE: CHARGES LEVIED BY MARKET INFRASTRUCTURE INSTITUTIONS – TRUE TO LABEL

It has been decided that the MIIs would comply with following additional principles while designing the processes for charges levied on their members which are to be recovered from the end clients:

- a. The MII charges which are to be recovered from the end client should be True to Label i.e. if certain MII charge is levied on the end client by members (i.e. stock brokers, depository participants, clearing members), it should be ensured by MIIs that the same amount is received by them.
- b. The charge structure of the MII should be uniform and equal for all its members instead of slab-wise viz. dependent on volume/activity of members.
- c. To begin with, the new charge structure designed by MIIs should give due consideration to the existing per unit charges realized by MIIs so that the end clients are benefited with the reduction of charges.

Link: [Charges levied by Market Infrastructure Institutions – True to Label](#)

SEBI UPDATE: DISPATCH OF CONSOLIDATED ACCOUNT STATEMENT (CAS) FOR ALL SECURITIES ASSETS

Considering the increasing reach of digital technology, electronic mode now being the preferred mode of communication and as a green initiative measure and to streamline the regulatory guidelines on mode of dispatch of account statements, it has been decided to revisit the regulatory provisions and provide for email as default mode of dispatch for Consolidated Account Statement (CAS) by Depositories, Mutual Fund – Registrar and Transfer Agents (MF-RTAs) and holding statement by Depositories Participant (DP).

The circular shall be effective from August 01, 2024.

The CAS shall be dispatched by email to all the investors whose email addresses are registered with the Depositories and AMCs/MF-RTAs.

If there is any transaction in any of the demat accounts of the investor or in any of his mutual fund folios, then CAS shall be sent to that investor through email on a monthly basis.

DP shall send at least one annual

statement of holding through email in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year.

Link: [Dispatch of Consolidated Account Statement \(CAS\) for all securities assets](#)

SEBI UPDATE: REDUCTION IN DENOMINATION OF DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

SEBI vide circular dated July 03, 2024 has announced reduction in denomination of debt securities and non-convertible redeemable preference shares. Market participants have expressed that lower ticket size of debt securities may encourage more non-institutional investors to participate in the corporate bond market which in turn may also enhance liquidity.

The minimum face value of a listed debt security or non-convertible redeemable preference share issued on private placement basis traded on a stock exchange or OTC basis is reduced from Rs. One lakh to Rs. Ten thousand.

Link: [Reduction in denomination of debt securities and non-convertible redeemable preference shares](#)

SEBI UPDATE: MODIFICATION TO ENHANCED SUPERVISION OF STOCK BROKERS AND DEPOSITORY PARTICIPANTS

SEBI, vide Circular dated September 26, 2016 (hereinafter mentioned as 'circular') and Master Circular for Stock Brokers dated May 22, 2024 (hereinafter mentioned as 'Master Circular'), inter alia, specified timelines for submission of annual audited accounts/net worth certificate by Stock Brokers/Depository Participants as part of monitoring criteria.

It has been decided to revise the timeline to October 31st of the relevant year. Accordingly, the said paras shall be read as under:

Para 6.1.1.c (Monitoring criteria for Stock Brokers) of Annexure to Circular and Para 15.8.1.1.c of Master Circular - Failure to furnish Annual Audited Accounts by October 31st of the relevant year

Para 6.1.2.a (Monitoring criteria for DPs) of Annexure to Circular and Para 15.8.1.2.a of Master Circular - Failure to furnish Net worth certificate to Depository for year ending March 31st by October 31st

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

Link: [Modification to Enhanced Supervision of Stock Brokers and Depository Participants](#)

SEBI UPDATE: MEASURES TO INSTIL CONFIDENCE IN SECURITIES MARKET – BROKERS’ INSTITUTIONAL MECHANISM FOR PREVENTION AND DETECTION OF FRAUD OR MARKET ABUSE

It has been decided that stock brokers shall comply with the following obligations / mechanisms as laid down in Chapter IVA of the Broker Regulations:

Systems for surveillance of trading activities and internal controls
 Obligations of the stock broker and its employees
 Escalation and reporting mechanisms
 Whistle Blower Policy

The standards for implementation of the same including operational modalities shall be formulated by the Broker’s Industry Standards Forum (ISF), in consultation with SEBI.

Applicability:

The provisions of this circular shall come into force in a risk-based, staggered manner to ensure smooth adoption and effective implementation for all the stock brokers by providing enough time for stock brokers, based on their size, for making necessary changes.

The effective date for implementation for different stock brokers has been prescribed in the table below

Number of active UCCs* of stockbroker	Applicability of Operational / working Modalities & Guidance Note
> 50,000	January 01, 2025
2,001 to 50,000	April 01, 2025
upto 2,000	April 01, 2026

as on last day of the preceding month of the date of issuance of the circular

Link: [Measures to instil confidence in securities market - Brokers' institutional mechanism for prevention and detection of fraud or market abuse](#)

SEBI UPDATE: MEASURES FOR EASE OF DOING BUSINESS FOR CREDIT RATING AGENCIES (CRAS) – TIMELINES AND DISCLOSURES

It has been decided to provide specific timelines for dealing with appeals made by the issuer in respect of rating actions carried out pursuant to periodic surveillance of ratings.

Periodic surveillance

Communication of the rating to the issuer - 1 working day* of the Rating Committee meeting

Request for review/ appeal of rating by the Issuer - 3 working days of the Rating Committee meeting

Dissemination of Press Release on CRA's website and intimation of the same to Stock Exchange/ Debenture Trustee - 7 working days of the Rating Committee meeting

* While an outer timeline of 1 working day has been specified, CRAs shall endeavor to communicate the rating to the issuer on the same day as the Rating Committee meeting.

The circular shall be applicable with effect from August 01, 2024.

Monitoring of this circular shall

be done in terms of the half-yearly internal audit for CRAs, mandated under Regulation 22 of the CRA Regulations and circulars issued thereunder.

Link: [Measures for Ease of Doing Business for Credit Rating Agencies \(CRAs\) – Timelines and Disclosures](#)

SEBI UPDATE: EASE OF DOING BUSINESS - STREAMLINING OF PRUDENTIAL NORM FOR PASSIVE SCHEMES REGARDING EXPOSURE TO SECURITIES OF GROUP COMPANIES OF THE SPONSOR OF MUTUAL FUNDS

It was decided to streamline the extant prudential norm applicable to investments by passively managed Mutual Fund schemes in the group companies of their sponsors

Pursuant to the said amendment, clause 9 of Seventh Schedule of the MF Regulations, inter alia mandates that no Mutual Fund scheme shall make any investment in the listed securities of group companies of the sponsor which is in excess of 25 per cent of the net assets of the scheme, except for investments by equity oriented exchange

traded funds (ETFs) and Index Funds and subject to such conditions as may be specified by SEBI. Accordingly, it has been decided as under:

Equity oriented ETFs and Index Funds, based on widely tracked and non bespoke indices, can make investments in accordance with the weightage of the constituents of the underlying index. However, such investments shall be subject to an overall cap of 35% of net asset value of the scheme, in the group companies of the sponsor.

Widely tracked and non-bespoke indices shall be indices that are tracked by passive funds or act as primary benchmark for actively managed funds with collective Assets under Management (AUM) of INR 20,000 Cr. and above.

.In case the portfolios of such schemes are not rebalanced within the period of 30 business days, justification in writing, including details of efforts taken to rebalance the portfolio shall be placed before the Investment Committee of the AMC. The Investment Committee, if so desires, can extend the timeline for rebalancing up to 60 business days from the date of completion of the mandated rebalancing period.

Link: [Ease of doing business - Streamlining of prudential norm for passive schemes regarding exposure to securities of group companies of the sponsor of Mutual Funds](#)

SEBI UPDATE: INFORMATION TO BE FILED BY SCHEMES OF AIFS AVAILING DISSOLUTION PERIOD/ADDITIONAL LIQUIDATION PERIOD AND CONDITIONS FOR IN-SPECIE DISTRIBUTION OF ASSETS OF AIFS

Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations 2024, notified on April 25, 2024, flexibility has been provided to schemes of AIFs to opt for dissolution period to deal with their unliquidated investments that are not sold due to lack of liquidity.

In terms of Regulation 29B(2) of SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations'), scheme of an AIF entering into dissolution period shall file an information memorandum with SEBI through a merchant banker in the manner as may be specified by SEBI.

In this regard, the following is specified

The information memorandum for a scheme of an AIF entering into dissolution period shall be submitted to SEBI before expiry of the liquidation period or

additional liquidation period of the scheme, as the case may be.

The format for information memorandum to be submitted by the scheme of AIF entering into dissolution period is given at Annexure I.

The format for Due Diligence Certificate by Merchant Banker to be submitted along with the aforesaid information memorandum to SEBI is given at Annexure II.

Link: [Information to be filed by schemes of AIFs availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs](#)



RBI UPDATE: ONLINE SUBMISSION OF FORM A2: REMOVAL OF LIMITS ON AMOUNT OF REMITTANCE

It is now decided to permit all Authorised Dealers (AD Category-I banks and AD Category-II entities) to facilitate remittances on the basis of online / physical submission of Form A2 and other related documents, if and as may be necessary, subject to the conditions laid down in Section 10(5) of FEMA 1999. Accordingly, there shall not be any limit on the amount being remitted on the basis of 'online' Form A2.

Authorised Dealers shall frame appropriate guidelines for the purpose, with the approval of their Board within the ambit of extant statutory and regulatory framework.

Link: [Online submission of Form A2: Removal of limits on amount of remittance](#)

RBI UPDATE: RELEASE OF FOREIGN EXCHANGE FOR MISCELLANEOUS REMITTANCES

It is now decided that Authorised Dealers shall obtain Form A2 in physical or digital form for all cross-border remittances irrespective of the value of

transaction. Consequently, the above-mentioned circulars stand withdrawn with immediate effect. Authorised Dealers shall continue to take necessary steps, in terms of Section 10(5) of Foreign Exchange Management Act, 1999, to assure themselves that such transactions do not involve any contravention of the provisions of FEMA.

Link: [Release of foreign exchange for Miscellaneous Remittances](#)

RBI UPDATE: EXPORT-IMPORT BANK OF INDIA'S GOI-SUPPORTED LINE OF CREDIT OF USD 2.50 MN TO THE GOVERNMENT OF CO-OPERATIVE REPUBLIC OF GUYANA, FOR INSTALLATION OF SOLAR PHOTO VOLTAIC POWER PLANT AT CHEDDI JAGAN INTERNATIONAL AIRPORT

Export-Import Bank of India (Exim Bank) has entered into an agreement dated February 29, 2024 with the Government of the Co-operative Republic of Guyana (GO-GUY), for making available to the latter, Government of India supported Line of Credit (LoC) of USD 2.50 mn (USD Two Million Five Hundred Thousand Only) for installation of Solar PhotoVoltaic

Power Plant at Cheddi Jagan International Airport in Guyana.

The export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their eligibility under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement.

Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India, and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

The Agreement under the LoC is effective from June 24, 2024. Under the LoC, the last date for disbursement will be 48 months after the scheduled completion date of the project.

Shipments under the LoC shall be declared in the Export Declaration Form/Shipping Bill as per instructions issued by the Reserve Bank from time to time.

Link: [Export-Import Bank of India's GOI-supported Line of Credit of USD 2.50 mn to the Government of Co-operative Republic of Guyana, for installation of Solar Photo Voltaic Power Plant at Cheddi Jagan International Airport](#)

RBI UPDATE: REMITTANCES TO INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSCS) UNDER THE LIBERALISED REMITTANCE SCHEME (LRS)

It has been decided that Authorised Persons may facilitate remittances for all permissible purposes under LRS to IFSCs for:

1. Availing financial services or financial products as per the International Financial Services Centres Authority Act, 2019 within IFSCs; and
2. All current or capital account transactions, in any other foreign jurisdiction (other than IFSCs) through an FCA held in IFSCs.

For these permissible purposes, resident individuals can open Foreign Currency Account (FCA) in IFSCs.

Link: [Remittances to International Financial Services Centres \(IFSCs\) under the Liberalised Remittance Scheme \(LRS\)](#)



RBI UPDATE: BASEL III CAPITAL REGULATIONS - ELIGIBLE CREDIT RATING AGENCIES (ECAI)

Banks are hereby permitted to use the ratings of the CRA for risk weighting their claims for capital adequacy purposes, subject to the following:

1. In respect of fresh rating mandates, rating may be obtained from the CRA for bank loans not exceeding Rs. 250 crore.
2. In respect of existing ratings, the CRA may undertake rating surveillance irrespective of the rated amount, till the residual tenure of such loans.

Provided that in case of existing ratings assigned to working capital facilities exceeding Rs.250 crore, the CRA shall undertake rating surveillance only till the next renewal of such facility by the banks.

Link: [Basel III Capital Regulations - Eligible Credit Rating Agencies \(ECAI\)](#)

RBI UPDATE: MASTER DIRECTIONS ON FRAUD RISK MANAGEMENT IN COMMERCIAL BANKS (INCLUDING REGIONAL RURAL BANKS) AND ALL INDIA FINANCIAL INSTITUTIONS

These Directions shall be called the Reserve Bank of India (Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions) Directions, 2024

Applicability

The provisions of these Directions shall, unless otherwise provided, apply to:

All banking companies [including banks incorporated outside India licensed to operate in India (foreign banks), Local Area Banks (LABs), Small Finance Banks (SFBs), Payments Banks (PBs)], Corresponding New Banks], Regional Rural Banks (RRBs) and State Bank of India as defined under sub-sections (c), (da), (ja) and (nc) of Section 5 of the Banking Regulation Act, 1949 respectively (collectively referred to as 'Commercial Banks'); and

Export-Import Bank of India ('Exim Bank'), National Bank for Agriculture and Rural Development ('NABARD'), National Bank for Financing Infrastructure and Development ('NaBFID'), National Housing Bank ('NHB') and Small Industries Development Bank of India ('SIDBI') as established by the Export-Import Bank of India Act, 1981; the National Bank for Agriculture and Rural Development Act, 1981; the National Bank for Financing Infrastructure and Development Act, 2021; National Housing Bank Act, 1987 and the Small Industries Development Bank of India Act,

1989, respectively (hereinafter referred to as 'All India Financial Institutions or 'AIFIs'.

The Commercial Banks and AIFIs shall hereinafter collectively be referred to as 'banks' for the purpose of these Directions.

Link: Master Directions on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions

RBI UPDATE: MASTER DIRECTIONS ON FRAUD RISK MANAGEMENT IN URBAN COOPERATIVE BANKS (UCBS) / STATE COOPERATIVE BANKS (STCBS) / CENTRAL COOPERATIVE BANKS (CCBS)

These Directions shall be called the Reserve Bank of India (Fraud Risk Management in UCBs / StCBs / CCBs) Directions, 2024.

Applicability

The provisions of these Directions shall, unless otherwise provided, apply to all Primary (Urban) Cooperative Banks (UCBs) and Rural Cooperative Banks i.e. State Cooperative Banks (StCBs) and Central Cooperative Banks (CCBs) licensed or permitted to carry on banking business in India by the Reserve Bank of India. Such Cooperative Banks shall

hereinafter collectively be referred to as 'Cooperative Banks' for the purpose of these Directions.

Link: Master Directions on Fraud Risk Management in Urban Cooperative Banks (UCBs) / State Cooperative Banks (StCBs) / Central Cooperative Banks (CCBs).

RBI UPDATE: MASTER DIRECTIONS ON FRAUD RISK MANAGEMENT IN NON-BANKING FINANCIAL COMPANIES (NBFCs) (INCLUDING HOUSING FINANCE COMPANIES)

These Directions shall be called the Reserve Bank of India (Fraud Risk Management in NBFCs) Directions, 2024.

Applicability

The provisions of these Directions shall, unless otherwise provided, apply to:

All Non-Banking Financial Companies¹ (including Housing Finance Companies) in the Upper Layer, Middle Layer and in the Base Layer² (with asset size of ₹500 crore and above³).

These NBFCs shall hereinafter collectively be referred to as 'Applicable NBFCs' for the purpose of these Directions.

Link: Master Directions on Fraud Risk Management in Non-Banking Financial Companies (NBFCs) (including Housing Finance Companies).

RBI UPDATE: DOMESTIC MONEY TRANSFER – REVIEW OF FRAMEWORK

The framework for Domestic Money Transfer (DMT) was introduced in 2011, vide RBI circular dated October 5, 2011. There has been significant increase in the availability of banking outlets, developments in payment systems for funds transfers, and ease in fulfilling KYC requirements etc., since then; and now users have multiple digital options for funds transfer. A review was recently undertaken of various services facilitated in the current framework. Based on the review, the following changes are being made:

a) Cash Pay-out Service

1. The remitting bank shall obtain and keep a record of the name and address of the beneficiary.

b) Cash Pay-in Service

1. Remitting banks / Business Correspondents (BCs) shall register the remitter based on a verified cell phone number and a self-certified 'Officially Valid Document (OVD)' as per the Master Direction – Know Your Customer Direction 2016, as amended from time to time.
2. Every transaction by a remitter shall be validated by an Additional Factor of Authentication (AFA).
3. Remitting banks and their BCs shall conform to provisions of the Income Tax

Act, 1961 and the rules / regulations framed thereunder (as amended from time to time), pertaining to cash deposits.

4. Remitter bank shall include remitter details as part of the IMPS / NEFT transaction message.
5. The transaction message shall include an identifier to identify the fund transfer as a cash-based remittance.

The guidelines on Card-to-Card transfer are excluded from the purview of the DMT framework and shall be governed under the guidelines / approvals granted for such instruments.

Link: [Domestic Money Transfer – Review of Framework](#)

RBI UPDATE: BANK FINANCE AGAINST SHARES AND DEBENTURES

Primary (Urban) Co-operative Banks (UCBs) were advised that the aggregate of their all loans against the security of shares and debentures should be within the overall ceiling of 20 percent of their owned funds.

It has been decided that the aforementioned overall ceiling of 20 per cent shall be linked to Tier I capital of the bank as on 31st March of the previous financial year.

This shall be effective from January 01, 2025.

Link: [Bank Finance against Shares and Debentures](#)

RBI UPDATE: SMALL VALUE LOANS – PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)

UCBs were required, inter alia, to have at least 50 per cent of their aggregate loans and advances comprising of Small Value Loans, i.e., loans of value not more than ₹25 lakh or 0.2 per cent of their Tier I capital, whichever is higher, subject to a maximum of ₹1 crore, per borrower. The target date for complying with the above requirement was March 31, 2024.

It has been decided to extend the glide path to achieve the aforementioned target by two years as given below:

Target Date →	March 31, 2025	March 31, 2026
Minimum percentage of Small Value Loans in aggregate loans and advances →	40%	50%

Link: [Small Value Loans – Primary \(Urban\) Co-operative Banks \(UCBs\)](#)

RBI UPDATE: PROMPT CORRECTIVE ACTION (PCA) FRAMEWORK FOR PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)

The existing Supervisory Action Framework (SAF) for UCBs has since been reviewed. Accordingly, the revised framework replacing the SAF, under the nomenclature Prompt Corrective Action (PCA) Framework is issued.

The PCA Framework shall be applicable to all UCBs under Tier 2, Tier 3 and Tier 4 categories except UCBs under All Inclusive Directions. Tier 1 UCBs, though not covered under the PCA Framework as of now, shall be subject to enhanced monitoring under the extant supervisory framework. The exemption of Tier 1 UCBs from the PCA Framework shall be reviewed in due course.

The provisions of the PCA Framework will be effective from April 1, 2025.

Link: [Prompt Corrective Action \(PCA\) Framework for Primary \(Urban\) Co-operative Banks \(UCBs\)](#)

RBI UPDATE: FULLY ACCESSIBLE ROUTE' FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES - EXCLUSION OF NEW ISSUANCES IN 14-YEAR AND 30-YEAR TENOR SECURITIES

It has been decided to exclude all new securities of 14-year and 30-year tenors from the Fully Accessible Route. Consequently, future issuances of Government Securities in these tenors shall not be available for investment under the Fully Accessible Route. Existing stocks of Government Securities in 14-year and 30-year tenors already included as 'specified securities' under the Fully Accessible Route shall, however, continue to be available under the Fully Accessible Route for investments by non-residents in the secondary market.

These Directions shall be applicable with immediate effect.

Link: [Fully Accessible Route' for Investment by Non-residents in Government Securities - Exclusion of new issuances in 14-year and 30-year tenor securities](#)

RBI UPDATE: MASTER DIRECTION ON TREATMENT OF WILFUL DEFAULTERS AND LARGE DEFAULTERS

This Master Direction on wilful

defaulters serves as a comprehensive guideline delineating the regulatory framework and procedures for classification of borrowers as wilful defaulters. This directive plays a crucial role in maintaining the integrity of the financial system by outlining the measures and consequences for those borrowers who deliberately default on their financial obligations.

Applicability

(1) The provisions regarding wilful defaulters contained in these Directions shall apply to the 'lenders' as defined in these Directions.

(2) Asset Reconstruction Companies (ARCs), and Credit Information Companies (CICs) shall be bound by these Directions only with regard to the reporting requirements contained in Chapter III.

(3) The restrictions on further financial accommodation to wilful defaulters shall apply to all entities regulated by the Reserve Bank, irrespective of whether they fall within the definition of 'lender' as provided in these Directions or not.

(4) The provisions regarding large defaulters contained in these Directions shall apply to all entities regulated by the Reserve Bank, irrespective of whether they fall within the definition of 'lender' as provided in these Directions or not.

(5) With these directions, instructions on Non-Cooperative Borrowers contained in circular DBR.No.CID.BC.54/20.16.064/2014-15 dated December 22, 2014 stand repealed. Reference is also drawn to Appendix on the 'List of Circulars' repealed with the issuance of this Master Direction.

Link: [Master Direction on Treatment of Wilful Defaulters and Large Defaulters](#)

RBI UPDATE: GUIDELINES ON TREATMENT OF DIVIDEND EQUALISATION FUND (DEF)- PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)

It is observed that some UCBS have created the Dividend Equalisation Fund (DEF) through appropriation of profits, with an intent to utilise these balances to pay dividend in future years, when profits are not sufficient or where the bank has posted a net loss. However, extant guidelines on "Declaration of Dividends by UCBS" dated July 05, 2012 *ibid* prohibit dividend payments from previously accumulated profits or reserves and mandate that dividend can only be paid by the banks from net profit of the current year after making all statutory and other provisions and after adjustment for accumulated losses in full. It is also observed that UCBS have been considering the balances in

in DEF as part of Tier-II capital.

In order to provide a better treatment of these balances for regulatory capital purposes, it has been decided, as a one time measure, to permit UCBS to transfer the balances in the DEF to general reserves/free reserves. The credit balances in general reserves/free reserves, shall qualify as Tier-I capital as per our Master Circular *ibid*.

Suitable disclosures shall be made of such transfers in the 'Notes on Accounts' to the Balance Sheet in terms of Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 dated August 30, 2021.

This circular is applicable to all Primary (Urban) Co-operative Banks. The instructions shall come into force with immediate effect.

Link: [Guidelines on treatment of Dividend Equalisation Fund \(DEF\)- Primary \(Urban\) Co-operative Banks \(UCBs\)](#)



RBI UPDATE: MASTER DIRECTIONS ON CYBER RESILIENCE AND DIGITAL PAYMENT SECURITY CONTROLS FOR NON-BANK PAYMENT SYSTEM OPERATORS

It has been decided to issue the final Directions, covering robust governance mechanisms for identification, assessment, monitoring and management of these risks. The Directions also cover baseline security measures for ensuring system resiliency as well as safe and secure digital payment transactions. However, they shall endeavour to migrate to the latest security standards. The existing instructions on security and risk mitigation measures for payments done using cards, Prepaid Payment Instruments (PPIs) and mobile

banking continue to be applicable as hitherto.

Applicability

The provisions of these Directions shall apply to all authorised non-bank PSOs.

To effectively identify, monitor, control and manage cyber and technology related risks arising out of linkages of PSOs with unregulated entities who are part of their digital payments ecosystem (like payment gateways, third party service providers, vendors, etc.), PSOs shall ensure adherence to these Directions by such unregulated entities as well, subject to mutual agreement. An organisational policy in this respect, approved by the Board, shall be put in place.

Link: [Master Directions on Cyber Resilience and Digital Payment Security Controls for non-bank Payment System Operators](#)



THE PROVISIONS OF SECTION 60(5) OF IBC CAN BE INVOKED FOR RECOVERY OF ADMITTED OUTSTANDING AGAINST SERVICES RENDERED BY THE CORPORATE DEBTOR, INSTEAD OF CIVIL COURT(S) OR ARBITRAL PROCEEDINGS – VINEET K. CHAUDHARY VS. NTPC LTD. – NCLT MUMBAI BENCH

Brief about the decision:

Facts of the case

- The Respondent issued two Work Orders dated 12.07.2013 for supply of electrical equipment and installation and erection works respectively to the Corporate Debtors.
- The Respondent has itself admitted an amount of Rs. 12,34,01,237 as due and payable to the Corporate Debtor during reconciliation of accounts.
- In accordance with the terms of the said Contract, the Corporate Debtor raised RA Bills from time to time, out of which 10% was retained by the Respondent from the bill amount.
- In the meantime, the Corporate Insolvency Resolution Process (“CIRP”) was initiated against the Corporate Debtor by NCLT, Mumbai Bench (Adjudicating Authority) vide Order dated 23.03.2018.
- As the CIRP could not succeed, the Adjudicating Authority passed a liquidation order dated 23.01.2020
- This is an application filed by the Applicant/Liquidator under Section 60(5) read with Section 35(1)(b), (d) & (n) of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Rule 11 of the NCLT Rules, 2016 seeking necessary directions from the Adjudicating Authority to direct the Respondent to release outstanding amount of Rs. 22,72,62,756/- along with interest at the rate of 18% p.a. which is due and payable by the Respondent in terms of Work Orders dated 12.07.2013.

Decision of Appellate Tribunal

- The Respondent has candidly and unequivocally admitted in the email dated 04.06.2022 its liability to pay a sum of INR 12,36,28,455/- to the Corporate Debtor. Therefore, there is not even a semblance of dispute so far as this amount is concerned. In Gujarat Urja Vikas Nigam Ltd. v. Mr. Amit Gupta and Ors. (2021) ibclaw.in 44 SC, it has been held by the Hon’ble Supreme Court that one of the important objects of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up the insolvency process. It was further observed in the aforesaid case that the non-obstante clause in Section 60(5) of the Code is designed for

a purpose i.e. to ensure that NCLT alone has the jurisdiction when it comes to applications or proceedings by or against the Corporate Debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings and therefore, NCLT has jurisdiction to adjudicate disputes which arise solely from or which relate to the insolvency of the corporate debtor.

- The process of undergoing CIRP or liquidation under the IB Code is a time bound process. Any delay in the process tends to defeat the objects of the Code, as the value of the assets gets eroded with passage of time. Therefore, in our considered view, **if the Applicant is relegated to civil court(s) or arbitral proceedings even in respect of admitted dues, it would definitely defeat the objects of the Code and the objective of concluding the process in a time bound manner would never be possibly adhered to.** Even otherwise, in the context of this case, undisputedly, the Corporate Debtor continued to render services to the Respondent despite initiation of CIRP against it and against those services, the Liquidator is seeking to realize the dues. Therefore, it cannot be said by any stretch of imagination that there is no nexus of the dues sought to be recovered or the relief(s) being claimed in the application with the insolvency/liquidation process.
- So far as the law laid down in Shri Ramachandra D. Choudhary v. Bansal Trading Company and Ors. (2022) ibclaw.in 653 NCLAT relied upon by the counsel for the Respondent is concerned, in our considered view, the same cannot be applied to the facts and circumstances of the instant case, as in the said case there was a genuine dispute between the parties with respect to the payment of the outstanding dues. On the contrary, in the instant case, there is no such dispute to the extent of admitted liability of INR 12,36,28,455/- and for undisputed liabilities, the parties cannot be driven to unnecessary and lengthy litigation.
- So far as the outstanding dues beyond the admitted dues of INR 12,36,28,455/- are concerned, the necessary permission can be granted u/s 33(5) of the Code to the liquidator to initiate appropriate legal proceedings.
- In view of the above discussion, we are of the considered opinion that this application deserves to be partly-allowed directing the Respondent to pay the admitted liability of INR 12,36,28,455/- to the Applicant forthwith. For the remaining amount, permission is hereby granted to the Liquidator u/s 33(5) of the Code to initiate appropriate legal proceedings. The Application is partly allowed to the extent indicated above, leaving the parties to bear their own costs.

THE PROTECTION UNDER SECTION 32A OF IBC IS RESTRICTED ONLY TO CORPORATE DEBTOR AND NOT TO ITS DIRECTORS WHO WERE IN-CHARGE OF THE AFFAIRS OF THE COMPANY WHEN THE OFFENCE COMMITTED OR THE SIGNATORY OF THE CHEQUE - VASAN HEALTHCARE PVT. LTD. VS. INDIA INFOLINE FINANCE LTD. - MADRAS HIGH COURT

Brief about the decision:

Facts of the case

- M/s. Vasan Health Care (P) Ltd. (Petitioner) borrowed loan from M/s.India Infoline Finance Ltd (IIFL/Respondent) which is a financial Institution and to discharge the liability, the Managing Director/Authorised Signatory of the petitioner company issued the cheques.
- The cheques, on presentation for collection, returned stating reason “Funds insufficient”. After causing statutory notice, complaints filed against i) the Company ii) A.M.Arun, the Managing Director and iii) Mrs.Meera, the Director.
- By an order dated 21.04.2017, the 1st accused company was admitted into the CIRP in application under Section 9 of IBC filed by M/s. Alcon Laboratories.
- While so, the second accused A.M. Arun, the representative of the first accused company and the Signatory of the cheques died on 16.11.2020.
- The resolution plan was approved by the NCLT, vide order dated 03.02.2023 and the Company has been taken over by the successful resolution applicant M/s.ASG Hospital (P) Ltd. The claims of the creditors verified by the RP and settled on condition that all the civil and criminal litigations, investigations, enquires, proceedings causes of action, claims, disputes or other judicial, regulatory proceedings against the corporate debtor or the affairs of the corporate debtor, pending, present or future shall stand extinguished.
- The respondent Company is one of the creditor whose claim has been admitted by RP and settled as per the resolution plan.
- The petitioner herein had filed a memo before the Judicial Magistrate and sought for dismissal of the complaint against the first accused Company as barred by law in view of Section 32A of IBC and the judgment of Supreme Court in Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd. (2023) ibclaw.in 30 SC.

- The Judicial Magistrate has returned the memo stating that the relief sought cannot be passed of memo. Meaning, the petitioner should have filed application under relevant provision of law for the relief sought. The petitioner, however had chosen to file petition under section 482 Cr.P.C., to quash the criminal complaint as against the first accused Company which is the Corporate Debtor.

Question

- Whether the existing criminal liability of the Company and its erstwhile Directors will get extinguished in view of the resolution plan approved by NCLT?

Decision of High Court

- After insertion of Section 32A in the IBC by way of amendment with effect from 28/12/2019, the liability of the corporate debtor for prior offences is restricted. In *Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd. (2023) ibclaw.in 30 SC*, the Hon'ble Supreme Court has considering the effect of the Section 32A of IBC in respect of prior liability of the Company and its directors, particularly in proceedings under Section 138 of Negotiable Instrument Act.
- From the law laid in *Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd. (2023) ibclaw.in 30 SC*, it is clear that the Corporate Debtor cannot be prosecuted for the prior liability after the approval of the Resolution Plan. At the same time, it is to be bear in mind the protection under Section 32A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate Debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed or the signatory of the cheque.
- Before this Court in this application only the Corporate debtor seeks quash. Therefore, the Criminal Original Petitions are allowed. The criminal prosecution in C.C.Nos.308,309, 310, 311, 312, 313, 3088, 3089 and 3090 of 2016 as against the first accused Company alone stands quashed. Consequently, connected Miscellaneous Petitions are closed.

CLAIM AGAINST DEMAND ORDER OF EPFO PASSED AFTER COMMENCEMENT OF LIQUIDATION CANNOT BE ADMITTED IN THE LIQUIDATION PROCEEDINGS - CENTRAL BOARD OF TRUSTEES, EMPLOYEES' PROVIDENT FUND VS. MR. BHAVESH RATHOD, LIQUIDATOR ASHAPURA INTIMATES FASHION LTD. - NCLT MUMBAI BENCH

Brief about the decision:

Facts of the case

- The Liquidation commenced on 5.10.2020 and the order in terms of section 7Q and 14B of the EPF & MP Act, 1952 were passed on 29.12.2023 demanding a sum of Rs. 4,17,102/-.
- The claim before the Liquidator was filed on 02.02.2024, while the last date for submission of claim in the liquidation process was 4.11.2020.
- The Liquidator rejected the claim vide email dated 09.02.2024.
- The appeal has been filed on 08.05.2024 praying to condone the delay of 40 days in filing the present Company Appeal by the Appellant and to condone the delay of 670 days in filing the Claim by the Appellant and be pleased to pass an order and direct the Liquidator to admit the claim and pay the amount of Rs. 417102/- towards the provident fund dues under section 7Q and 14B of EPF & MP Act, 1952.
- The Appellant, being an organization under the Ministry of Labour and Employment, has to go through various approvals and sanctions from the Higher authorities to file a claim in respect of the Corporate debtor which caused a delay of 670 days in filing a claim against the Corporate debtor.

Decision of Adjudicating Authority

- Section 42 of the IB Code require the claimant to file an appeal against the rejection of claim within 14 days. The Hon'ble NCLAT in the case of Canara Bank vs. Commercial Tax Department Madhya Pradesh and Anr. (2023) ibclaw.in 342 NCLAT has held that "The delay in filing the Appeal under Section 42 is clearly condonable while exercising the power under Section 5 of the Limitation Act." Accordingly, to meet the end of justice, we consider it appropriate to condone the delay in filing the present appeal.

- Undisputedly the Orders u/s 7Q and 14B of the EPF Act were passed on 29.12.2023 i.e. after the commencement of liquidation in case of corporate debtor on 4.11.2020. Section 33(5) of the IB Code provides that “Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.” In terms of section 38 of the Code, the Liquidator is collect the claims of creditors within 30 days of the liquidation commencement date which is 4.11.2020 in this case.
- The Hon’ble NCLAT in case of DBS Bank India Ltd. Vs. Kuldeep Verma, Liquidator of Eastern Gases Ltd. (2023) ibclaw.in 103 NCLAT held that “When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator.”
- **Admittedly, the order creating the demand against the Corporate Debtor was passed after the commencement of liquidation, we have no hesitation to hold that the claim of applicant can not be admitted in the liquidation proceedings.**
- In view of the above, Appeal 15/2024 is dismissed.



REPAYMENT OF BORROWINGS DURING LOOK BACK PERIOD, AFTER CLASSIFICATION OF ACCOUNT OF CORPORATE DEBTOR AS NPA, FALLS WITHIN THE EXCEPTION PROVIDED IN SECTION 43(3) OF IBC – MR. ANISH NIRANJAN NANAVATY RP OF RELIANCE COMMUNICATIONS LTD. VS. RPL ADITYA POWER LTD. – NCLT MUMBAI BENCH

Brief about the decision:

Facts of the case

- The account of the Corporate Debtor is classified as NPA on 26.08.2016.
- In 2017, the Corporate Debtor availed of an unsecured loan of Rs. 363 crores from the Respondent by entering into the loan agreement dated **10.04.2017** at an interest rate of 13%.
- During the period of 15.05.2017 to 19.09.2017, in multiple tranches, the Corporate Debtor repaid an amount of Rs. 15.21 crores to the Respondent under the said loan agreement, in priority to its secured lenders.
- CIRP against the Corporate Debtor was admitted vide order dated 15.05.2018.
- The Applicant, Resolution Professional of Reliance Communications Limited, has observed that prior to the commencement of the CIRP, the Corporate Debtor repaid to the Respondent, an unsecured loan amounting to Rs. 15.21 crores, which was granted to it by the Respondent herein. Thus, the said payments of Rs. 15.21 crores made by the Corporate Debtor to the Respondent being under Section 43 of the Insolvency and Bankruptcy Code, 2016, is liable to be set aside by this Hon'ble Tribunal.
- The Applicant has also pleaded that the repayment of the inter corporate deposits, without a demand being raised by the Respondent, could not be said to be in Ordinary Course of business from Corporate Debtor's perspective, since the Corporate Debtor was placed in NPA category, and was delaying / not repaying the loans owed to other financial creditors, during this period.
- The Respondents have pleaded that the said transaction was carried out in Ordinary Course of business. The Respondent is a company engaged into business of power and is authorised to lend money not immediately required by it for its business. The Corporate Debtor is engaged in provision of cellular mobile telephony services and borrows the money for the purpose of its business to meet its short term and long term financial requirements.

Decision of Adjudicating Authority

- Section 43(3) of the Code provides certain exceptions, whereby even a transaction falling within the mischief of Section 43(2) read with Section 43(4) of the Code are excluded from the scope of section 43 calling for orders u/s 44 of the Code.
- The Corporate Debtor borrowed from the Respondents to meet its financial requirements for its business. It is not the case of the applicant that the borrowings from the Respondent were for a purpose other than the business of the Corporate Debtor.
- Ordinarily, every borrower makes sure that the amounts borrowed are paid as and when it becomes due or with least delay. The loans taken from Respondents are stated to be paid in multiple tranches of odd amounts and the loan was repayable on demand.
- The account of the Corporate Debtor is stated to be classified as NPA on 26.08.2016 as noted in para 28 of the order dated 15.05.2018 passed by this Tribunal admitting the Corporate Debtor in CIRP and the loan was taken from the Respondent after classification of loan account as NPA by its financial creditors and the same was repaid within short span.
- The sanction letter does not stipulate that the demand for repayment of the loan is to be made in writing, hence, we do not find any substance in the submission that the loan amount had not fallen due for repayment.
- Hence, such repayment of loan was in Ordinary Course of financial affairs of the Corporate Debtor as well. Since, the impugned transaction was in Ordinary Course of financial affairs of Corporate Debtor and the Respondent, we are of considered view that it squarely falls within the exception provided in Section 43(3) of the Code.
- In view of the above, IA 1269/2020 is **dismissed** and disposed of accordingly.



Insolvency
And
Bankruptcy code

WHETHER PRIOR TO IMPEAD HOLDING COMPANY AS ADDITIONAL CORPORATE DEBTOR IN THE APPLICATION U/S 9 OF IBC, A PRIOR NOTICE IS REQUIRED TO BE ISSUED TO HOLDING COMPANY? - INKEL LTD. VS. SHAJI MATHEW AND ANR. - NCLAT CHENNAI

Brief about the decision:

Facts of the case

- On 12.03.2020 an application has been filed under Section 9 of the Code against M/s. Seguro Foundations & Structures Pvt Ltd. The matter was listed before this Tribunal on 16.09.2020.
- The Corporate Debtor company have been acquired by M/s Inkel Ltd. and is having a control stake of over 65% of the shares of the Corporate Debtor with effect from 01.12.2017.
- Notice was issued to the Corporate Debtor and the matter adjourned to 07.10.2020. Notice to the Corporate Debtor was served and AD card returned is on record. But the Corporate Debtor did not make representation before this Tribunal.
- Thereafter, the Operational Creditor filed this Interlocutory Application to implead M/s. Inkel Limited as additional Corporate Debtor in the application. The operations of Corporate Debtor were managed, controlled and operated by the proposed Corporate Debtor.
- The Adjudicating Authority held that in the light of the decision in Mrs. Mamatha Vs. AMB Infrabuild Pvt. Ltd. & Ors. [2018] ibclaw.in 114 NCLAT and considering the facts and circumstances of the case, it is clear that the proposed additional Corporate Debtor is the holding company of the M/s. Seguro Foundations and Structures Pvt Ltd. Therefore, the Application under Section 9 would be maintainable against both of them jointly. Hence, this Tribunal is of the view that M/s. Inkel Limited, should be impleaded as additional Corporate Debtor.

Submission of the Appellant

- It is contended by the Appellant M/s. Inkel Limited, that it had come to know of the Impugned Order of 26.11.2020, only when he received the notice on 03.12.2020 based on regards the order passed by the Learned Adjudicating Authority whereby he was directed to be impleaded as party in the Company Petition praying for initiation of the CIRP Proceedings.

- The Impugned Order wherein he has been impleaded in the proceedings as an “Additional Corporate Debtor”, is an order which has been passed ex-parte without issuing any prior notice to him, prior to impleadment and hence he contended that the order would suffer being in violation of the principle of natural justice.

Decision of Appellate Tribunal

- On scrutiny of the Impugned Order impleading the Appellant as the party in the proceedings under section 9, it shows that the Appellant has been impleaded as an Additional Corporate Debtor for two reasons, namely: –
 - (1) He happens to be one of the major share holders of the Corporate Debtor
 - (2) He is managing, controlling and operating the affairs of the company of Respondent No.2.
- The Hon’ble NCLAT holds that ultimately the controversy as raised by the Learned Counsel for the Appellant in his arguments, would be confined as to whether the Impleadment Application, as it has been preferred by the Respondent No.1 could at all have been allowed without there being a notice issued to him, who was sought to be impleaded in order to enable him to put forth his views on whether at all he happens to be the necessary party to the proceedings or not.
- As far as the aspect of impleadment is concerned from the perspective of the Appellant, that there was no prior notice given to him, it is an aspect which has already been dealt with, coupled with the fact since the issue of impleadment being exclusive prerogative of the court because it is the court which has to determine the necessity of the party to be introduced in the proceedings as to whether if at all it is the necessary party to decide the case effectively, we find no error in the Impugned Judgment under challenge allowing the Impleadment Application.
- Thus, the Appeal lacks merits and the same is accordingly **dismissed**.

INSOLVENCY AND
BANKRUPTCY CODE

COMPANY FACES HEFTY RS. 3.75 LAKH PENALTY FOR MISSING E-FORM CHG-1 FILING DEADLINE - A CASE STUDY

Background of the case

1. This case pertains to an adjudication order passed by the Registrar of Companies of Jaipur on 5th October 2023 (order uploaded at the MCA website on 7th May 2024) relating to non-filing of mandated e-form CHG-1 for charge creation. The facts of the case indicate that a company named M/s Akshat Telecom Private Limited took loans from HDFC Bank Limited during the financial years 2018-19 to 2020-21 but failed to register the charges created on the company's property with the Registrar of Companies in the mandated e-form CHG-1 – the form for registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI). The mandated e-form CHG-1 was required to be filed by the company pursuant to sections 77, 78 and 79 and pursuant to section 384 read with 77, 78 and 79 of the Companies Act, 2013 and Rule 3 (1) of the Companies (Registration of Charges) Rules 2014.

As per the framework of the Companies Act 2013, it was the company's duty to create a charge on its property or assets to register the particulars of the charge with the Registrar within thirty days of its creation. In this case, since the company failed to file the charge creation e-form CHG-1, the Adjudication officer, after following the due procedure of law, penalised the company and its directors to the tune of Rs. 3.50 lakh. Let us go through this case threadbare in order to understand the requirement of the law while creating the charges and the procedures to be followed and understand the consequences of non-compliance with the provisions of the Act.

Relevant Provision relating to this case under the Companies Act 2013.

2. The relevant provisions pertaining to this case are section 77 of the Companies Act 2013, read with the relevant rules thereunder. The relevant provisions are extracted below.

Companies Act 2013 Chapter VI – Registration of Charges Section 77 - Duty to register charges, etc.	
Section	Provision
77 (1)	It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation.
Penal section for non-compliance / default, if any	
86 (1)	If any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Consequences of default/violation

3. To understand the consequences of any default / non-compliance while complying with the provisions of section 77 of the Companies Act 2013 relating to the company's duty to register the charges created with the Registrar of Companies and related procedures, let us go through the decided case law by the Registrar of Companies of Jaipur on this matter on 5th October 2023—in the matte of M/s. Akshat Telecom Private Limited.

The relevant case law on this matter

4. We shall go through the adjudication order bearing no. No. 999 passed by the Registrar of Companies, Jaipur on 5th October 2023 order for penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Rules 2019 for the violation of section 77(1) of the Companies Act 2013 in respect of M/s Akshat Telecom Private Limited.

Details of the company

5. M/s Akshat Telecom Private Limited is a registered company under the provisions of the Companies Act 2013 with effect from 28th December 2013 and having its registered office situated at Cabin No. 303, Third Floor, A-5 Shruti Tower, Hariom Colony, Nayapura, Kota in the state of Rajasthan. The company falls under the jurisdiction of the Registrar of Companies of Rajasthan, and the office of the Registrar of Companies is situated at Jaipur. The company has five directors on its board, as per the details available on the MCA portal. The Company is mainly engaged in transport, storage, and communications.

Facts of the case

6. The following were the facts pertaining to this case.

(a) The Registrar of Companies of Jaipur undertook an enquiry upon the company, i.e. M/s Akshat Telecom Private Limited, after having received a complaint from one of the individuals stating that the company's affairs were not conducted properly.

(b) During the process of such enquiry, the Registrar of Companies wrote to the company a letter dated 31st March 2022 followed by another reminder letter on 27th April 2022 and in response to the above letters, the company had furnished its response vide letter dated 30th April 2022.

(c) Upon receipt of the letter from the company, the Registrar of Companies sought further additional information under section 206(1) of the Companies Act 2013 through a letter dated 19 July 2022, to which the company replied on 1 August 2022 and furnished the relevant information sought by the Registrar of Companies.

(d) During the course of such enquiry, the Registrar of Companies came to know that the company had taken loan(s) from HDFC Bank Limited during the financial Year 2018-19 to 2020-21 and created a charge on the property of the company.

(e) However, the Registrar of Companies could not find any filing relating to the charge created by the company to the Registrar's office, and there was no e-form CHG-1 at the Ministry of Corporate portal on these loans taken by the company and charge created upon the company's property.

Based on the above facts and observations, the Registrar of Companies, had a strong reason to believe that the company had violated the provision of section 77(1) of the Companies Act 2013 as the company had not created charge(s) with Registrar of Companies pursuant to loan(s) taken by the company from the HDFC Bank Limited during the financial Year 2018-19 to 2020-21 by non-filing of the mandated e-form CHG-1.

Issue of show cause notice / Adjudication notice by the Registrar of Companies

7. The Registrar of Companies based on his belief that the company and its directors had violated the provisions of filing the form with the Registrar of Companies for charge creation, issued a show cause notice under section 454(4) of the Companies Act 2013 read with Rule 3 (2) of Companies (Adjudication of Penalties) 2014 as amended in Amendment Rules 2019, to the company and its directors in default for the violation of the provisions of section 77(1) of the Companies Act 2013 giving an opportunity to submit a reply as to why the penalty should not be imposed under the provisions of section 86 (1) of the Companies Act 2013 against the company and its directors in default for violations committed by them.

Further, to the show cause notice, the Registrar of Companies also issued an adjudication notice to the company and its directors on 26th July 2023 directing the company and its directors to be present for a personal hearing on 11th September 2023 and make the submissions / representation.

Response from the company

8. Neither the company responded to the show cause notice nor appeared for the personal hearing. However, one of the company's directors responded to the show cause notice, and the Registrar of Companies found it unsatisfactory.

Conclusion reached by the Registrar of Companies / Adjudication Officer

9. The Registrar of Companies / Adjudication Officer, having considered the facts and circumstances of the case and with reference to the available records on the Ministry of Corporate portal, decided on the matter based on the merits and concluded that the company and the directors had not complied with the provision of section 77(1) of the Companies Act, 2013 relating to the filing of the charge creation with the Registrar of Companies. In view of the above violation, the company and its directors were liable for penal action as provided under section 86 (1) of the Companies Act 2013. Accordingly, the Registrar of Companies / Adjudication Officer decided to pass the adjudication order on this matter.

Order passed by the Registrar of Companies / Adjudication Officer

10. The Registrar of Companies / Adjudication Officer, in the exercise of

the exercise of the power conferred upon him under section 454 (3) of the Companies Act 2013, based on the facts and circumstances of the case along with the conclusion reached by him on this matter imposed the penalty as prescribed under section 86 (1) of the Companies Act 2013 upon the company and its directors in default for violation of section 77(1) of the of the Companies Act 2013 as per the table below for not having filed the CHG-1 form as mandated by the Act.

Nature of default	Violations under Companies Act 2013	Name of person on whom Penalty levied	Total default amount	Maximum limit for penalty	Penalty imposed pursuant to sec. 446B of the Act
			Rs.	Rs.	Rs.
Non filing of e-Form CHG-1 for the creation of secured charge	Sec. 77 (1)	Company	5,00,000	5,00,000	2,50,000
	Sec. 77 (1)	Director -1	50,000	50,000	25,000
	Sec. 77 (1)	Director -2	50,000	50,000	25,000
	Sec. 77 (1)	Director -3	50,000	50,000	25,000
	Sec. 77 (1)	Director -4	50,000	50,000	25,000
	Sec. 77 (1)	Director -5	50,000	50,000	25,000
Total amount of Penalty					3,75,000

a. The Adjudication Officer was of the opinion that the penalty imposed commensurate with the aforesaid failure committed by the company and the penalty so imposed upon the Officers-in-default shall have to be paid from their personal sources/ income. The order further directed that the penalty imposed shall have to be paid through the Ministry of Corporate Affairs portal only as mentioned under Rule 3(14) of Company (Adjudication of Penalties) (Amendment) Rules 2019 under intimation to the office of the Registrar of Companies.

b. The order stated that an appeal against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, Ahmedabad within a period of sixty days from the date of receipt of this order, in e-Form ADJ (available on Ministry website mca.gov.in) setting forth the grounds of appeal and the appeal shall have to be accompanied by a certified copy of the this order. (Section 454(5) & 454(6) of the Act read with the Companies (Adjudicating of Penalties) Rules, 2014)

c. The order also invited the attention of the company and its officers-in-default to the provisions of section 454(8)(i) and 454(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 be less than twenty-five thousand rupees but which may extend to five

lakh rupees and officer in default shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or both.

Despatch of the order

11. The order was sent by the Registrar of Companies, Jaipur in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 to the company and its defaulting director and to the Regional Director, North Western Region, Ministry of Corporate Affairs at ROC Bhavan, Opp. Rupal Park Society, Behind Ankur Bus Stop, Naranpura, Ahmedabad in the state of Gujarat. The order copy was also sent to the Content Manager for publication of the order at the Ministry's website.

The complete order for reading

12. The readers may like to read the complete adjudication order passed by the Registrar of Companies / Adjudication Officer of Jaipur order bearing No. 999 dated 5th October 2023 –order for penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Rules 2019 for the violation of section 77(1) of the Companies Act 2013 in respect of M/s Akshat Telecom Private Limited at the MCA website at <https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/roc-adjudication-orders.html>. (the order is uploaded under the ROC of Jaipur 7th May 2024, titled as adjudication order in the matter of M/s Akshat Telecom Private Limited)

Conclusion

13. As discussed in the earlier paragraphs, M/s Akshat Telecom Private Limited did not register charges created on its property with the Registrar of Companies despite taking loans from HDFC Bank Limited during the financial years 2018-19 to 2020-21. The relevant provisions of the Companies Act 2013 state that it is the duty of every company creating a charge on its property or assets to register the particulars of the charge with the Registrar within thirty days of its creation, and the failure to comply with this provision attracts penalties. Since the violation has been committed by the company and its directors, the Registrar of Companies of Jaipur initiated the penal action against the company and its directors and passed an adjudication order for the violation of section 77(1) of the Companies Act 2013 by M/s. Akshat Telecom Private Limited and its directors imposed a penalty amounting to Rs. 350 lakh. The directors and officers of the company need to take

all the necessary caution in ensuring the required compliance so that the penal actions can be avoided, failing which the company and its directors/officers have to pay the financial penalty besides spending their time in resolving the issue. It is better to take precautions by doing things in the right way in the first place.

Reference:-

- 1.The Companies Act 2013
- 2.Companies (Adjudication of Penalties) Rules 2014
- 3.Companies (Adjudication of Penalties) Amendments Rules 2019
- 4.Adjudication order passed by the Registrar of Companies of Jaipur - order bearing No. 999 dated 5thOctober 2023 –order for penalty under section 454 of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication of Penalties) Rules 2014 and Companies (Adjudication of Penalties) Rules 2019 for the violation of section 77(1) of the Companies Act 2013 in respect of M/s Akshat Telecom Private Limited

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