

Issue:  
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**Monthly Newsletter**  
 by Mehta & Mehta



# VEDANAM

## WHY VEDANAM?

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

We hereby release our **May 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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**SEBI UPDATE: EASE OF DOING BUSINESS- FUND MANAGER FOR MUTUAL FUND SCHEMES INVESTING IN COMMODITIES AND OVERSEAS SECURITIES.**

SEBI constituted various Working Groups to recommend measures to simplify and ease compliances under various SEBI Regulations. Accordingly, a working group was constituted to review the present regulatory framework under SEBI (Mutual Funds) Regulation, 1996 and recommend measures to promote ease of doing business for mutual funds. Based on the recommendations of the working group, a public consultation was carried out.

The following has been decided:

In partial modification to the Clause 3.3.11 of the Master Circular for Mutual Funds dated May 19, 2023, it has been decided as under:

“For commodity based funds such as Gold ETFs, Silver ETFs and other funds participating in commodities market, appointment of a dedicated fund manager shall be optional. However, the person appointed as fund manager of such funds should have adequate expertise and experience to manage investments in commodities market. The Board of the AMCs shall be responsible for ensuring compliance and reporting regarding the same to trustees, on a periodic basis.

Further, in partial modification to the Clause 12.19.3.1 of the Master Circular for Mutual Funds dated May 19, 2023, it has been decided as under

Appointment of a dedicated fund manager for making the above overseas investments stipulated under paragraph 12.19.2.1 to 12.19.2.9 shall be optional. However, the person appointed as fund manager of such funds should have adequate expertise and experience to manage investments in overseas securities. The Board of the AMCs shall be responsible for ensuring compliance and reporting regarding the same to trustees, on a periodic basis.”

Link: [Ease of doing business- Fund manager for Mutual fund schemes investing in commodities and overseas securities.](#)

**SEBI UPDATE: NOMINATION FOR MUTUAL FUND UNIT HOLDERS - EXEMPTION FOR JOINTLY HELD FOLIOS.**

In order to simplify, ease and reduce cost of compliance, a working group was constituted to review the present regulatory framework of Mutual Funds and recommend measures to promote the ease of doing business. Based on the recommendations of the working group, a public consultation was carried out.

Accordingly, it has been decided that the requirement of nomination specified under clause 17.16 of the Master Circular for Mutual Funds shall be optional for jointly held Mutual Fund folios.

Link: [Nomination for Mutual Fund unitholders – exemption for jointly held folios](#)

### **SEBI UPDATE: FACILITATING COLLECTIVE OVERSIGHT OF DISTRIBUTORS FOR PORTFOLIO MANAGEMENT SERVICES (PMS) THROUGH APMI.**

To simplify and ease compliances, a working group was constituted to review the present regulatory framework under SEBI (Portfolio Managers) Regulations, 2020 and recommend measures to promote ease of doing business. Based on the recommendations of the working group, a public consultation was carried out

It has been decided that any person or entity involved in the distribution of portfolio management services shall obtain registration with APMI. Portfolio Managers shall ensure that any person or entity engaged in the distribution of its services has obtained registration with APMI, in accordance with the criteria laid down by APMI.

This circular shall come into

effect from January 01, 2025. APMI shall issue the criteria for registration of distributors by July 01, 2024.

Link: [Facilitating collective oversight of distributors for Portfolio Management Services \(PMS\) through APMI](#)

### **SEBI UPDATE: PORTFOLIO MANAGERS - FACILITATING EASE IN DIGITAL ON-BOARDING PROCESS FOR CLIENTS AND ENHANCING TRANSPARENCY THROUGH DISCLOSURES.**

SEBI issued circular for Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures

Based on the recommendations of the working group, a public consultation was carried out.

The following has been decided:

Ease in digital on-boarding process for clients of Portfolio Managers

While on-boarding a client, Portfolio Manager shall ensure that:

- a) the client has understood the structure for fees and charges.
- b) the new client has separately signed the annexure on fees and charges and added a note, that they have understood the

structure for fees and charges, in the following manner:

- i) handwritten, in case the client is on-boarded through physical mode.
- ii) typed using keyboard or written electronically using fingers/a stylus pen, in case the client is on-boarded through digital mode.

The above provision shall be applicable from October 01, 2024

### Fee calculation tool

Portfolio Manager shall provide a fee calculation tool to all clients that highlights various fee options with multi-year fee calculations. Such tool shall incorporate the high watermark principle, wherever applicable.

Additional fees disclosures  
PMS-client agreement  
Periodic reports

Link: [Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures](#)

### SEBI UPDATE: ENTITIES ALLOWED TO USE E-KYC AADHAAR AUTHENTICATION SERVICES OF UIDAI IN 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 eKYC 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. 1863(E) dated April 30, 2024, notified one entity which is 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 entity 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 the entity as sub-KUA 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 Annexure A](#)

## SEBI UPDATE: PERIODIC REPORTING FORMAT FOR INVESTMENT ADVISERS.

SEBI has recognized Investment Advisers Administration and Supervisory Body ("IAASB") for the purpose of administration and supervision of Investment Advisers ("IAs") under regulation 14 of the IA Regulations. At present, the IAASB has been seeking reports from IAs on an ad-hoc basis. It is decided to specify a standardized format for periodic reporting for IAs.

### Consultative process for development of periodic reporting format

A standardized periodic reporting format for submission of information by IAs pertaining to their activities on periodic basis has been prepared. The periodic reporting format is enclosed as Annexure I.

### Periodicity of reporting

IAs shall submit periodic report for half-yearly periods ending on September 30 and March 31 of every financial year.

### Timelines for submission of periodic reports

IAASB is directed to make necessary arrangements for obtaining periodic reports from IAs in the format specified in Annexure I and shall issue a circular to IAs in this regard, within thirty days from the date of issuance of this circular.

IAs shall submit periodic report in

the format specified in Annexure I from the half yearly period ending on March 31, 2024. The timelines for submission of periodic reports by IAs shall be as under:

IAs shall submit the periodic report for the half-yearly period ending on March 31, 2024 to IAASB within a period of fifteen days from the date of issuance of circular by IAASB.

For the subsequent half-yearly periods, IAs shall submit periodic reports within seven working days from the end of the half-yearly period for which details are to be furnished.

### Applicability of circular

This circular shall become applicable with immediate effect

Link: [Periodic reporting format for Investment Advisers](#)

## SEBI UPDATE: CERTIFICATION REQUIREMENT FOR KEY INVESTMENT TEAM OF MANAGER OF AIF

In terms of Regulation 4(g)(i) of SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), the key investment team of the Manager of an Alternative Investment Fund (AIF) shall have at least one key personnel with relevant certification as may be specified by SEBI from time to time, as an eligibility criterion for obtaining certification of registration as an AIF. The said Regulation has

come into force with effect from May 10, 2024.

In this regard, the following is specified:

The requirement for at least one key personnel of the key investment team of manager of AIF to obtain the aforesaid certification, shall be applicable as an eligibility criterion to all the applications for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024.

Further, the aforesaid requirement of obtaining the certification shall be complied with on or before May 09, 2025, for the following –

- (i) Existing schemes of AIFs; and,
- (ii) Schemes of AIFs whose application for launch of scheme pending with SEBI as on May 10, 2024.

The trustee/sponsor of AIF, as the case may be, shall ensure that the 'Compliance Test Report' prepared by the manager in terms of para 15.2 of SEBI Master Circular No. SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/39 dated May 07, 2024, includes compliance with the provisions of this circular.

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

Link: [Certification requirement for key investment team of manager of AIF](#)

## **SEBI UPDATE: INDUSTRY STANDARDS ON VERIFICATION OF MARKET RUMOURS**

In order to facilitate ease of doing business, the Industry Standards Forum ("ISF") comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, under the aegis of the Stock Exchanges, on a pilot basis, has formulated industry standards, in consultation with SEBI, for effective implementation of the requirement to verify market rumours under Regulation 30(11) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). The industry associations which are part of ISF (ASSOCHAM, FICCI, and CII) and the stock exchanges shall publish the industry standards note on their websites.

The listed entities shall follow the aforesaid industry standards to ensure compliance with Regulation 30(11) of LODR Regulations.

The requirement to verify market rumours under Regulation 30(11) of LODR Regulations shall be applicable to top 100 listed entities with effect from June 01, 2024 and to top 250 listed entities (i.e., next top 150) with effect from December 01, 2024 as specified by SEBI circular dated January 25, 2024.

Link: [Industry Standards on verification of market rumours](#)

## SEBI UPDATE: FRAMEWORK FOR CONSIDERING UNAFFECTED PRICE FOR TRANSACTIONS UPON CONFIRMATION OF MARKET RUMOUR

In terms of Regulation 30(11) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), as amended by SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 (link), listed entity is required to verify market rumours, upon material price movement. The stock exchanges shall issue the framework for material price movement on their websites.

As per second proviso to Regulation 30(11) of LODR Regulations, unaffected price shall be considered for transactions on which pricing norms specified by SEBI or the stock exchanges are applicable, provided that the rumour pertaining to such transaction has been confirmed within 24 hours from the trigger of material price movement. Further, it has been specified that the unaffected price shall be considered by excluding the effect on the price of the equity shares of the listed entity due to the material price movement and confirmation of the rumour. Accordingly, the framework for considering unaffected price is placed as ANNEXURE to this circular and the same shall be

applicable to top 100 listed entities with effect from June 01, 2024 and to top 250 listed entities (i.e., next top 150) with effect from December 01, 2024.

The Stock Exchanges are advised to bring the contents of this circular to the notice of their listed entities and ensure its compliance.

Link: [Framework for considering unaffected price for transactions upon confirmation of market rumour](#)

## SEBI UPDATE: TIMELINES FOR DISCLOSURES BY SOCIAL ENTERPRISES ON SOCIAL STOCK EXCHANGE (“SSE”) FOR FY 2023-24

In terms of Regulation 91C (1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR Regulations”) Not for Profit Organizations (NPOs) registered on SSE including NPOs whose designated securities are listed on SSE, shall be required to make annual disclosures to the SSE on matters specified under the SEBI Circular dated September 19, 2022 by 31st October, 2024 for the Financial Year 2023-24.

In terms of Regulation 91E (1) of SEBI LODR Regulations, 2015, Social Enterprises which has registered or raised funds through SSE shall be required to

submit Annual Impact Report to SSE by 31st October, 2024 for the Financial Year 2023-24.

Link: [Timelines for disclosures by Social Enterprises on Social Stock Exchange \(“SSE”\)](#)

### **SEBI UPDATE: SELF REGULATORY ORGANIZATIONS FOR SOCIAL IMPACT ASSESSORS IN THE CONTEXT OF SOCIAL STOCK EXCHANGE (“SSE”)**

In terms of Regulation 292A(f) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, (“ICDR Regulations”) a Social Impact Assessor means an individual registered with self regulatory organization under the Institute of Chartered Accountants of India or such other agency, as may be specified by the Board, who has qualified a certification program conducted by National Institute of Securities Market.

In addition to the Self-Regulatory Organization under the Institute of Chartered Accountants of India the following agencies are specified as Self Regulatory Organizations for Social Impact Assessors in the context of Social Stock Exchange:

ICMAI Social Auditors Organization (ICMAI SAO) under the Institute of Cost Accountants of India

ICSI Institute of Social Auditors (ICSI ISA) under the Institute of Company Secretaries of India.

Link: [Self Regulatory Organizations for Social Impact Assessors in the context of Social Stock Exchange \(SSE\)](#)

### **SEBI UPDATE: ELIGIBILITY CRITERIA FOR LAUNCHING OPTIONS WITH COMMODITY FUTURES AS UNDERLYING BY STOCK EXCHANGES HAVING COMMODITY DERIVATIVE SEGMENTS**

Chapter 6 of SEBI Master Circular dated August 4, 2023 for Commodity Derivatives Segment prescribes Product Design and Risk Management Framework for Options on Commodity Futures.

It is decided that for launching Options contracts on agricultural and agri-processed commodities, the average daily turnover of underlying futures contracts of the corresponding commodity during the previous twelve months shall be INR 100 crore instead of existing INR 200 crore. Accordingly, paragraph 6.1.2. of the aforesaid Master Circular on Eligibility criteria for launching Options on Commodity Futures stands revised as follows:

Eligibility criteria for launching Options with Commodity Futures as underlying: Options would be permitted for trading on a stock exchange only on those



commodity futures as underlying, which are traded on its platform and satisfy the criteria specified below on the respective exchange:

i. The average daily turnover of underlying futures contracts of the corresponding commodity during the previous twelve months, shall be at least:

- a) INR 100 crore for agricultural and agri-processed commodities
- b) INR 1000 crore for other commodities

The Circular shall be applicable for all Options on Futures contracts (agricultural and agri-processed commodities) introduced on or after June 1, 2024 wherein average daily turnover of underlying futures contracts during the previous twelve months is Rs.100 crore.

Link: [Eligibility criteria for launching Options with Commodity Futures as underlying by Stock Exchanges having commodity derivative segments](#)

## **SEBI UPDATE: STANDARD OPERATING PROCEDURE FOR HANDLING OF STOCK EXCHANGE OUTAGE AND EXTENSION OF TRADING HOURS THEREOF IN COMMODITY DERIVATIVES SEGMENT**

SEBI vide circular dated January 09, 2023 has prescribed standard

operating procedure for handling stock exchange outage and extension of trading hours thereof in Cash Market and Equity Derivatives segment.

In continuation of the same, standard operating procedure for handling stock exchange outage and extension of trading hours thereof in Commodity Derivatives segment was deliberated by Commodity Derivatives Advisory Committee (CDAC) of SEBI. Accordingly, the framework for Commodity Derivatives segment has been prepared and placed as Annexure to the Circular.

The stock exchanges should ensure necessary changes in the systems to extending market hours as specified in this circular. Accordingly, the circular shall be effective from July 01, 2024.

Link: [Standard Operating Procedure for handling of Stock Exchange outage and extension of trading hours thereof in Commodity Derivatives segment](#)

## **SEBI UPDATE: INVESTOR CHARTER FOR DEPOSITORIES AND DEPOSITORY PARTICIPANTS**

The recent developments in the securities market including introduction of Online Dispute Resolution (ODR) platform and SCORES 2.0, it is felt necessary to modify the Investor Charter for Depositories and DPs, inter-alia,

detailing the services provided to Investors, Rights of Investors, various activities of Depository through DPs with timelines, Dos and DON'T's for Investors, Responsibilities of Investors, Code of Conduct for Depositories and DPs and Grievance Redressal Mechanism which is placed at Annexure.

Depositories are advised to publish Investor Charter on their websites. Further, Depositories should ask DPs to bring to the notice of their clients (existing as well as new clients) through disclosing the Investor Charter on their respective websites, provide a copy of Investor Charter as a part of account opening kit to the clients, through emails/letters etc.

Link: [Investor Charter for Depositories and Depository Participants](#)

### **SEBI UPDATE: NORMS FOR ACCEPTABLE COLLATERALS AND EXPOSURE OF CLEARING CORPORATIONS**

In order to further strengthen the risk management framework of CCs, it has been felt to review the existing collaterals accepted by CCs and also to have prudential norms for exposure of CCs.

The acceptable liquid assets for Cash Market includes -

a. Cash Equivalents such as cash, bank fixed deposits, bank guarantees, securities of the

Central Government, units of liquid mutual funds (including units of overnight mutual funds) or government securities mutual funds;

b. Other Liquid Assets such as Group I equity shares, units of other mutual fund schemes and corporate bonds. In addition, for Commodity Derivatives Segment, the Other Liquid Assets includes Bullion, units of Gold ETF, Agricultural Commodities, Base Metals & Alloys, and Diamond

Link: [Norms for acceptable collaterals and exposure of Clearing Corporations](#)

### **SEBI UPDATE: MODIFICATION IN REQUIREMENT OF INSPECTION OF ACCREDITED WAREHOUSES BY CLEARING CORPORATIONS**

There is a requirement for clearing corporations to conduct independent audits of the goods and other facilities in the storage facilities by engaging expert agencies, at regular intervals.

It has been decided that the requirement of two inspections in a calendar year may be done away for accredited storage facility with 'Nil' stock, continuously during preceding six months. In these cases, the number of inspections by an independent agency may be limited to 'once in a calendar year'.

It has been decided that the requirement of inspection by an independent agency may also be done away with, in case there is 'Nil' stock in an accredited storage facility continuously during the calendar year". However, to ensure readiness of accredited warehouse/s to accept new deposits, it is emphasized that requirement of periodic (in-house) inspection by clearing corporation, as stated in Para 12.16.1 of Master Circular, shall continue to apply.

Link: [Modification in requirement of inspection of accredited warehouses by Clearing Corporations](#)

## **SEBI UPDATE: INVESTOR CHARTER FOR STOCK EXCHANGES**

In order to facilitate investor awareness about various activities such as business transacted and services provided to investors on stock exchanges, grievance redressal mechanism, rights and obligations of investors, guidance pertaining to special circumstances related to market activities due to default of brokers, advisory for investors etc., SEBI in November 2021 has formulated the Investor Charter for Stock exchanges containing the information for investors on aforesaid issues and advised Stock Exchanges to disclose the same on their respective websites.

In view of the recent

developments in the securities market including introduction of Online Dispute Resolution (ODR) platform and SCORES 2.0, it is felt necessary to modify the Investor Charter for Stock Exchanges inter-alia detailing the services provided to Investors, Rights of Investors, various activities of stock exchanges with timelines, Dos and DON'T's for Investors, Responsibilities of Investors, Code of Conduct for Stock Exchanges and Grievance Redressal Mechanism which is placed at Annexure A.

In this regard, Stock Exchanges are advised to disclose the Investor Charter on their respective websites.

Link: [Investor Charter for Stock Exchanges](#)

## **SEBI UPDATE: EASE OF DOING BUSINESS - INTERNET BASED TRADING FOR STOCK BROKERS**

To improve ease of doing business and remove obsolete compliance requirements related to activities of Market Infrastructure Institutions (MIIs), inputs or suggestions were sought from various stakeholders. In this regard, there were requests pertaining to Internet Based Trading (IBT) from the Industry Standard Forum (ISF) of stock brokers.

The following has been decided:  
a. In line with Clause 1.1 of Chapter 2 of SEBI Master Circular

for Stock Exchanges and Clearing Corporations dated October 16, 2023, the broker is required to apply to the respective stock exchange for a formal permission to provide IBT Service. The stock exchange is required to communicate its decision to the member within 30 calendar days of the date of completed application submitted to the exchange. The timeline, is hereby reduced to 7 calendar days from 30 calendar days.

b. In line with Clause 1.1.2.4.3.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, brokers providing IBT service are required to make periodic reporting to the Exchange as specified by the Exchange. As part of the aforesaid requirement, exchanges compute IBT trade statistics for each stock broker on the basis of IBT terminal details provided by the stock broker. It has been decided to do away with the existing requirement of periodic confirmation of IBT statistics by the stock brokers before they are published by the stock exchanges. Instead, exchanges would publish IBT statistics on the basis of details of IBT terminals provided by the stock brokers. Exchanges, in this regard, may obtain information/declaration about IBT terminals from stock brokers as deemed fit by them.

Link: [Ease of Doing Business – Internet Based Trading for Stock Brokers](#)

## **SEBI UPDATE: REVISION OF ELIGIBILITY CRITERIA FOR LAUNCHING COMMODITY FUTURES CONTRACTS.**

It has been decided to modify the norms under Paragraph 2.2 and Paragraph 10.1 of the Master Circular dated August 4, 2023 as under:

Criteria for eligibility of derivative contracts on commodities

Paragraph 2.2.2.: “The following criteria for eligibility, retention and reintroduction of derivative contracts on commodities shall be followed by all the stock exchanges.” stands deleted.

Paragraph 2.2.3 (vi) is modified as under.

“The stock exchanges shall also analyze all the proposed commodities on the afore-said parameters comprised in the template and submit the same to SEBI along with necessary supporting documentary evidence for referring the commodity for notification under section 2(bc) of Securities Contracts (Regulation) Act, 1956.”

Check-list of information/details to be submitted along with proposal for launch of new contract:

All derivative contracts approved by SEBI from time to time, are allowed to be traded in respective Stock exchange(s) on a continuous basis without

requiring further approval unless SEBI advises/directs otherwise.

All proposals of stock exchange for launch of new contract shall be accompanied by complete information covering all the points appended at Annexure P of the Master Circular dated August 4, 2023 regarding Checklist of information/details for launch of new contract. The parameters / items listed in the check-list for compliance are illustrative and not exhaustive. Any additional relevant parameter/information as deemed necessary may also be furnished while sending proposal for contracts.

Link: [Revision of eligibility criteria for launching commodity futures contracts](#)

### **SEBI UPDATE: COMPREHENSIVE GUIDELINES FOR INVESTOR PROTECTION FUND (IPF) AND INVESTOR SERVICES FUND (ISF) FOR STOCK EXCHANGES HAVING COMMODITY DERIVATIVES SEGMENT**

SEBI vide circulars dated September 26, 2016, June 13, 2017, March 14, 2018 and October 22, 2021 has issued provisions for Investor Protection Fund and Investor Service Fund for commodity derivatives segment. Further, circular on Price Dissemination through SMS/Electronic Communication Facility was issued on August 30,

2016. These aforementioned Circulars have been rescinded with issuance of Master Circular for Commodity Derivatives Segment dated August 04, 2023. SEBI vide Circular dated May 30, 2023 has issued Comprehensive guidelines for Investor Protection Fund and Investor Services Fund at Stock Exchanges and Depositories (excluding Commodity Derivatives Exchanges) with inclusion of new provisions.

After due consultation with the stock exchanges, the new requirements have been framed as under

#### **Guidelines for Investor Protection Fund (IPF)**

- Constitution and Management of the IPF
- Contribution to the IPF
- Manner of inviting claims from the Investors
- Eligibility of Claims
- Threshold limit for Claims:
- Determination of Legitimate Claims
- Disbursements of claims from the IPF
- Deployment of funds of IPF
- Utilisation of IPF
- Utilization of Interest or Income earned on IPF

The Circular shall come into force from June 01, 2024.

Link: [Comprehensive guidelines for Investor Protection Fund \(IPF\) and Investor Services Fund \(ISF\) for Stock Exchanges having commodity derivatives segment](#)

**RBI UPDATE: GUIDANCE NOTE ON OPERATIONAL RISK MANAGEMENT AND OPERATIONAL RESILIENCE.**

In view of the foregoing, the Reserve Bank, through this Guidance Note on Operational Risk Management and Operational Resilience (hereafter 'Guidance Note') intends to:

- promote and further improve the effectiveness of Operational Risk Management of the REs, and
- enhance their Operational Resilience given the interconnections and interdependencies, within the financial system, that result from the complex and dynamic environment in which the REs operate.

This Guidance Note shall apply to the following REs:

- All Commercial Banks;
- All Primary (Urban) Co-operative Banks/State Co-operative Banks/Central Co-operative Banks;
- All All-India Financial Institutions (viz., Exim Bank, NABARD, NHB, SIDBI, and NaBFID); and
- All Non-Banking Financial Companies including Housing Finance Companies.

Link: [Guidance Note on Operational Risk Management and Operational Resilience](#)

**RBI UPDATE: MASTER DIRECTION – RISK MANAGEMENT AND INTER-BANK DEALINGS: AMENDMENTS.**

Standalone Primary Dealers (SPDs) have been granted authorisation under Section 10(1) of the Foreign Exchange Management Act (FEMA), 1999 pursuant to notification no. D-19 July 27, 2018. Accordingly, amendments are being made in the Master Direction to reflect the applicability of the provisions to SPDs. These amendments are placed at Annex I herewith. SPDs shall continue to comply with all applicable Directions issued by the Reserve Bank of India.

Link: [Master Direction – Risk Management and Inter-Bank Dealings: Amendments.](#)

**RBI UPDATE: MASTER DIRECTION – RESERVE BANK OF INDIA (MARGINING FOR NON-CENTRALLY CLEARED OTC DERIVATIVES) DIRECTIONS, 2024.**

RBI has issued Master Direction – Reserve Bank of India (Margining for Non-Centrally Cleared OTC Derivatives) Directions, 2024.

These Directions shall come into force on November 08, 2024.

Applicability:

- (1) The provisions of these

Directions shall apply to the following contracts, which are entered into on or after the date on which these Directions come into force:

Non-centrally cleared foreign exchange derivative contracts undertaken in terms of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification No. FEMA 25/RB-2000 dated May 3, 2000) and Master Direction – Risk Management and Inter-Bank Dealings dated July 05, 2016, as amended from time to time;

Non-centrally cleared interest rate derivative contracts undertaken in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019 (Notification No. FMRD.DIRD.20/2019 dated June 26, 2019), as amended from time to time;

Non-centrally cleared credit derivative contracts undertaken in terms of Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022 (Notification No. FMRD.DIRD.11/14.03.004/2021-22 dated February 10, 2022), as amended from time to time; and

Any other non-centrally cleared derivative (NCCD) contract as may be specified by the Reserve Bank.

(2) Genuine amendments, including the following, to an

existing derivative contract entered into before the date on which these Directions come into force ('grandfathered contract') will not qualify as a new derivative contract under these Directions:

non-material amendments that do not substantially change the terms and conditions of the contract or create any new significant exposures;

amendments made solely for the purpose of addressing benchmark reforms; and

contracts arising from novation, portfolio compression and application of standard trade maintenance processes on grandfathered contracts. Contracts resulting from compression of grandfathered contracts together with contracts which are subject to these Directions shall, however, be subject to the margin requirements under these Directions.

Link: [Master Direction – Reserve Bank of India \(Margining for Non-Centrally Cleared OTC Derivatives\) Directions, 2024](#)

## **RBI UPDATE: MARGIN FOR DERIVATIVE CONTRACTS.**

RBI has issued Directions shall be called the Reserve Bank of India (Margin for Derivative Contracts) Directions, 2024.

**Authorised Dealers may:**

- (i) Post and collect margin, in India and outside India, for a permitted derivative contract entered into with a person resident outside India and receive and pay interest on such margin; and
- (ii) Post and collect margin, in India and outside India, for derivative transactions of their overseas branches and IFSC Banking Units and receive and pay interest on such margin.

Authorised Dealer Category-I banks may post and collect margin, in India and outside India, on behalf of their customers for a permitted derivative contract entered into with a person resident outside India and receive and pay interest on such margin.

Margin posted and collected in India shall be in the form of:

- (i) Indian currency;
- (ii) Freely convertible foreign currency;
- (iii) Debt securities issued by Indian Central Government and State Governments;
- (iv) Rupee bonds issued by persons resident in India which are:

- (a) Listed on a recognized stock exchange in India; and
- (b) Assigned a credit rating of AAA issued by a rating agency registered with the Securities and Exchange Board of India. If different ratings are accorded by two or more credit rating agencies, then the lowest rating shall be reckoned.

- (v) Certificate of Deposits; and
- (vi) Commercial Papers which are assigned a minimum credit rating of A1 issued by a rating agency registered with the Securities and Exchange Board of India. If different ratings are accorded by two or more credit rating agencies, then the lowest rating shall be reckoned.

Link: [Margin for Derivative Contracts.](#)

## **RBI UPDATE: FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) (FOURTH AMENDMENT) REGULATIONS, 2024**

RBI has issued the circular for the Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024

They shall come into force with effect from the date of their publication in the Official Gazette.

### **Amendment to Regulation 7 of the Principal Regulations:**

In the Principal Regulations, in Regulation 7, after sub-regulation 5, the following new sub-regulation shall be inserted, namely:-

“6) An authorised dealer in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and / or foreign currency for the purpose of posting and collecting margin



in India, for a permitted derivative contract entered into by such person in terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020, dated October 23, 2020, as amended from time to time, subject to directions issued by the Reserve Bank in this regard.”

Link: [Foreign Exchange Management \(Deposit\) \(Fourth Amendment\) Regulations, 2024](#)

## **RBI UPDATE: INTERNAL REVIEW – INTERIM RECOMMENDATIONS – WITHDRAWAL OF CIRCULARS**

The following circular has been withdrawn:

No.	Circular No.	Date	Subject
1	DOS.No.BC.2/16.1 3.100/95	March 22, 1995	Meeting of Compliance Officers
2	DOS.No.BC.24/0 8.91.021/96	December 30, 1996	Internal Organisation and Control System
3	DOS.No.CO.PP.B C.2/11.01.016/97- 98	July 24, 1997	Compliance Officers of Banks
4	DBS.No.PP.BC.17 /11.01.005/1999- 2000	October 27, 1999	Checklist for Evaluation of Internal Inspection/ Audit
5	DBS.CO.PP.BC.3 6/11.01.005/1999- 2000	June 5, 2000	Compliance Officers of banks
6	UBD.No.POT.3/0 9.06-00/2000- 2001	July 12, 2001	Overseeing the internal audit function in Banks - Setting up of Audit Committee
7	DBS.CO.PP.BC.17 /11.01.005/2004- 05	February 1, 2005	Implementation of Risk-based internal audit (RBI) in banks

8	DBS.PP.BC1/11/01. 005/2006-07	November 16, 2006	Compliance function in banks
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Link: [Internal Review – Interim Recommendations – Withdrawal of Circulars](#)

## **RBI UPDATE: INSTRUCTIONS ON MONEY CHANGING ACTIVITIES**

Full Fledged Money Changers (FFMCs)/non-bank Authorised Dealers (ADs) Category-II may obtain their normal business requirements of foreign currency notes from other FFMCs and Authorised Dealers (ADs) in India.

It has been decided that from July 1, 2024, value of foreign currency notes sold by FFMCs / non-bank ADs Category -II to the public for permitted purposes should not be less than 75% of the value of foreign currency notes purchased from other FFMCs/ ADs, on a quarterly basis. Data of such sale and purchase should be maintained and made available for audit / inspection.

It has also been decided that FFMCs/non-bank ADs Category-II shall submit their annual audited balance sheet to the concerned Regional Office of the Reserve Bank along with a certificate from their statutory auditors regarding the NOF as on the date of the balance sheet, latest by October 31 of the year concerned.

Link: [Instructions on Money Changing Activities](#)

## **CAN PROCEEDINGS UNDER SECTION 66 OF IBC, 2016 FOR FRAUDULENT TRADING OR WRONGFUL TRADING BE INITIATED AGAINST THE THIRD PARTIES? – ROYAL INDIA CORPORATION LTD. VS. MR. NANDKISHOR VISHNUPANT DESHPANDE, RP FOR ROYAL REFINERY PVT. LTD. AND ORS. – NCLAT NEW DELHI**

### **Brief about the decision:**

#### ***Facts of the case***

- Royal Refineries Pvt. Ltd. (RRPL) was engaged in the business of Trading in Bullion i.e. importing Gold and then exporting the same after performing manufacturing activity over the imported gold. The Corporate Debtor also engaged in sale/ purchase of gold in the local market.
- In May 2019, RRPL and its associated concerns and persons were searched by the Department of Revenue Intelligence (hereinafter referred as DRI). It is stated that the business operations of the corporate debtor had virtually stopped since May 2019.
- The Corporate Debtor, Royal Refineries Pvt. Ltd. (RRPL) was admitted in CIRP by order dated 13.11.2019.
- In the application filed by the Resolution Professional under Section 66 read with Section 26 of IBC before NCLT, Mumbai, it was submitted that the transaction of Rs. 1,58,07,56,469/- between the corporate debtor and the appellant, Royal India Corporation Limited (RICL) are covered under the provisions of Section 66 of IBC, 2016.
- The Adjudicating Authority gave a finding and directions requiring the appellant herein (RICL) to return to the corporate debtor's accounts the sum of Rs. 1,19,08,05,762/- vide impugned order dated 07.1.2021. The Adjudicating Authority (AA) noted that as per the documents seized by DRI there was a balance of Rs. 1,58,07,56,469/- which was due from RIPL (the appellant herein) to the corporate debtor (RRPL).

### ***Decision of Appellate Tribunal***

#### **A. Tribunal observations**

Hon'ble NCLAT observes that:

- The Application under Section 66 of IBC was filed by the Resolution Professional before the Adjudicating Authority after perusing the records seized by Department of Revenue Intelligence (DRI) in their search action on the Corporate Debtor in May, 2019.
- No Books of Account or documents for the period from May, 2019, the time of DRI search till initiation of CIRP on 13.11.2019 were found by the Resolution Professional.

- Statutory Auditor has also stated that Books of Accounts were not made available to him to conduct statutory audit.
- The Resolution Professional had informed the CoC that there are no matching assets/inventory with the Corporate Debtor.
- Only thereafter, Application under Section 66 IBC was filed thereby showing that the Resolution Profession had complied with the Regulation 35A of CIRP, Regulation 2016.(p10.1)

### **B. Can proceedings under Section 66 of IBC, 2016 be taken against the third parties?**

- As per provisions of Section 66(1) of IBC, the Adjudicating Authority can pass an order directing “any person”, who was party to carrying on the business of Corporate Debtor in such manner as to defraud creditors of the Corporate Debtor, or for any fraudulent purpose, to make him liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. **A plain reading clearly shows that action can be taken against ‘any person’ for recovery of amount involved in the fraudulent transaction.(p10.2)**
- The finding of the Customs Department was that both the Appellant Company (RICL) and Corporate Debtor (RRPL) were being managed by Mr. Manoj Punamia. Mr. Manoj Punamia and his wife were said to be shareholders of the Appellant Company. In these circumstances, the appellant cannot be said to be a third party, as both RICL and RRPL are under the control of same person.(p10.5)
- During, the search action by DRI, documents/accounts were found which reflected that the Appellant owed Rs. 1,58,07,56,469/- to the Corporate Debtor. However, through entries, showing sale of gold to the Corporate Debtor, the outstanding amount was brought down to Rs. 31,01,83,022/-. This is a case where the outstanding of Appx. Rs. 158 Cr. was brought down to Rs. 31 Cr. by alleged entries so as to reduce the amount due to the Corporate Debtor thereby reducing likelihood of recovery, causing loss to the creditors of the Corporate Debtor.(p10.5)
- Section 66 of IBC, 2016 empowers the Adjudicating Authority to pass an order for recovery from such fraudulent transactions as contribution to the assets of the Corporate Debtor. Such action has also been upheld by Hon’ble Supreme Court in the case of Phoenix Arc (P) Ltd. vs. Spade Financial Services Ltd. (2021) ibclaw.in 03 SC. (p10.7)

### **C. Disposed of**

- No reason to interfere with the order of the Adjudicating Authority. The Appeal is accordingly dismissed. All pending Interlocutory Applications, if any, are closed. No order as to costs.(p10.9)

**SECTION 95(1) OF IBC PERMITS A CREDITOR TO FILE AN APPLICATION THROUGH A RESOLUTION PROFESSIONAL FOR INITIATING THE INSOLVENCY RESOLUTION PROCESS AGAINST PERSONAL GUARANTOR - SHRENIK ASHOKBHAI MORAKHIA VS. RELIANCE ASSET RECONSTRUCTION COMPANY LTD. AND ANR. - NCLAT NEW DELHI**

**Brief about the decision:**

***Background***

- This Appeal by a Personal Guarantor of the Corporate Debtor has been filed challenging the order passed by the NCLT, Ahmedabad Division Bench, Court No.1 by which Section 95 application filed by the Financial Creditor has been admitted.
- Learned counsel for the Appellant challenging the order submits that date of default having occurred on 04.03.2016, the application under Section 95 having been filed on 10.08.2021 is beyond the period of three years and barred by time. The three years' period stood expired on 04.03.2019 and thereafter no application under Section 95 could have been filed by the Bank. It is further submitted that the Dena Bank having already invoked the guarantee dated 25.07.2012, it could not have assigned debt to Respondent No.1. Assignment Agreement itself is invalid. The application under Section 95 deserve to be rejected since it is signed by Resolution Professional who was a proposed Resolution Professional and not an authorized officer of Respondent No.1.

***Decision of Appellate Tribunal***

**A. Issue of Limitation under Section 95 application**

- Submission of the Appellant is that the Deed of Guarantee dated 25.07.2012 was invoked by Recall Notice dated 04.03.2016, hence, three years' period of limitation ended on 04.03.2019 and application filed by the Financial Creditor on 10.08.2021 was barred by time.**(p6)**
- The notice demanded an amount of Rs.26.68 crore within 15 days from the date of notice. After issuance of notice, the Appellant has issued Declaration cum Undertaking dated **29.01.2018.(p6)**

- It is clear that said declaration contained the acknowledgement of debt of the company towards the Financial Creditor. The acknowledgment of debt in writing is sufficient to extend the period of limitation as per Section 18 of the Limitation Act. The said Declaration cum Undertaking will extend further period of three years from date of undertaking and the application under Section 95 which was filed on 10.08.2021 cannot be said to be barred by time. **(p7)**
- The Hon'ble Supreme Court by Sua Motu Writ Petition (Civil) No. 03 of 2020 has excluded the period from 15.03.2020 to 28.02.2022 and in the present case the application was filed on 10.08.2021 i.e. during the aforesaid period. The three years' period from date of Declaration cum Undertaking came to an end on 28.01.2021 i.e. within the period which was excluded by the Hon'ble Supreme Court by order passed in Sua Motu Writ Petition (Civil) No. 03 of 2020. **(p8)**

#### **B. Insolvency petition u/s 95 of IBC filed by the Financial Creditor was signed by Resolution Professional**

- Section 95(1) permits a creditor to file an application through a Resolution Professional for initiating the insolvency resolution process. Thus, the submission of application by the Financial Creditor through Resolution Professional is clearly permitted by Section 95(1). We do not find any defect in the application which was filed by the Financial Creditor through Resolution Professional i.e. Mahesh R. Sureka, who is also submitted his written consent in Form A, which is part of the application. The authorized person of the Financial Creditor has authorized the Resolution Professional to sign the application in NCLT, Ahmedabad Bench on behalf of the Financial Creditor, which document has also been brought on the record along with the appeal. **(p10)**



## **ESSENTIALLY FOR A TRANSACTION TO QUALIFY AS FRAUDULENT TRADING UNDER SECTION 66(1) OF IBC, 2016 AND WRONGFUL TRADING UNDER SECTION 66(2) OF INSOLVENCY CODE - MR. VIJENDRA KUMAR JAIN VS. MR. NITIN RAMCHANDRA JADHAV AND ORS. - NCLT MUMBAI BENCH**

### **Brief about the decision:**

The present Application is filed by the Resolution Professional under Section 66 of the Insolvency and Bankruptcy Code, 2016 against the Respondents i.e., the suspended board of directors of the Corporate Debtor based on the findings of the transaction audit report of the Forensic Auditor, M/s. Shambhu Gupta & Co.

Hon'ble Adjudicating Authority holds that a careful perusal of Section 66 of IBC, 2016 reveals that it deals with two types of transactions: Section 66(1) of IBC, 2016 deals with '**Fraudulent Trading**' and Section 66(2) of IBC, 2016 deals with '**Wrongful Trading**'.(p26)

### **A. 'Fraudulent Trading' under Section 66(1) of IBC**

Section 66(1) of IBC, 2016 imposes liability to make contribution to the assets of the Corporate Debtor on 'any persons' who were knowingly parties to the carrying on of the business with a dishonest intention to defraud the creditors. Essentially for a transaction to qualify as '**Fraudulent Trading**' under Section 66(1) of IBC, 2016, the following conditions should be satisfied:-

- (a) Liability can be fixed upon 'any person' including but not limited to the Directors;
- (b) Such business of the Corporate Debtor undergoing insolvency has been carried on with a dishonest intention to defraud the creditors or for any other fraudulent purpose; and
- (c) The said persons have participated in the carrying on of business of the Corporate Debtor knowingly i.e., with the knowledge that the transactions they were participating in were intended to defraud the creditors of the company or were in some other way fraudulent.

**All the above ingredients are required to be fulfilled so as to make a transaction fall under Section 66(1) of the IBC.**

**B. 'Wrongful Trading' under Section 66(1) of IBC**

As far as Section 66(2) is concerned, following ingredients must be satisfied before invoking the charge of '**wrongful trading**':-

- a) The act in question has taken place before the insolvency commencement date.
- b) The directors of the Corporate debtor knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP.
- c) The directors did not exercise the due diligence in minimising the potential loss to the creditors of the Corporate Debtor.
- d) A director of the Corporate Debtor shall be deemed to have exercised due diligence, if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such Director in relation to the Corporate Debtor.(p27)

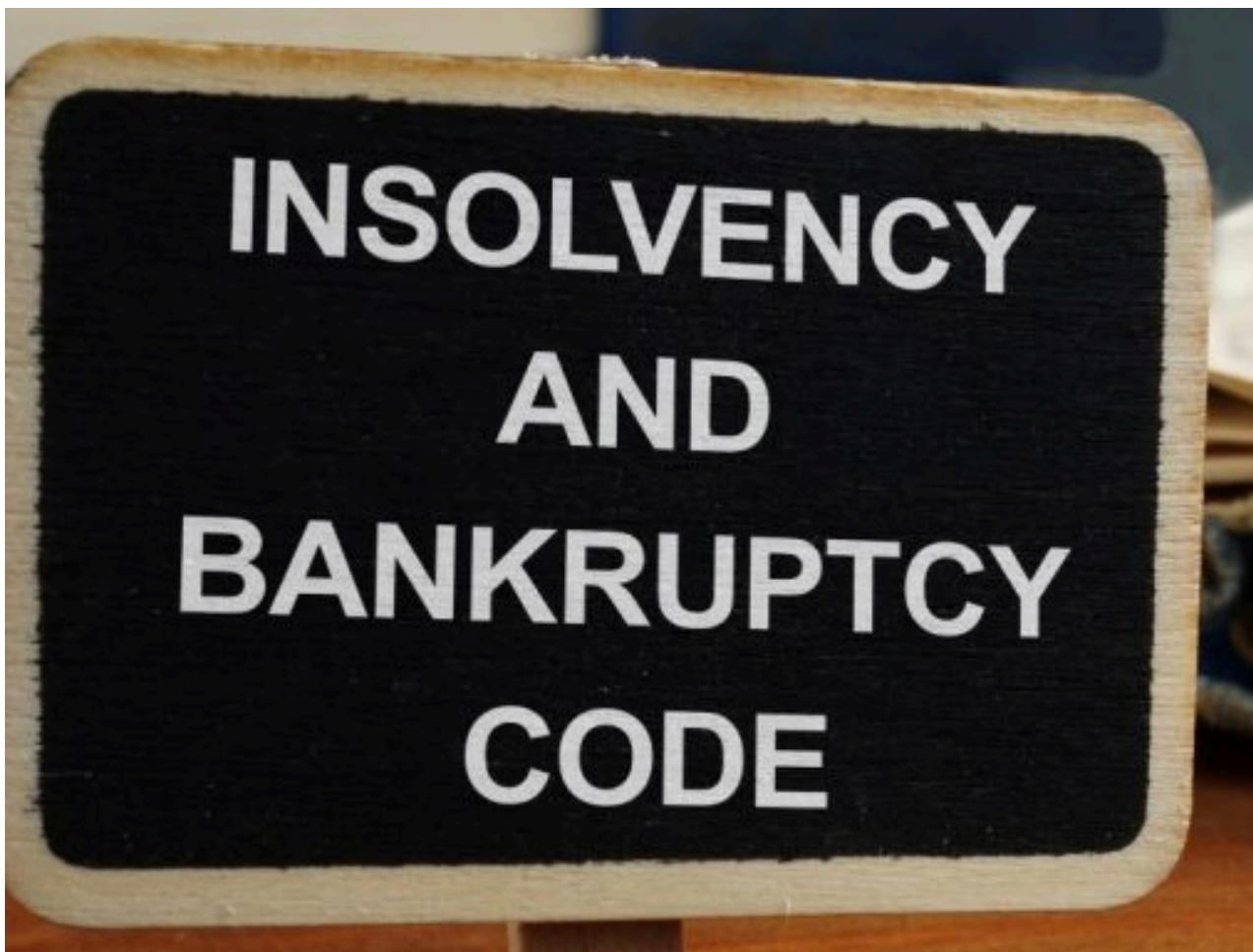
**C. Actions which constitute 'Wrongful Trading', relying English Courts' judgments**

It emerges that the definition of 'Wrongful Trading' in Section 66(2) does not clearly delineate as to which act committed by a Director of the Company would amount to 'Wrongful Trading'. It is pertinent to mention that the concept of 'Wrongful Trading' has been imported from the UK Insolvency Act, 1986 into the IBC, 2016 which is still at a nascent stage in this country. Thus, by taking a cue from the judgments rendered by the English Courts in this regard, **the following acts have been held to constitute 'Wrongful Trading'**;

- (i) Repaying the director loan made to the company while other creditors were not paid;
- (ii) Repayment of a loan to a family member;
- (iii) A director paying his own salary while the salary for the employees was not paid;
- (iv) Buying goods on credit when there is no means to pay for them;
- (v) Using customer deposits for cash-flow purposes with no means of supplying goods;
- (vi) Repaying bank personal guarantees over other creditors;
- (vii) Not keeping proper accounting records;
- (viii) Falsification of company records; and
- (ix) Any transfer or sale of assets at anything less than a fair and reasonable commercial value.(p28)

**D. Duty of Directors is towards the Creditors**

- The directors of the Corporate Debtor ought to have known that the Financial Creditor had already initiated action under SARFAESI Act for enforcement of security interest by issuing notice under Section 13(2).
- It is generally understood that the primary duty of directors is towards the shareholders. The provisions of 'wrongful trading' u/s 66(2) of IBC modifies this position and the focus of the directors shifts away from shareholders towards creditors of the company once it enters the twilight zone of insolvency. As per the report of the Bankruptcy Law Reform Committee (which was instrumental in drafting the IBC), the objective behind introducing the provision of 'wrongful trading' under IBC was to accord protection to creditors who may suffer from information asymmetry while dealing with a distressed company.(p37-38)





## **WHETHER UNSUCCESSFUL RESOLUTION APPLICANT HAVE VESTED RIGHT TO CHALLENGE ELIGIBILITY OF SUCCESSFUL RESOLUTION APPLICANT – CREATIVE CHANNEL ADVERTISING & MARKETING PVT. LTD. VS. MR. ROHIT RAMESH MEHRA AND ORS. – NCLT MUMBAI BENCH**

### **Brief about the decision:**

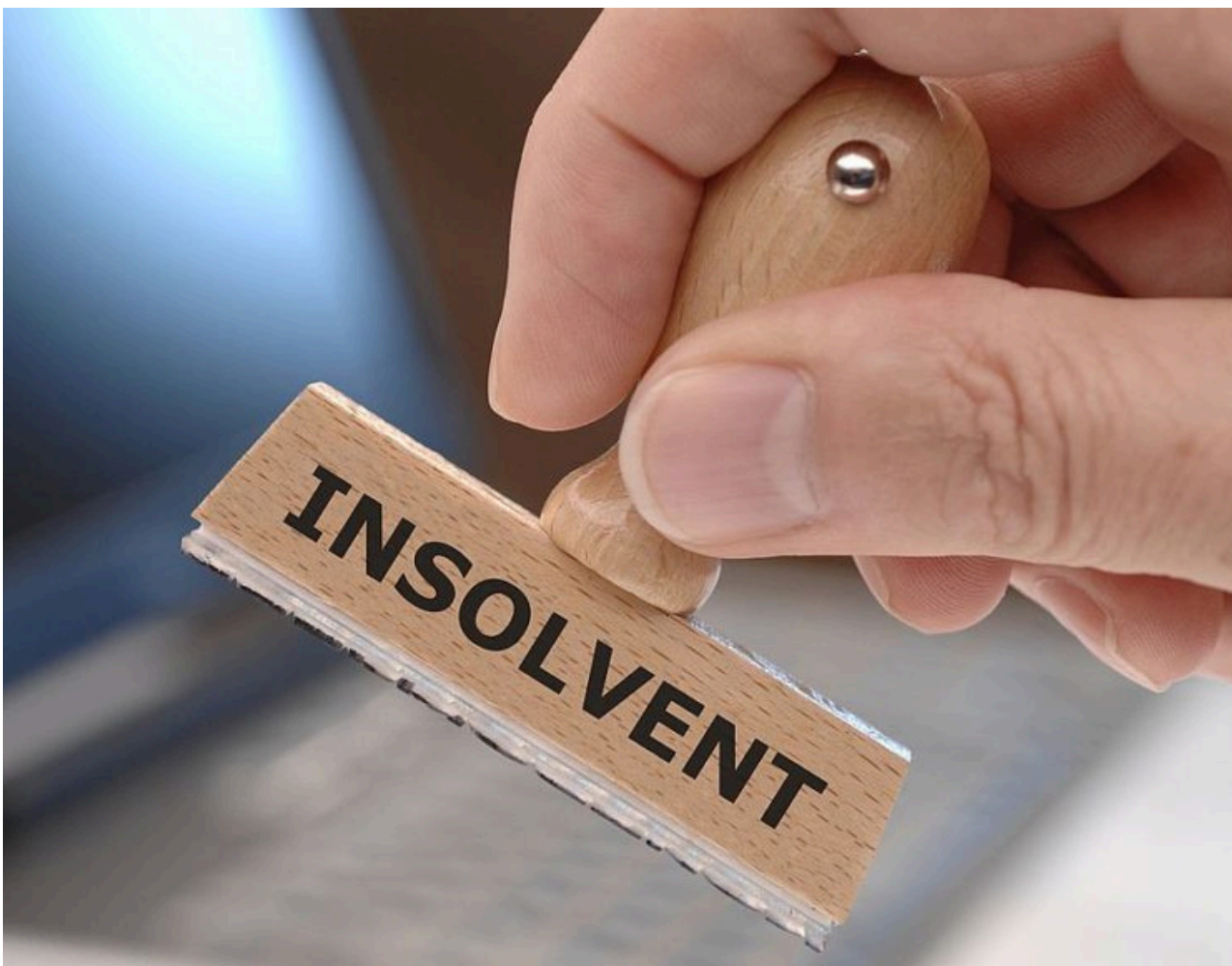
The I.A. 290 of 2024 and I.A. 614 of 2024 is filed by the Unsuccessful Resolution Applicants against the Resolution Professional, Committee of Creditors and SRA as Respondents. The contention in both the above Applications is that the Applicant on the basis of CA Certificate of 'Sachin Agarwal & Associates, a Chartered Accountant' has challenged the eligibility criteria of SRA on the basis of the threshold criteria mention in the detailed EOI, for submitting the Resolution Plan and raised allegations on the RP for his negligence and misconduct in checking the Eligibility criteria of the SRA for putting it before the COC for approval.

The Adjudicating Authority held that:

- After perusing the above Regulation, the Applicants in the present case has raised objections for the first time vide email dated 16th December 2023 whereas the provisional list was issued on 10th June 2023.
- Therefore, the bench is of the considered view that the objection by the Applicants are raised after 6 months from the date of issuance of the Provisional List, however no objection was raised within 5 days of issuance of the list. Regulation 36A (12) of the CIRP Regulations provides that RP will consider such objections and upon consideration, RP will issue the final list of PRAs to the CoC within 10 days of the last date for receipt of objections, to the committee. Therefore, the contention of the Applicant is not only belated but reliance for the objection is only on the CA certificate which is based on the half cooked information extracted from the ROC and selecting only 12 companies from the group of companies of SRA for computing its net worth.
- This bench further with respect to the above Applications considered that since the plan already stands approved by the CoC in its commercial wisdom, these belated contentions are filed after filing of the Application for the approval of the Resolution Plan by RP. Moreover, this process under the IBC is a time bound process

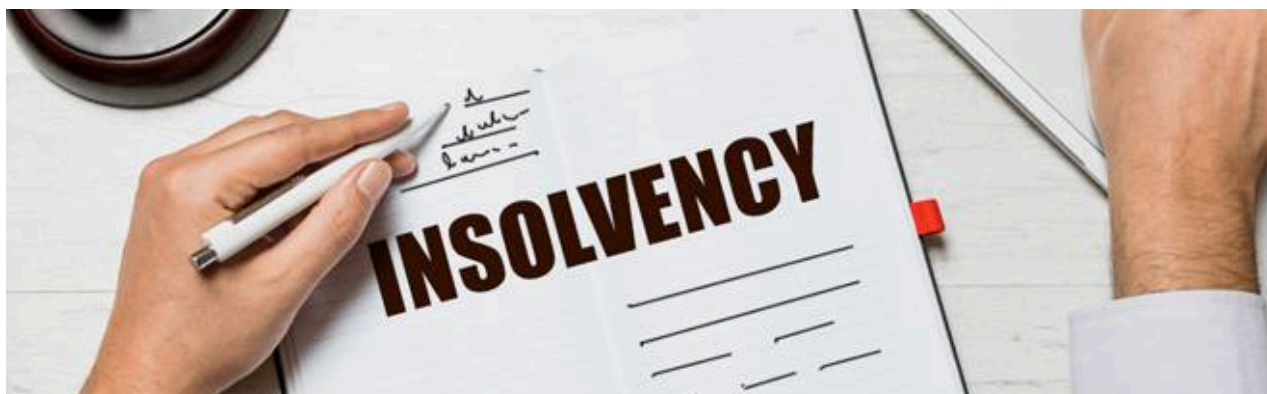
wherein the legislature and the regulator have set out specific timelines within which the process should be completed, including timelines within which PRAs can raise objections with respect to inclusion or exclusion of a PRA in the provisional list of PRAs basis the eligibility criteria. Therefore, the contentions raised thereafter are highly belated and now cannot be used to turn around and derail the process.

- This bench has relied on the judgment of the Hon'ble Apex Court in *Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. (2018)* [ibclaw.in 31 SC](#) wherein it was held as under-
  - “.....It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved....”
- Hence, relying on the above the applications are not maintainable as the unsuccessful resolution applicants have no vested right. The Plan already stands approved by the CoC in its commercial wisdom. In the light of the above discussion IA 290 of 2024 and I.A No.614 of 2024 are dismissed.



**DISPUTE WITH RESPECT TO FORGERY CANNOT BE DECIDED BY THIS ADJUDICATING AUTHORITY - MR. ABDUL WAJID PM VS. P&G ENTERPRISES PVT. LTD. - NCLT NEW DELHI BENCH****Brief about the decision:**

- The dispute with respect to forgery cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. The aforesaid summary jurisdiction of the NCLT has been affirmed in Rakesh Kumar V. Flourish Paper & Chemicals Ltd. (2023) ibclaw.in 638 NCLAT.
- This Adjudicating Authority is not expected to ascertain the veracity of documents in a summary proceeding, if the Tribunal starts adjudicating these types of issues, then the purpose of the statute of enacting speedy disposal by the mechanism will be defeated. Therefore, the Applicant may explore other legal remedies.
- Therefore, from the aforesaid observations and findings we found that –
  - I. A pre-existing dispute existed between the parties pertaining to the quality of the goods i.e., the raw material, supplied by the OC and the and the rejection of the goods manufactured from the aforesaid raw material, at the time when the section 8 notice was given.
  - II. Further, in view of the payment vouchers amounting to INR 15,06,308, the claim made by the OC also falls below the requisite threshold to initiate CIRP against the CD in the present case.
- In the light of the above, this Tribunal dismisses the present application filed by Operational Creditor. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.(p7-10)



## **COMPANY AND ITS DIRECTORS PENALIZED FOR FILING UNSIGNED FINANCIAL STATEMENTS AND ENCLOSURES BY THE ROC - A CASE STUDY**

### **Background of the case**

1. This is the case where a company named M/s Regent Professional Academy Private Limited had filed its financial statements along with other documents by way of annual filing through the Ministry of Corporate Affairs portal for the financial year 2020-21, which happened to be the time of pandemic COVID-19 period. The financial statements filed by the company were found to be unsigned by the company directors and the company's statutory auditors. As per the framework of the Companies Act 2013, the duly signed financial statements were required to be filed with the regulator, which constituted a violation of sections 134(1) and 134 (6) of the Companies Act 2013. Upon scrutinising the documents, the Ministry of Corporate Affairs, through the Office of the Registrar of Companies in Madhya Pradesh, followed the procedures of issuing a show cause notice to the company, followed by a personal hearing and passed an adjudication order for the default committed by the company and its directors. However, the company defended its default of filing the unsigned financial statements along with attachments instead of the signed version, stating that it was due to oversight, attributing to the challenges posed by the pandemic COVID-19 and other personal issues. At the time of response to the show cause notice, the company provided the signed financial statements, directors' report, and auditors' report along with their response and requested leniency due to the inadvertent nature of the error. The Adjudicating Officer did not accept the stand taken by the company and held that the company and its directors had committed the default and penalised the company and its directors to the tune of rupees four lakh rupees for the default as per the provisions of the Companies Act 2013. The order of the Adjudicating Officer was uploaded to the Ministry of Corporate Affairs website on 21st May 2024, although the order was passed by the Registrar of Companies on 26th June 2023. Let us have a brief look at this interesting case law in detail in order to understand the intricacies involved in this matter.

### **Provisions relating to this case under the Companies Act 2013.**

2. The relevant provisions pertaining to this case are section 134 of the Companies Act 2013, read with the relevant rules framed thereunder. The extracts of the relevant provisions are given below.

<b>Disclosure –illustration (cases where AOC-2 is not attached )</b>	
<b>Section</b>	<b>Provision</b>
134(1)	The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
134(2)	The auditors' report shall be attached to every financial statement
134(6)	The Board's report and any annexures thereto under subsection (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director
<b>Penal section for non-compliance / default, if any</b>	
134 (8)	If a company is in default in complying with the provisions of this section, the e company shall be liable to a penalty of three 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 134 of the Companies Act 2013 relating to signing of the financial statements by the director and the auditors of the company within the frame of the Companies Act 2013 and the related procedures to be complied with, let us go through the decided case law by the Registrar of Companies of Gwalior of Madhya Pradesh on this matter on 26th June 2023 relating to M/s. Excel Vehicles Private Limited.

**The relevant case law on this matter**

4. We shall go through the adjudication order passed by the Registrar of Companies, Gwalior on 26th June 2023 - Companies / Adjudication Officer of Gwalior of Madhya Pradesh on 26th June 2023 adjudication order bearing No. F.no.ROC/G/Adj. Pen/u.s.134(1) /Regent/780 - order under section 454 of the Companies Act 2013 for violation of section 134(1) of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 - In the matter of Companies Act 2013 and in the matter of adjudication proceeding under sub-section (1) of section 134 of the Companies Act 2013 and in the matter of M/s. Regent Professional Academy Private Limited

**Details of the company**

5. M/s. Regent Professional Academy Private Limited is a registered company under the provisions of the Companies Act, 1956 with effect from 25th May 1993 and having its registered office situated at Maina Wali Gali, Opposite Old High Court, Gwalior in the state of Madhya Pradesh. The company falls under the jurisdiction of the Registrar of Companies, Madhya Pradesh and the office of the Registrar of Companies is situated at Gwalior. The company, as per the details shown at the MCA portal has two directors on its board (husband and wife). The company provides tutorial services to the students to support and encourage them in their subjects.

**Facts of the case**

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

- (a) The company i.e., M/s Regent Professional Academy Private Limited, filed the financial statements and other documents with the Registrar of Companies for the financial year 2020-21 through the portal of the Ministry of Corporate Affairs pursuant to section 137 of the Companies Act, 2013 and sub-rule (1) of Rule 12 of Companies (Accounts) Rules, 2014.
- (b) However, the financial statements filed by the company were unsigned – i.e., without the signature of the auditor and the directors of the company. (as per the provisions of section 134 (1) of the Companies Act 2013, the financial statements were required to be signed by the

directors of the company on behalf of the board and the financials were required to accompany the auditor's report as required under 134(2) of the Act)

(c) Upon the scrutiny of the documents filed by the company, the Directorate of Ministry of Corporate Affairs observed that the company had filed the financials without the signatures of the auditor and directors.

### **Directions issued by the Regional Director (NWR) to the Registrar of Companies of Gwalior**

7. The Registrar of Companies of Gwalior received directions from the Regional Director of North Western Region vide the Directorate letter dated 21st March 2023 to initiate action against M/s Regent Professional Academy Private Limited and its directors since the company had filed its financial statements for the financial year 200-21 without the signature of the auditor and directors which constituted an offence under the provisions of the Companies Act 2013.

### **Issue of show cause notice by the Registrar of Companies / Adjudication Officer**

8. Subsequently, the Registrar of Companies / Adjudication Officer had issued show cause notice under section 134(1) & (6) of the Companies Act 2013 to the company and its directors in default vide letter dated 10th April 2023 directing the company and its directors to show cause as to why penal action could not be taken against them for the default committed by them.

### **Response from the company**

9. In response to the show cause notice issued by the Registrar of Companies the company and its directors submitted, one of the directors of the company responded to the show cause notice through a letter stating the following:-

(i) M/ s. Regent Professional Academy was a private limited with two directors – husband and wife.

(ii) The company has not taken any unsecured loan from any person outside the company.

(iii) The Financial statements were signed and accepted by the board of directors and auditor. Still, due to the conditions of COVID-19, and other personal issues, somehow the unsigned copy of the financial statements was attached in place of the signed copy.

(iv) The letter accompanied the copy of the signed financial statements and board report, and auditors report by way of an attachment along with the letter for the reference of the Registrar of Companies.

(v) The letter ended up in making a request you to consider the same and excuse for the accidental and inadvertent error occurred.

**Issue of personal hearing notice by the Adjudication Officer**

10. The Registrar of Companies / Adjudicating Officer sent out a personal hearing notice to the company and its directors in default on 13th June 2023. As per Rule 3(3) of Companies (Adjudication of Penalties) Rules 2014, the regulator fixed the personal hearing on 23rd June 2023 and directed the company and its directors to appear in front of him at his office and make the submissions.

**On the date of the personal hearing**

11. On the scheduled date of the hearing i.e. on 23rd June 2023 one of the directors of the company attended the personal hearing and furnished a written submission vide letter dated 23rd June 2023 stating the following:-

(i) M/s Regent Professional Academy was a private limited company with two directors, a husband and a wife.

(ii) The company had not taken any unsecured loan from any person outside the company.

(iii) The financial statements were signed and accepted by the board of directors and auditor, but due to the conditions that prevailed at that point of time i.e. the pandemic of COVID-19 due to which the company and its directors were also affected, and the staff had uploaded the unsigned copy of the financial statements and director report and audit report as an attachment while filing the forms with ROC with digital signatures.

(iv) The letter pointed out that a reply on the same issue was already given to the office of the Registrar of Companies on 20th April 2023 and along with the letter the company had also submitted the signed financial statements along with director report and auditor's report.

(v) The company also submitted the signed financial statements, director report, and auditor report along with the reply.

(vi) The letter ended in stating that the company and its directors be given an opportunity to rectify the mistake and upload the signed copy of financial statements and all other documents and further stated that the unsigned financial statements already uploaded had the attachment along with the statements duly signed by DSC

**Conclusions arrived by the Registrar of Companies / Adjudication Officer**

12. The Registrar of Companies / Adjudication Officer, after having considered the facts and circumstances of the case and after taking into account the factors above, concluded that the company and its directors in default were liable for penalty as prescribed under section 134(8) of the Companies Act 2013 for default made in complying with the requirements of section 134(1) of the Companies Act 2013 of the



company viz. Regent Professional Academy Private Limited and accordingly, the Adjudication Officer decided to impose a penalty as prescribed under sub-section (8) of section 134 of the Companies Act 2013.

**Order passed by the Registrar of Companies / Adjudication Officer**

13. The Registrar of Companies / Adjudication Officer in the exercise of the powers vested upon him under section 454(1) & (3) of the Companies Act, 2013 and after having considered the facts and circumstances of the case and after taking into account the factors discussed above-imposed penalty upon the company and its defaulting directors pursuant to Rule 3(12) of Companies (Adjudication of Penalties) Rules, 2014 and the proviso of the said Rule and Rule 3(13) of Companies (Adjudication of Penalties) Rules 2014 for the violation of section 134 of the Companies Act 2013. (filing the unsigned copies of the financial statements /other documents by the directors and auditors of the company)

The details of the penalty imposed on the company are shown in the table below:

Sr. No.	Violation of section of Companies Act 2013	Penalty levied upon Company/ directors	Penalty imposed
			Rupees
1	Section 134 of the Companies Act 2013 – unsigned filing of financials with ROC	Company	3,00,000
2		Director -1	50,000
3		Director -2	50,000
<b>Total Penalty</b>			<b>4,00,000</b>

- a. The Adjudication Officer was of the opinion that the penalty levied was commensurate with the failure committed by the company and its directors, and the defaulting directors were directed to remit the payment from their personal sources/income. The order further stated that the penalty imposed should 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. Any person aggrieved by the order of Adjudicating Authority under sub-section (3) of section 454 might prefer an appeal to the Regional Director having jurisdiction on this matter.

- c. The order stated that an appeal against this order may be filed in writing with the Hon'ble Regional Director, (NWR), Ministry of Corporate Affairs, Ahmedabad within a period of sixty days from the date of receipt of this order in Form ADJ (available on Ministry website mca.gov.in) setting forth the grounds of appeal. The appeal must be accompanied by a certified copy of this order. (Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014.
  
- d. The order also drew the attention of the company to the provisions of section 454(8)(i) and 454(8)(ii) of the Companies Act, 2013, which stated that in case of non-payment of penalty amount within a period of ninety days from the date of the receipt of the order, 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 does not pay the penalty within a period of ninety days from the date of receipt of the order, such officer 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**

14. The order was sent by the Registrar of Companies, Gwalior, 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 directors and to the Regional Director, North Western Region, Ministry of Corporate Affairs Ahmedabad. A copy of the order was also sent to the E- Gov cell to upload the order documents to the MCA site.

### **The complete order for reading**

15. The readers may like to read the complete adjudication order passed by the Registrar of Companies / Adjudication Officer of Gwalior of Madhya Pradesh on 26th June 2023, the adjudication order bearing No. F.no.ROC/G/Adj. Pen/u.s.134(1) /Regent/780 - order under section 454 of the Companies Act 2013 for violation of section 134(1) of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 - In the matter of Companies Act 2013 and in the matter of adjudication proceeding under sub-section (1) of section 134 of the Companies Act 2013 and in the matter of M/s. Regent Professional Academy 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 by the ROC of Gwalior on 21st May 2024 titled an adjudication order in the matter of M/s. Regent Professional Academy Private Limited)

**Conclusion**

16. As per the framework of the Companies Act, every company must file the duly signed financial statements along with the enclosures as required. In this particular case, as seen, the company and its directors were penalised to the tune of Rs.4 lakh for filing unsigned financials/attachments that were filed with the Registrar of Companies. This case clearly indicates that the company's directors, officers and KMPs need to be very careful in ensuring the required compliance without taking it lightly. Though the company had done the right thing of filing, due to some reasons or other, the company filed unsigned documents in place of signed documents, which led to the violation for which the company and its directors were penalised. Needless to mention, the company needs to put a compliance mechanism in place, and work with a checklist for ensuring absolute compliance – probably adopting the principle of "doing the first time right". Taking precautions and ensuring absolute compliance would not result in penal action, and therefore, the companies need to be very diligent and careful in ensuring the required compliance with the Acts and Rules.

**Reference**

- 1.The Companies Act 2013
- 2.Companies (Adjudication of Penalties) Rules 2014
- 3.Companies( Registration of Charges) Rules 2014
- 4.Companies (Adjudication of Penalties) Amendments Rules 2019
- 5.Adjudication order passed by the Registrar of Companies, of Gwalior of Madhya Pradesh on 26th June 2023 adjudication order bearing No. F.no.ROC/G/Adj. Pen/u.s.134(1) /Regent/780 - order under section 454 of the Companies Act 2013 for violation of section 134(1) of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 - In the matter of Companies Act 2013 and in the matter of

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