

V VEDANAM वेदनम्

Issue: August 2024

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 **August** 2024 issue.

Stay informed, educated and empowered with our comprehensive lelegal 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: LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2024

Rule No	Limited Liability Partnership Rules, 2009	Limited Liability Partnership (Amendment) Rules, 2024.	Comments
<p>Rule 37 in sub rule (1) clause (b)</p> <p>Proviso</p>	<p>for a period of one year or more and has made an application in Form 24 to the Registrar , with the consent of all partners of the limited liability partnership for striking off its name from the register, the Registrar shall send a notice to the limited liability partnership and all its partners, of his intention to strike off the name of the limited liability partnership from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice</p> <p>Provided that no such notice by Registrar shall be required under clause (b)</p>	<p>for a period of one year or more and has made an application in Form 24 to the Registrar, the Centre for Processing Accelerated Corporate Exit with the consent of all partners of the limited liability partnership for striking off its name from the register, the Registrar shall send a notice to the limited liability partnership and all its partners, of his intention to strike off the name of the limited liability partnership from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice</p> <p>Provided that no such notice by Registrar Centre for Processing Accelerated Corporate Exit shall be required under clause (b)</p>	<p>After the word "Registrar", the words "the Centre for Processing Accelerated Corporate Exit" is inserted</p>

<p>Explanation is inserted,</p>		<p>for the purposes of this sub-rule, the Centre for Processing Accelerated Corporate Exit means the office of Centre for Processing Accelerated Corporate Exit established by the Central Government, vide notification number S.O. 1269(E), dated 17th March, 2023 issued under sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013)</p>	
<p>Sub rule (3)</p>	<p>At the expiry of the time mentioned in the notice under sub-rule (1), or one month under sub-rule (2) above, the Registrar may, by an order, unless cause to the contrary is shown by the limited liability partnership, or the Registrar is satisfied that the name should not be struck off from the register, strike its name off the register, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the limited liability partnership shall stand dissolved.</p>	<p>At the expiry of the time mentioned in the notice under sub-rule (1), or one month under sub-rule (2) above, the Registrar or the Centre for Processing Accelerated Corporate Exit as the case may be may, by an order, unless cause to the contrary is shown by the limited liability partnership, or the Registrar or the Centre for Processing Accelerated Corporate Exit as the case may be is satisfied that the name should not be struck off from the register, strike its name off the register, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the limited liability partnership shall stand dissolved</p>	<p>After the word "Registrar" occurring at both places, the words "or the Centre for Processing Accelerated Corporate Exit, as the case may be" is inserted;</p>

<p>Sub- rule (4)</p>	<p>The Registrar, before passing an order under sub-rule (3), shall, where he has sufficient cause to believe that the limited liability partnership has any asset or liability, satisfy himself that sufficient provision has been made for the realisation of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time and, if necessary, obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership:</p>	<p>The Registrar, or the Centre for Processing Accelerated Corporate Exit, as the case may be before passing an order under sub-rule (3), shall, where he has sufficient cause to believe that the limited liability partnership has any asset or liability, satisfy himself that sufficient provision has been made for the realisation of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time and, if necessary, obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership:</p>	<p>After the word "Registrar" occurring at both places, the words "or the Centre for Processing Accelerated Corporate Exit, as the case may be" is inserted</p>
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Link: [Limited Liability Partnership \(Amendment\) Rules, 2024](#)

MCA UPDATE: COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2024.

(1) These rules may be called the Companies (Adjudication of Penalties) Amendment Rules, 2024.

(2) They shall come into force from the 16th day of September, 2024.

In the Companies (Adjudication of Penalties) Rules, 2014,—

(i) after rule 3, the following rule shall be inserted, namely:- “

3A. Adjudication Platform.-

(1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

(2) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1): Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.”

Link: [Companies \(Adjudication of Penalties\) Amendment Rules, 2024.](#)

MCA UPDATE: COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2024.

These rules may be called the Companies (Registration of Foreign Companies) Amendment Rules, 2024.

They shall come into force with effect from 09th day of September, 2024.

Rule	Companies (Registration of Foreign Companies) Rules, 2014.	Companies (Registration of Foreign Companies) Amendment Rules, 2024.	Comments
Rule -3 Sub rule (3)	A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the registrar Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380	A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the Registrar, Central Registration Centre” Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1)	For the word, “registrar”, the words, “Registrar, Central Registration Centre” shall be substituted

	and the application shall also be supported with an attested copy of approval torn the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.	of section 380 and the application shall also be supported with an attested copy of approval torn the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.	For the word, “registrar”, the words, “Registrar, Central Registration Centre” shall be substituted
Rule 8 sub-rule(1) New provision inserted		“Provided that the documents for registration by a foreign company referred to in sub-rule (3) of rule (3) shall be delivered in Form FC-1 to the Registrar, Central Registration Centre.”	The documents for registration by a foreign company shall be delivered in Form FC-1 to the Registrar, Central Registration Centre

Link: [Companies \(Adjudication of Penalties\) Amendment Rules, 2024.](#)



SEBI UPDATE: AMENDMENT TO CIRCULAR FOR MANDATING ADDITIONAL DISCLOSURES BY FPIs THAT FULFIL CERTAIN OBJECTIVE CRITERIA

SEBI vide Circular dated August 24, 2023 mandated additional disclosures for FPIs that fulfil objective criteria as specified in the said Circular. Further, FPIs satisfying any of the criteria listed under Para 8 of the said Circular were exempted from the additional disclosure requirements, subject to conditions specified in the said Circular. The said circular has been subsumed subsequently in the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors ("FPI Master Circular") dated May 30, 2024.

It has been decided that University Funds and University related Endowments shall not be required to make the additional disclosures as specified in Para 1(xiii) of Part C of the FPI Master Circular, subject to compliance with certain conditions. In view of the above, the FPI Master Circular stands modified as follows:

After clause (g) of Para 1(xiv) of Part C, the following shall be inserted:

"(h) University Funds and University related Endowments,

registered or eligible to be registered as Category I FPI, subject to them fulfilling the following additional conditions: i. Indian equity AUM being less than 25% of global AUM ii. Global AUM being more than INR 10,000 crore equivalent iii. Appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax."

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

Link: [Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria](#)

SEBI UPDATE: INSTITUTIONAL MECHANISM BY ASSET MANAGEMENT COMPANIES FOR IDENTIFICATION AND DETERRENCE OF POTENTIAL MARKET ABUSE INCLUDING FRONT-RUNNING AND FRAUDULENT TRANSACTIONS IN SECURITIES

AMCs shall put in place an institutional mechanism for identification and deterrence of potential market abuse including front-running and fraudulent

transactions in securities. This mechanism shall consist of enhanced surveillance systems, internal control procedures, and escalation processes such that the overall mechanism is able to identify, monitor and address specific types of misconduct, including front running, insider trading, misuse of sensitive information etc. The mechanism shall ensure the following –

Accountability

The Chief Executive Officer or Managing Director or such other person of equivalent or analogous rank and Chief Compliance Officer of the asset management company shall be responsible and accountable for implementation of the institutional mechanism for deterrence of potential market abuse, including front-running and fraudulent transactions in securities.

Alert-based surveillance mechanism:

AMCs shall develop and implement systems and procedures to generate and process alerts in a timely manner.

Link: [Institutional mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities](#)

SEBI UPDATE: VALUATION OF ADDITIONAL TIER 1 BONDS (“AT-1 BONDS”).

It has been decided that the valuation of AT-1 Bonds by Mutual Funds shall be based on Yield to Call.

For all other purposes, since liquidity risk of perpetual bonds is required to be suitably captured, deemed maturity of all perpetual bonds shall continue.

Link: [Valuation of Additional Tier-1 Bonds](#)

SEBI UPDATE: AMENDMENT TO MASTER CIRCULAR FOR INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) DATED MAY 15, 2024 - BOARD NOMINATION RIGHTS TO UNITHOLDERS OF INVITS

Market participants have requested to provide clarity on the availability of the right to nominate a director on the Board of Directors of the Investment Manager of InvIT, to a unitholder where such nomination right is also available to a unitholder in the capacity of lender to the Investment Manager or the InvIT (or its HoldCo(s) or SPVs).

It is proposed to insert the

following proviso under paragraph 22.3.1. (b) of Master Circular for Infrastructure Investment Trusts dated May 15, 2024: “Provided that the above restriction relating to the right to nominate a Unitholder Nominee Director shall not be applicable if the right to appoint a nominee director is available in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993.”

This circular shall come into force with immediate effect.

Link: [Amendment to Master Circular for Infrastructure Investment Trusts \(InvITs\) dated May 15, 2024 - Board nomination rights to unitholders of InvITs](#)

SEBI UPDATE: AMENDMENT TO MASTER CIRCULAR FOR REAL ESTATE INVESTMENT TRUSTS (REITS) DATED MAY 15, 2024 – BOARD NOMINATION RIGHTS TO UNITHOLDERS OF REITS

Market participants have requested to provide clarity on the availability of the right to nominate a director on the Board of Directors of the Manager of REIT, to a unitholder where such nomination right is also available to a unitholder in the capacity of lender to the Manager or the REIT (or its HoldCo(s) or SPVs).

It is proposed to insert the following proviso under paragraph 18.2.2. (b) of Master Circular for Real Estate Investment Trusts dated May 15, 2024: “Provided that the above restriction relating to the right to nominate a Unitholder Nominee Director shall not be applicable if the right to appoint a nominee director is available in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993.”

This circular shall come into force with immediate effect.

Link: [Amendment to Master Circular for Real Estate Investment Trusts \(REITs\) dated May 15, 2024 – Board nomination rights to unitholders of REITs](#)

SEBI UPDATE: GUIDELINES FOR BORROWING BY CATEGORY I AND CATEGORY II AIFS AND MAXIMUM PERMISSIBLE LIMIT FOR EXTENSION OF TENURE BY LVFS

It has been decided to allow Category I and Category II AIFs to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies ('drawdown amount').

Maximum permissible limit for

extension of tenure by LVFs

Existing LVF schemes who have not disclosed definite period of extension in their tenure in the PPM or whose period of extension in tenure is beyond the permissible five years, shall align the period of extension in tenure with the requirement as given at para 6 above, within three months from the date of this circular, i.e., on or before November 18, 2024.

Such LVF schemes shall update their revised period of extension in tenure in the quarterly report submitted on the SEBI Intermediary Portal (SI Portal) for the quarter ending December 31, 2024.

While realigning the period of extension in tenure, LVF schemes shall have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Such LVF schemes shall submit an undertaking to SEBI on or before November 18, 2024, stating that consent of all the investors of the scheme has been obtained for revising the original tenure.

Link: [Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs](#)

SEBI UPDATE: MODALITIES FOR MIGRATION OF VENTURE CAPITAL FUNDS REGISTERED UNDER ERSTWHILE SEBI (VENTURE CAPITAL FUNDS) REGULATIONS, 1996 TO SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012

In terms of Regulation 19X(1) of AIF Regulations, an application for seeking registration as a Migrated Venture Capital Fund shall be made to SEBI in the manner specified by SEBI. In this regard, while applying to SEBI for migration to AIF Regulations as "Migrated VCFs", VCFs shall submit the following:

Original certificate of registration issued under VCF Regulations.

Requisite information as per the format

While opting for migration to AIF Regulations, VCFs having only schemes whose liquidation period (in terms of Regulation 24(2) of VCF Regulations) has not expired, shall be subject to the following conditions -

The facility of migration to AIF Regulations shall be available till July 19, 2025. 4.2. The tenure of scheme(s) of the Migrated VCF, upon migration, shall be

determined in the following manner:

In case a definite tenure was disclosed in the Private Placement Memorandum (PPM) of the scheme(s) under the VCF Regulations, such scheme(s) shall continue with the same tenure upon migration.

In case a definite tenure was not disclosed in the PPM of the scheme(s), the residual tenure of the scheme(s) of the Migrated VCF shall be determined prior to the application for migration, with the approval of 75 percent of investors by value of their investment in the scheme(s).

Link: [Modalities for migration of Venture Capital Funds registered under erstwhile SEBI \(Venture Capital Funds\) Regulations, 1996 to SEBI \(Alternative Investment Funds\) Regulations, 2012](#)

SEBI UPDATE: CYBERSECURITY AND CYBER RESILIENCE FRAMEWORK (CSCRF) FOR SEBI REGULATED ENTITIES(RES)

Sebi has issued a detailed circular on Cybersecurity and Cyber Resilience Framework (CSCRF) for Sebi Regulated Entities (REs).

The key objective of CSCRF is to address evolving cyber threats, to

align with the industry standards, to encourage efficient audits, and to ensure compliance by SEBI REs.

Link: [Cybersecurity and Cyber Resilience Framework \(CSCRF\) for SEBI Regulated Entities \(REs\)](#)

SEBI UPDATE: AMENDMENT TO MASTER CIRCULAR FOR REAL ESTATE INVESTMENT TRUSTS (REITS) DATED MAY 15, 2024 - REVIEW OF STATEMENT OF INVESTOR COMPLAINTS AND TIMELINE FOR DISCLOSURE OF STATEMENT OF DEVIATION(S)

To improve ease of doing business related to activities of InvITs and REITs, a working group was constituted by SEBI to examine and give recommendations on ease of doing business measures ("Working Group"). The Working group, inter-alia, gave recommendations on the provisions related to the review of statements of investor complaints and timeline for disclosure of statement of deviation(s).

Review of statement of investor complaints

All complaints including SCORES complaints received by the REIT shall be disclosed in the format.

The Trustee and the Board of Directors/Governing Body of the Manager, shall review the aforementioned statement, before submission of the same to the Stock Exchange(s), and shall ensure that all investor complaints are redressed by the Manager in a timely manner.

Timeline for disclosure of statement of deviation(s)

With regard to the provisions related to the timeline for disclosure of statement of deviation(s) in the use of proceeds from the stated objects, paragraph 4.17.2 of the Master Circular reads as under:

“The statement(s) specified above, shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved. Such statement(s) shall also be placed before the Trustee and the Board of Directors/Governing Body of the Manager for review. Pursuant to such review, the statement shall be submitted to the stock exchange(s). Such submission to the Stock Exchange(s) shall be made within twenty-one days from the end of each quarter”

Link: [Amendment to Master Circular for Real Estate Investment Trusts \(REITs\) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation\(s\)](#)

SEBI UPDATE: AMENDMENT TO MASTER CIRCULAR FOR INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) DATED MAY 15, 2024 - REVIEW OF STATEMENT OF INVESTOR COMPLAINTS AND TIMELINE FOR DISCLOSURE OF STATEMENT OF DEVIATION(S)

To improve ease of doing business related to activities of InvITs and REITs, a working group was constituted by SEBI to examine and give recommendations on ease of doing business measures (“Working Group”). The Working group, inter-alia, gave recommendations on the provisions related to the review of statements of investor complaints and timeline for disclosure of statement of deviation(s).

Review of statement of investor complaints

All complaints including SCORES complaints received by the InvIT shall be disclosed in the format.

The Trustee and the Board of Directors/Governing Body of the Investment Manager, shall review the aforementioned statement, before submission of the same to the Stock Exchange(s), and shall

ensure that all investor complaints are redressed by the Investment Manager in a timely manner.

Timeline for disclosure of statement of deviation(s)

With regard to the provisions related to the timeline for disclosure of statement of deviation(s) in the use of proceeds from the stated objects, paragraph 4.17.2 of the Master Circular reads as under:

"The statement(s) specified above, shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved. Such statement(s) shall also be placed before the Trustee and the Board of Directors/Governing Body of the Investment Manager for review. Pursuant to such review, the statement shall be submitted to the stock exchange(s). Such submission to the Stock Exchange(s) shall be made within twenty-one days from the end of each quarter"

Link: [Amendment to Master Circular for Infrastructure Investment Trusts \(InvITs\) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation\(s\)](#)

SEBI UPDATE: REVIEW OF ELIGIBILITY CRITERIA FOR ENTRY/EXIT OF STOCKS IN DERIVATIVES SEGMENT.

SEBI has revised the eligibility criteria for entry and exit of stocks in the derivatives segment to ensure that only high-quality stocks with sufficient markets are allowed to trade in such segments.

To be eligible for entry into the derivatives segment, stocks must meet certain criteria based on their performance in the cash market over the previous six months on a rolling basis.

The stock's Median Quarter Sigma Order Size (MQSOS) must be at least Rs 75 lakh, revised, from the current Rs 25 lakh and the Market Wide Position Limit (MWPL) must be at least Rs 1,500 crore, increased from the present Rs 500 crore due to a rise in market capitalisation.

Additionally, the stock's Average Daily Delivery Value in the cash market has been increased to at least R 35 crore from Rs 10 crore, owing to a significant increase in the average daily delivery value.

Link: [Review of eligibility criteria for entry/exit of stocks in derivatives segment](#)

RBI UPDATE: PRUDENTIAL TREATMENT OF BAD AND DOUBTFUL DEBT RESERVE BY CO-OPERATIVE BANKS

To bring uniformity in the treatment of Bad and Doubtful Debt Reserve (BDDR) for prudential purposes, revised instructions on BDDR are being issued, as under:

- a) With effect from the FY 2024-25, all provisions as per Income Recognition, Asset Classification and Provisioning (IRACP) norms³, whether accounted for under the head "BDDR" or any other head of account, shall be charged as an expense to the P&L account in the accounting period in which they are recognised. The eligibility of such provisions for regulatory capital purposes shall continue to be as defined in the extant guidelines on capital adequacy⁴.
- b) After charging all applicable provisions as per IRACP norms and other extant regulations to the P&L Account, banks may make any appropriations of net profits below the line to BDDR, if required as per the applicable statutes or otherwise.
- c) As a one-time measure, with a view to facilitate rectification and smoother transition to an AS compliant approach, the following regulatory treatment is prescribed:
 1. Previously, banks may have created provisions required as per IRACP norms by

appropriating from the net profit rather than recognizing the same as an expense in the P&L account. The balances in BDDR as on March 31, 2024, representing such provisions as per IRACP norms (that have been created by directly appropriating from net profits instead of recognising as an expense in the P&L Account) in the previous years (hereafter referred to as 'BDDR2024') shall be identified and quantified.

2. As at March 31, 2025, to the extent of BDDR2024, an appropriation shall be made directly (i.e. 'below the line') from the P&L Account or General Reserves to provisions for NPA (i.e. liability). Such provisions shall be permitted to be netted off from GNPA's to arrive at NNPA's.
3. To the extent the balances in BDDR are not required as per applicable statute, the same can also be transferred to General Reserves/Balance in P&L Account below the line.
4. After passing the above entries, the balances in the BDDR can be reckoned as Tier 1 capital. However, balance in the BDDR shall not be reduced from Gross NPAs to arrive at Net NPAs.

This circular is applicable to all Primary (Urban) Co-operative Banks, State Co-operative Banks and Central Co-operative Banks. The instructions are applicable with immediate effect.

[Link: Prudential Treatment of Bad and Doubtful Debt Reserve by Co-operative Banks](#)

RBI UPDATE: MODIFIED INTEREST SUBVENTION SCHEME FOR SHORT TERM LOANS FOR AGRICULTURE AND ALLIED ACTIVITIES AVAILED THROUGH KISAN CREDIT CARD (KCC) DURING THE FINANCIAL YEAR 2024-25

It is advised that Government of India has approved the continuation of the Modified Interest Subvention Scheme (MISS) for the financial year 2024-25 with the following stipulations:

(i) In order to provide short term crop loans and short term loans for allied activities including animal husbandry, dairy, fisheries, beekeeping etc. upto an overall limit of ₹3 lakh to farmers through KCC at concessional interest rate during the year 2024-25, it has been decided to provide interest subvention to lending institutions viz. Public Sector Banks (PSBs) and Private Sector Banks (in respect of loans given by their rural and semi-urban branches only), Small Finance Banks (SFBs) and computerized Primary Agriculture Cooperative Societies (PACS) ceded with Scheduled Commercial Banks (SCBs), on use of their own resources. This interest subvention will be calculated on the loan amount from the date of disbursement/drawal up to the date of actual repayment of the loan by the farmer or up to the due date of the loan fixed by the banks, whichever is earlier, subject to a maximum period of one year. The applicable lending rate to farmers and the rate of interest subvention for the financial year 2024-25 will be as follows:

Financial Year	Lending rate to farmers	Rate of Interest Subvention to Lending Institutions
2024-25	7%	1.50%

Link: [Modified Interest Subvention Scheme for Short Term Loans for Agriculture and Allied Activities availed through Kisan Credit Card \(KCC\) during the financial year 2024-25](#)

RBI UPDATE: FREQUENCY OF REPORTING OF CREDIT INFORMATION BY CREDIT INSTITUTIONS TO CREDIT INFORMATION COMPANIES

It is directed that CICs and CIs shall keep the credit information collected/maintained by them updated regularly on a fortnightly basis (i.e., as on 15th and last day of the respective month) or at such shorter intervals as mutually agreed upon between the CI and the CIC. The fortnightly submission of credit information by CIs to CICs shall be ensured within seven (7) calendar days of the relevant reporting fortnight. Further, as directed vide circular dated October 26, 2023, CICs are required to ingest credit information data received from the CIs, as per their data acceptance rules, within seven (7) calendar days of its receipt from the CIs. This is now being revised to five (5) calendar days of its receipt.

CICs shall provide a list of CIs which are not adhering to the fortnightly data submission timelines to Department of Supervision, Reserve Bank of India, Central Office at half yearly intervals (as on March 31 and September 30 each year) for information and monitoring purposes.

These instructions shall be

effective from January 1, 2025. However, the CIs and CICs are encouraged to give effect to these instructions as expeditiously as feasible but not later than January 1, 2025.

Link: [Frequency of reporting of credit information by Credit Institutions to Credit Information Companies](#)

RBI UPDATE: REVIEW OF REGULATORY FRAMEWORK FOR HFCS AND HARMONISATION OF REGULATIONS APPLICABLE TO HFCS AND NBFCS

HFCs accepting public deposits are subject to more relaxed prudential parameters on deposit acceptance as compared to NBFCS. Since the regulatory concerns associated with deposit acceptance are same across all categories of NBFCS, it has been decided to move HFCs towards the regulatory regime on deposit acceptance as applicable to deposit-taking NBFCS and specify uniform prudential parameters as prescribed under Master Direction – Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016. Accordingly, the revised regulations as stated would be applicable to HFCs accepting or holding public deposits.

Safe Custody of Liquid Assets

It has been decided that the

regulations on safe custody of liquid assets for HFCs shall be aligned with those of NBFCs in the interest of harmonization of regulations. Accordingly, the instructions contained in para 33 of Master Direction – Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 on Safe Custody of Liquid Assets / Collection of Interest on SLR Securities shall, mutatis-mutandis, be applicable to deposit taking HFCs; and the existing regulations on Safe custody of approved securities as contained in para 40 of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 shall stand repealed.

Full cover for public deposits

HFCs shall ensure that full asset cover is available for public deposits accepted by them at all times in terms of para 42.1 of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021. Henceforth, it would be incumbent upon the HFC concerned to inform NHB in case the above asset cover falls short of the liability on account of public deposits.

Accounting Year

With regard to the accounting year, all HFCs are required to prepare their financial statements for the year ending on the 31st day of March. It has been decided that HFCs shall

finalise their balance sheet within 3 months from the date to which it pertains. Further, whenever an HFC intends to extend the date of its balance sheet as per the provisions of Companies Act, it shall take prior approval of NHB before approaching Registrar of Companies (RoC) for this purpose. In cases where NHB and RoC grants extension of time, the HFC shall furnish to NHB a proforma balance sheet (unaudited) as on March 31 of the year and the returns due on the said date.

Link: [Review of regulatory framework for HFCs and harmonisation of regulations applicable to HFCs and NBFCs](#)

RBI UPDATE: REVIEW OF RISK WEIGHTS FOR HOUSING FINANCE COMPANIES (HFCS)

It has been decided to carry out the following modifications:

(i) Risk weighted assets for undisbursed amount of housing loans/other loans – In order to address a potential anomaly in computation of risk weighted assets for undisbursed amount of housing loans/other loans vis-à-vis that for an equivalent disbursed amount of similar exposures, it has been decided that the risk weighted assets computed for undisbursed amount of housing loans/other loans as per step 1 and step 2 of

(ii) Risk weight for Commercial Real Estate – Residential Building – With reference to Sr. No. 3(d)(i)(a) under paragraph 6.2, the risk weight of fund-based and non-fund based exposures to ‘Commercial Real Estate-Residential Building’, which are classified as standard, shall be 75 per cent. For exposures under this category, which are not classified as standard, the risk weight shall be as per the category ‘Other Assets (Others)’ as indicated at Sr. No. 6(d) of paragraph 6.2 of the Master Direction *ibid* (which presently is at 100 per cent).

Link: [Review of Risk Weights for Housing Finance Companies \(HFCs\)](#)

RBI UPDATE: REVIEW OF MASTER DIRECTION – NON-BANKING FINANCIAL COMPANY – PEER TO PEER LENDING PLATFORM (RESERVE BANK) DIRECTIONS, 2017

It has been observed that some of these platforms have adopted certain practices which are violative of the said Directions. Such practices include, among others, violation of the prescribed funds transfer mechanism, promoting peer to peer lending as an investment product with features like tenure linked assured minimum returns,

providing liquidity options and at times acting like deposit takers and lenders instead of being a platform. Such violations, when observed, have been dealt with bilaterally by the Reserve Bank of India for remediation.

It has been decided to elaborate and clarify certain provisions with some modifications for proper implementation of the Directions.

Link: [Review of Master Direction – Non-Banking Financial Company – Peer to Peer Lending Platform \(Reserve Bank\) Directions, 2017](#)

RBI UPDATE: PROCESSING OF E-MANDATES FOR RECURRING TRANSACTIONS

It has been decided to include auto-replenishment of FASTag and NCMC, as and when the balance falls below a threshold set by the customer, under the e-mandate framework. Payments for auto-replenishment, since they are recurring in nature but without any fixed periodicity, will be exempt from the requirement of pre-debit notification.

Link: [Processing of e-mandates for recurring transactions](#)

RBI UPDATE:
IMPLEMENTATION OF
SECTION 51A OF UAPA, 1967:
UPDATES TO UNSC'S
1267/1989 ISIL (DA'ESH) &
AL-QAIDA SANCTIONS LIST:
AMENDMENTS IN OI ENTRY

Ministry of External Affairs (MEA), Government of India has informed about the UNSC press release SC/15800 dated August 23, 2024 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities removed the entry below from the ISIL (Da'esh) and Al-Qaida Sanctions List after concluding its consideration of the de-listing request for this name submitted through the Office of the Ombudsperson established pursuant to Security Council resolution 1904 (2009), and of the Comprehensive Report of the Ombudsperson on this de-listing request.

A. Individuals

QDi.070 Name: 1: YASSINE 2: CHEKKOURI 3: na 4: na

Name (original script): ياسين شكوري

Title: na **Designation:** na **DOB:** 6 Oct. 1966 **POB:** Safi, Morocco **Good quality**

a.k.a.: na **Low quality a.k.a.:** na **Nationality:** Morocco **Passport no:** Morocco number

F46947 **National identification no:** Morocco H-135467

In accordance with paragraph 58 of resolution 2610 (2021), the Committee has made accessible on its website the narrative summaries of reasons for listing of the above entries at the following URL:

www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries.

Press release dated August 23, 2024 regarding the above can be found at <https://press.un.org/en/2024/sc15800.doc.htm>

Further, the UNSC press releases concerning amendments to the list are available at URL: <https://www.un.org/securitycouncil/sanctions/1267/press-releases>

The details of the sanction measures and exemptions are available at the following URL: https://www.un.org/securitycouncil/sanctions/1267#further_information

In view of the above, REs are advised to take appropriate action in terms of Section 51 of the MD on KYC and strictly follow the procedure as laid down in the UAPA Order dated February 02, 2021 (amended on August 29, 2023) annexed to the MD on KYC.

Updated lists of individuals and entities linked to ISIL (Da'esh), Al-Qaida and Taliban are available at:

www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list
<https://www.un.org/securitycouncil/sanctions/1988/materials>

Further, as per the instructions

from the Ministry of Home Affairs (MHA), any request for de-listing received by any RE is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration. Individuals, groups, undertakings or entities seeking to be removed from the Security Council's ISIL (Da'esh) and Al-Qaida Sanctions List can submit their request for delisting to an independent and impartial Ombudsperson who has been appointed by the United Nations Secretary-General. More details are available at the following URL:

<https://www.un.org/securitycouncil/ombudsperson/application>

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

Link: [Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/1989 ISIL \(Da'esh\) & Al-Qaida Sanctions List: Amendments in O1 Entry](#)

RBI UPDATE: INTEREST EQUALIZATION SCHEME (IES) ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT

Government of India, vide Trade Notice dated June 28, 2024 read with Trade Notice dated July 10, 2024 has allowed for an extension of the Interest Equalization Scheme for Pre and Post

Shipment Rupee Export Credit ('Scheme') up to August 31, 2024. The extension takes effect from July 1, 2024 and ends on August 31, 2024.

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

1. Eligibility of borrowers: With effect from July 1, 2024, only MSME Manufacturer exporters would be eligible under the Scheme. Hence, the Scheme benefits will not be available to non-MSME exporters, and such claims are not to be entertained beyond June 30, 2024.
2. Cap on subvention amount: The interest equalization will be capped at ₹1.66 Crore per Importer-Exporter Code (IEC) for the aforesaid extended period of the scheme.

Link: [Interest Equalization Scheme \(IES\) on Pre and Post Shipment Rupee Export Credit](#)

RBI UPDATE: SCHEME FOR TRADING AND SETTLEMENT OF SOVEREIGN GREEN BONDS IN THE INTERNATIONAL FINANCIAL SERVICES CENTRE IN INDIA

The Scheme shall apply to investments in Sovereign Green Bonds issued by the Government of India by eligible investors in the IFSC in India.

Eligible investors

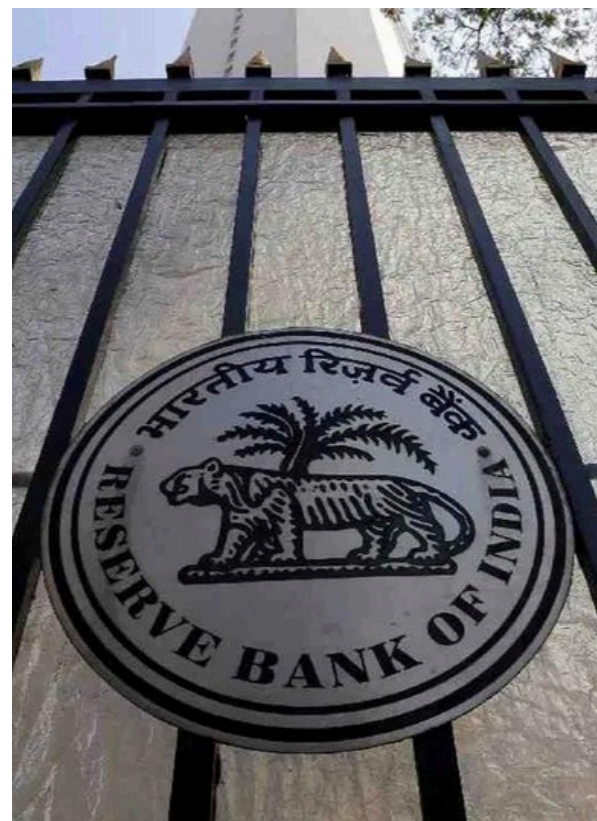
The following persons will be eligible to participate in the Scheme (hereinafter referred to as 'investors') as specified in para 6(a):

1. Persons resident outside India as defined in Section 2(w) of the FEMA, 1999, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in High-Risk Jurisdictions subject to a Call for Action as identified by FATF; and
2. An IBU of a foreign bank which does not have a branch or subsidiary licensed to undertake banking business in India.
3. Persons resident outside India as treated under Foreign Exchange Management (International Financial Services Centre) Regulations, 2015, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in High-Risk Jurisdictions subject to a Call for Action as identified by FATF provided that such persons are not a branch, joint venture, subsidiary or trust of an entity incorporated in India.

However, funds / schemes, including the ones setup by entities incorporated in India, regulated by IFSCA under the IFSCA (Fund Management) Regulations, 2022 shall be considered as eligible investors under the Scheme.

The Scheme shall come into force with immediate effect.

Link: [Scheme for Trading and Settlement of Sovereign Green Bonds in the International Financial Services Centre in India](#)



IBBI UPDATE: GENERATION OF VALUATION REPORT IDENTIFICATION NUMBER FOR VALUATION CONDUCTED BY REGISTER VALUER UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

It has been decided to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the Code.

Accordingly, an online module, in consultation with Registered Valuers Organisations, has been developed by IBBI. The module has been hosted on the IBBI website at <https://www.ibbi.gov.in>. The RV/RVE shall access the module with the login credentials already provided by the IBBI. Before the submission of a valuation report, the respective RV/RVEs shall generate a unique VRIN for each valuation report. The RV/RVE shall mention the VRIN on the front page of the valuation report.

The circular shall be applicable to all the cases where the date of valuation report is on or after the date of this circular. The IPs shall not accept any valuation reports without VRIN in all such cases.

Link: [Generation of Valuation Report Identification Number for valuation conducted by Register Valuer under Insolvency and Bankruptcy Code, 2016](#)



IBC CASE LAW: CAN THE RESIDUAL ASSETS OF THE CORPORATE DEBTOR BE SOLD ON A GOING CONCERN BASIS UNDER REGULATION 32A OF THE LIQUIDATION PROCESS REGULATIONS, 2016? - MR. RAVINDRA CHATURVEDI, LIQUIDATOR OF EXCEL GLASSES LTD. - NCLT KOCHI BENCH**Brief about the decision:*****Facts of the case***

- The Tribunal vide its Order dated 21.10.2019 ordered for Liquidation of the Corporate Debtor and had consequently appointed this Applicant as the liquidator of the Corporate Debtor.
- The Corporate Debtor had 6 Blocks of Assets that were available for liquidation.
- The sale of all blocks of assets has been completed except the sale is in process for one asset block for which a successful bid has been received in the 22nd auction held on 19.06.2024. The entire blocks of assets of the Corporate Debtor have been successfully sold by the liquidator and all that is left is to complete the registration process for the immovable properties sold via e-auction and the last block.
- After obtaining permission from this Tribunal, the Applicant has proceeded with the distribution of proceeds of the sale of assets, whereby the admitted claims of secured financial creditors, namely KSIDC and KFC, and of Workmen and employees have been settled in full and admitted claims of unsecured financial creditors have been settled to the extent of about 39%.
- In the process of completion of the CIRP, the Applicant has received interest from over 10 interested parties expressing their willingness to purchase the Corporate Debtor as a going concern without tangible assets. This is preliminary since the Corporate Debtor is a BSE-listed company and is considered to have value. However, the offers that were put forth for the same were vague and insubstantial ranging from 10 Lakhs to 50 Lakhs. The Applicant thereafter appointed two IBBI registered valuers to determine a realizable value for the present company.
- The members of SCC unanimously agreed to keep the reserve price at Rs. 50 lakhs for the sale of Corporate Debtor as a going concern.
- The application has been filed under Section 60(5) of IBC,2016 read with Rule 11 of the NCLT Rules, 2016 by the Liquidator in the matter of Excel Glasses Limited, seeking the relief to consider granting permission to the applicant herein for the sale of the Corporate Debtor as a going concern in terms of Regulation 32A of Liquidation Process Regulations, 2016 as per the E-Auction process Memorandum approved by the SCC.

Issues

- i. Is this Interlocutory Application maintainable after the expiry of 90 days of liquidation of the Corporate Debtor?
- ii. Can the residual assets of the Corporate Debtor be sold on a going concern basis under Regulation 32A of the Liquidation Process Regulations, 2016?

Decision of the Adjudicating Authority**A. Is this Interlocutory Application maintainable after the expiry of 90 days of liquidation of the Corporate Debtor?**

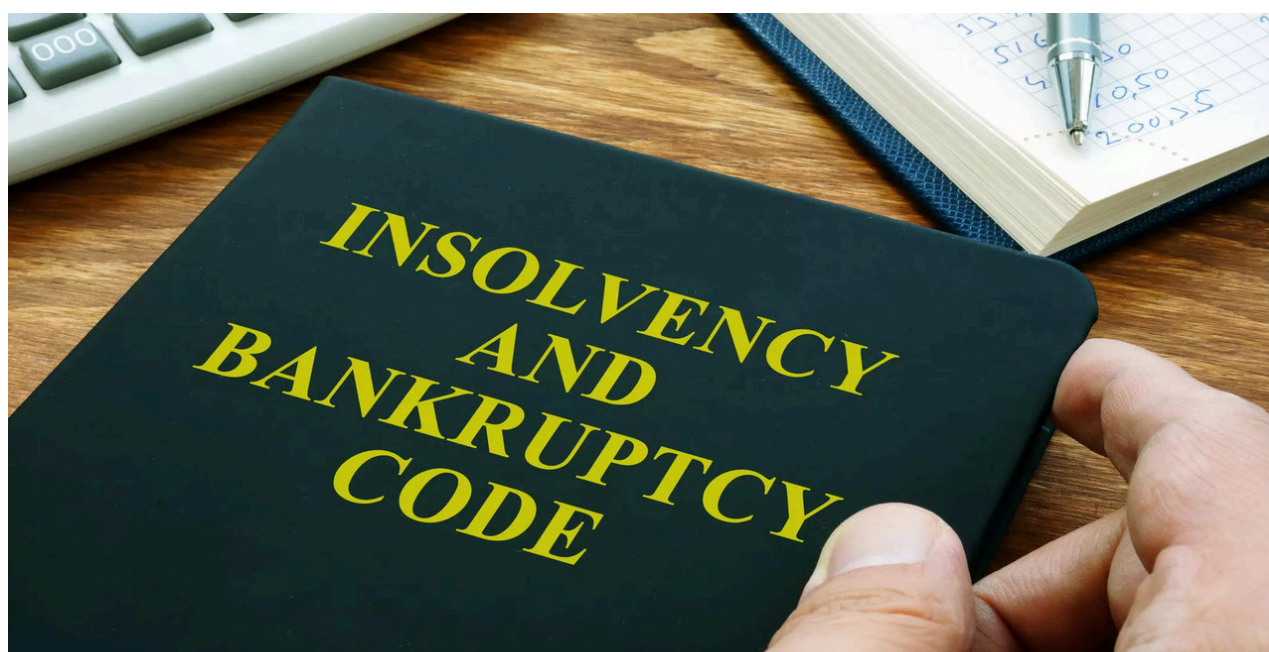
- A substantial amount of assets of the Corporate Debtor were sold after the commencement of the Liquidation of the Corporate Debtor.
- The 90 days specified for sale as a going concern under Regulation 32A has already expired and that the Liquidator has already sold a few assets of the Corporate Debtor.
- In the circumstances mentioned above, we have gone through the settled law decided by the NCLT Hyderabad Bench in SREI Equipment Finance Ltd v Viswa Infrastructures and Services Pvt. Ltd. (2021) ibclaw.in 35 NCLT.
- Taking into consideration the facts and circumstances of the instant case along with Regulation 32 read with 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 it is clear that the Liquidator should have made all such endeavours to first sell the assets of the Corporate Debtor under Regulation 32(e) or (f) as such exclusively only at the first auction. However, perusing the instant application, it is seen that the Liquidator has sold a few properties and is now pursuing the present application for sale as a going concern. The case above law is persuasive because those are from a similar bench of the National Company Law Tribunal and hence, the same is not binding on this Adjudicating Authority.
- Therefore, this application is maintainable.

B. Can the residual assets of the Corporate Debtor be sold on a going concern basis under Regulation 32A of the Liquidation Process Regulations, 2016?

- The word going concern is not defined in IBC/ the Liquidation Regulations. However we rely on the Note of the Insolvency and Bankruptcy Board of India according to one round table of the Insolvency and Bankruptcy Board of India held with stakeholders on 21.05.2018, wherein the word going concern is described as “Going

Concern means all the assets, tangibles or intangibles and resources needed to continue to operate independently a business activity which may be whole or a part of the business of the corporate debtor without values being assigned to the individual asset or resource.”.

- On perusal of the above and further reliance placed on Regulations 32 and 32A of the Liquidation Process Regulations, 2016, the present Corporate Debtor, bereft of assets and dismissed of employees, would not serve the interest of the Corporate Debtor to be sold as a going concern.
- The sale as a going concern provided in extant regulation means that the Corporate Debtor could be put into operation with all the essential resources available for it to carry on the business activity.
- Accounting Standard 1 clarifies *“The enterprise is normally viewed as a going concern that is as continuing operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidating or curtailing materially the scale of the operation”.*
- In the instant case, the Corporate Debtor is under liquidation proceedings and all the key assets of the business has been sold already. The nothing left for the Corporate Debtor to carry out the business and selling the skeleton of the Corporate Debtor.
- Being a listed entity would lead to misuse of the Corporate Debtor and therefore the appropriate cause of action will thus be auctioning the sale of the asset on an individual basis and subsequently dissolution.
- Therefore, we are of the view that this application IA(IBC)/307/KOB/2024 is to be dismissed.



IBC CASE LAW: WHETHER AN APPLICATION UNDER SECTION 12A OF IBC FOR WITHDRAWAL OF THE CIRP CAN BE FILED AFTER COMMENCEMENT OF THE LIQUIDATION PROCEEDINGS? – ASHA CHOPRA AND ORS. VS. HIND MOTORS INDIA LTD. AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- CIRP of the Corporate Debtor M/s. Hind Motors India Ltd., commenced by an Order dated 09.03.2017 passed under Section 10 of the IBC on an Application filed by the Corporate Debtor itself.
- On 12.09.2017, an Order of Liquidation was passed by the Adjudicating Authority.
- The Promoter and former Director (Respondent No. 2) challenged the Liquidation Order, which Appeal was dismissed by this Tribunal on 26.04.2018.
- In the Liquidation Proceeding, Liquidator issued an e-Auction Notice.
- Former Director filed an application seeking stay of the sale on the ground that the Scheme under Section 230 of the Companies Act, 2013 has been submitted by the former Director which needs to be considered.
- The application of the Former Director was rejected on 23.08.2019 and against which Order an appeal was filed which too was dismissed on 13.04.2021, reported in (2021) ibclaw.in 203 NCLAT, relying on the Judgment of the Hon'ble Supreme Court in the matter of Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. & Anr. (2021) ibclaw.in 46 SC.
- The Appellant who claimed to be depositors of the Corporate Debtor has filed an application on 24.05.2021, under Section 12A of the Code. I.A. No. 336/2021 was filed by the Appellant before the Adjudicating Authority under Section 12A seeking a direction to the Liquidator to call the Meeting of the Committee of Creditors (CoC) in terms of Regulation 30A and to consider the application dated 24.05.2021 submitted by the Applicant under Section 12A.
- Adjudicating Authority vide Order dated 31.05.2024 rejected I.A. No. 336/2021 filed by the Appellant holding that Application is not maintainable under 12A. Adjudicating Authority has also further observed that the Applications I.A. No. 336/2021 has been filed by the Appellant at the instance of the ex-Director of the Corporate Debtor, Mr. Ashish Mohan Gupta, since as per Form-FA, the Guarantees being offered by Mr. Ashish Mohan Gupta. Adjudicating Authority has observed that Application filed by the Appellant under the Guarantee of Mr. Ashish Mohan Gupta, who himself is barred under

Questions

- (i) Whether an application under Section 12A of IBC for withdrawal of the CIRP can be filed after commencement of the Liquidation Proceedings?
- (ii) Whether in the facts of the present case, when the Liquidation commenced on 12.09.2017, it was obligatory for the Liquidator to constitute the SCC as per the Regulation 31A inserted in Liquidation Regulation with effect from 25.07.2019.

Decision of the Appellate Tribunal**A. Is an application under Section 12A of IBC permissible during Liquidation period?**

- Liquidation commenced on 12.09.2017. Section 12A itself contemplates withdrawal of the Application with the approval of the 90% voting share of the CoC in such manner as may be prescribed. **The CoC exist till continuation of the CIRP and after the Order passed under Section 33 for Liquidation, the CoC does not continues so as to take a decision for withdrawal of an Application under Sections 7, 9 & 10.** The Statutory Scheme of IBC thus clearly contemplates that withdrawal of Application is permissible only during CIRP period with the approval of 90% vote shares of the CoC. The Scheme of Liquidation and the Liquidation Regulations do not contemplate any withdrawal under Section 12A.
- Thus, in the Liquidation Process, Compromise or Arrangement is contemplated as per Regulation 2B which clearly negates the submission of the Appellant that withdrawal is permissible only under Section 12A.
- In view of the clear Statutory Scheme as delineated by 12A, Section 33 and Regulation 2B of the Liquidation Regulation, the Hon'ble Bench is of the view that **during Liquidation period, an Application under Section 12A is not permissible.**
- In the facts of the present case, it is clear that former Director of the Corporate Debtor, Ashish Mohan Gupta, himself has challenged the Liquidation Order and also sought to submit a Scheme which were all rejected up to this Tribunal. The Application which has been filed by the Appellant No. 1 under Section 12A was filed after more than three years from Liquidation commencement, which was at the instance of the former Director Aashish Mohan Gupta, which has been clearly noticed by the Adjudicating Authority in the Impugned Order.

B. V. Navaneetha Krishnan v. Central Bank of India, Coimbatore and Anr. Case

- The observations made in Paragraph 5 by this Tribunal in *V. Navaneetha Krishnan v. Central Bank of India, Coimbatore and Anr. (2018) ibclaw.in 298 NCLAT*, where in the facts of the said case,

where a Plan was already submitted on 178th day. The Court, however, dismissed both the Appeals but made an observation which is relied by the Appellant in Paragraph 5 that *“in view of Section 12A, even during the Liquidation period, if any person, not barred under Section 29A satisfy the demand of CoC then such person may move before the Adjudicating Authority by giving the offer which may be considered by the CoC”*.

- **The above observation made by this Tribunal has not taken the Statutory Scheme which is delineated by Section 12A and Section 33 of the IBC Code.** Liquidation Regulations 2016 which provides for Compromise and Arrangement has also not been placed before this Tribunal in the above case. **The Hon’ble NCLAT does not subscribe to the observation made by the Tribunal in Paragraph 5 that even during Liquidation period, any person can make an Application under 12A.**

C. When the Liquidation commenced on 12.09.2017, it was obligatory for the Liquidator to constitute the SCC as per the Regulation 31A inserted in Liquidation Regulation with effect from 25.07.2019

- The Liquidation commencement date in the present case is 12.09.2017. The provision for constitution of SCC was inserted in IBBI (Liquidation Process) Regulations, 2016, by Notification dated 25.07.2019 with effect from 25.07.2019, which required the Liquidator shall constitute the SCC. An explanation to Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, has been inserted by Notification dated 08.04.2022 with effect from 20.04.2022, which explanation is clarificatory explanation, clarifying the ambit and scope of Regulation 31A.
- Moreover, when we look into the Scheme of IBC, SCC, which is required to be constituted within 60 days from the Liquidation commencement date is not a possibility in the facts of the present case. Statute never contemplate performance of impossible act, in the present case when Liquidation has commenced on 12.09.2017, there is no question of constitution of the SCC within 60 days from Liquidation commencement date.
- **From bare look into the statutory provision, it is clear that Regulation 31A did not require constitution of SCC with regard to the Liquidation which has commenced years ago from the provision for SCC came into the Regulation.**

Disposed of

The Hon’ble NCLAT thus does not find any error in the Order passed by the Adjudicating Authority, rejecting the Applications filed by the Appellant. There is no merit in the Appeals. The Appeals are **dismissed**.

IBC CASE LAW: WHETHER EX-DIRECTOR WHO HAS RESIGNED PRIOR TO INITIATION OF CIRP CAN BE HELD TO BE A SUSPENDED DIRECTOR AND IS ENTITLED FOR THE COPY OF RESOLUTION PLAN AND OTHER RELEVANT DOCUMENTS? – JAGDISH VALECHA VS. ANURAG KUMAR SINHA, RP OF VALECHA ENGINEERING LTD. AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- Appellant was Director of M/s. Valecha Engineering Ltd. (Corporate Debtor) who resigned on 19.11.2019.
- By Order dated 21.10.2022, Adjudicating Authority initiated CIRP on application filed by SBI under Section 7 of the IBC against the Corporate Debtor.
- The Resolution Plan submitted by JK Solutions Pvt. Ltd. in consortium with One Media Facility Management was approved with 97.54% vote of the CoC on 25.11.2023 and RP filed I.A. No. 5819/2023, praying for approval of the Resolution Plan.
- I.A. No. 910/2024 was filed by the Appellant, ex-Promoter and ex-Director and guarantor of the Corporate Debtor.
- Another I.A. No. 2519/2024 was filed by the Appellant before the Adjudicating Authority which is referred as Fixed Deposit (FD) Application in which Applicant pleaded that during the period April 2014 to April 2018, Corporate Debtor had submitted various FD receipts to the Officer of the Executive Engineer by way of Performance Guarantee. The Executive Engineer authorised the refund of the FD vide letter dated 23.11.2019.
- Applicant's case in the Application was that he does not have access to any document or copies of all papers necessary pertaining to the Corporate Debtor. Applicant by the Application has sought copy of the Resolution Plan as approved by the CoC of the Corporate Debtor.
- The Adjudicating Authority has rejected the I.A. No. 2519/2024, by Order dated 25.06.2024 and by a separate Order of the same day allowed the I.A. filed by the RP for approval of the Plan and rejected I.A. No. 910/2024 filed by the Appellant.

Decision of the Appellate Tribunal

A. Whether Ex-Director who has resigned prior to initiation of the CIRP can be held to be a Suspended Director and is entitled for the copy of the Resolution Plan and other relevant documents?

- The Appellant was the ex-Director of the Corporate Debtor who

resigned on 19.11.2019, i.e., almost about three years prior to initiation of the CIRP, which was initiated on 21.10.2022.

- Vijay Kumar Jain v. Standard Chartered Bank and Ors. (2019) ibclaw.in 24 SC was a case where the Appeal was filed in the Hon'ble Supreme Court by Appellant who was Member of the Suspended Board of Directors. In the above case also the prayer of the Vijay Kumar Jain for direction to the RP to provide relevant documents including the Resolution Plan was rejected by the NCLT. Appellant was Member of the Suspended Board of Director and was given Notice in the agenda for the first CoC Meeting which was to be held on 12.01.2018. As per Section 24(3) of the IBC, Notice is mandatory to Members of the Suspended Board of Directors.
- The Hon'ble Supreme Court in Vijay Kumar Jain (2019) ibclaw.in 24 SC after elaborately considering all the relevant statutory provisions of the IBC as well as the CIRP Regulations 2016 has held that Members of the Suspended Board of Directors are entitled for copy of the Resolution Plan. Hon'ble Supreme Court has also held that expression "documents" is a wide expression which would certainly include the Resolution Plans.
- The law laid down by the Hon'ble Supreme Court in the above Judgment is very clear that Members of the Suspended Board of Directors who may also be Guarantors of the Corporate Debtor are entitled to receive all relevant documents, including the Resolution Plan.
- A perusal of the Regulation 21(3) of the CIRP Regulations clearly indicates that Notice of the Meeting shall contain copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the Meeting.
- It is not the case of the Appellant that Appellant was issued Notice for participating in the Meeting of the CoC as required by the provisions of the IBC. **Appellant has resigned more than two years prior to initiation of the CIRP and cannot be held to be a Suspended Director.**
- **Suspended Directors are Directors whose power to act as Directors are suspended by virtue of initiation of CIRP. Suspended Directors may include those Directors of the Corporate Debtor who were working in such capacity on the date of initiation of the CIRP.**
- The Hon'ble NCLAT, thus is of the view that Judgment of the Hon'ble Supreme Court in Vijay Kumar Jain (2019) ibclaw.in 24 SC, in no manner help the Appellant to seek a direction from Adjudicating Authority to receive the copy of the Resolution Plan and other relevant information. Adjudicating Authority did not commit any error in rejecting the I.A. No. 910/2024.
- The Appellant cannot be allowed to challenge the approval of the Resolution Plan by the Adjudicating Authority, which stood

approved by the CoC by vote share of 97.54%. It is well settled that commercial wisdom of the CoC in approving Resolution Plan is not to be lightly interfered with. The jurisdiction of the Adjudicating Authority to interfere with approval of the Resolution Plan is limited within the four corners of Section 30(2) of the Code. Adjudicating Authority in the Impugned Order has held that Resolution Plan meets the requirement of Section 30(2).

B. Issue of Performance Bank Guarantee issued by the Corporate Debtor

- The submission of the Counsel for the Appellant is that valuation of the Corporate Debtor was not correctly done and the amount of Rs.20 Crores/- which was to be received from out of Performance Bank Guarantee issued by the Corporate Debtor has not been taken note in the Valuation. Suffice it to say that valuation was conducted by the RP in accordance with CIRP Regulations, 2016.
- Adjudicating Authority has also noticed the Reply of the RP where RP has written to PWD to transfer of balance as against the same FDRs to the Corporate Debtor, but no proceeds have been remitted.

C. Disposed of

- Hon'ble NCLAT, thus, does not find any ground to interfere with the Impugned Order of the Adjudicating Authority approving the Resolution Plan at the instance of the Appellant. In result, Comp. App. (AT) (Ins.) No. 1542/2022, also deserves to be dismissed.
- No error has been committed by the Adjudicating Authority in rejecting the I.A. No. 2519/2024 filed by the Appellant, hence there is no merit in the Appeal. Comp. App. (AT) (Ins.) No. 1552/2024 deserves to be dismissed.
- In result, both the Appeals are dismissed. No Order as to costs.

**INSOLVENCY
AND
BANKRUPTCY
CODE**

DUAL DIN ISSUE: RD REDUCES ROC PENALTY, HIGHLIGHTS ABSENCE OF DELIBERATE ACTION

Background of the case

1. Director Identification Number (DIN) is a unique identification number, allotted by the Central Government to each of the aspiring individual who would like to be director of any company. The DIN number is allotted by the Central Government and is valid for the lifetime of the director. As per the provisions of Companies Act 2013, that an individual should have a valid DIN number for him / her to be appointed as a director in any company. The framework of the Companies Act 2013 provides certain restrictions and prohibition to obtain more than one DIN number As per the provisions of the Companies Act 2013, no person who already has a DIN number shall apply for another DIN number which means, one DIN number for each of the director.

In this case an individual named Shri. Thiyagarajan Parthasarathy, director associated with SPS Motors private Limited had obtained dual DIN in violation of the provisions of the Companies Act 2013 and he was penalized to a tune of Rs.5.04 lakh by the Registrar of Companies of Chennai. Against the order of the Registrar of Companies, the directors made an appeal to the Regional Director and the Regional Director, considering the merits of the case and the submission made by the director, reduced the penalty to Rs. 50,000/- (90% remission of the penalty levied by the Registrar of Companies). We shall go through the case in order to understand the rationale behind the reduction granted by the Regional Director.

Details of the director

2. The case is pertaining to a director named Shri. Thiyagarajan son of Shri. Parthasarashy aged 53 years having Director Identification Number 09018479 having his residence at No. 24, Old No. 33, Mettu Street, Periyakuppam, Thiruvallur in the state of Tamil Nadu. He was associated as a director with M/s SPS Motors Private Limited.

Facts of the case / Default committed

3. The Regional Director (Northern Region) had received an application via e-form DIR-5 filed by the company M/s. SPS motors Private Limited pertaining to the DIN held by one of its director named Shri. Thiyagarajan Parthasarathy. While processing the DIR-5 form - Application for surrender of Director Identification Number, pursuant to section 153 & Rule 11(f) of Companies (Appointment and Qualification of

Rules, 2014, observed that the concerned director had applied for and obtained two Director Identification Numbers on the Ministry of Corporate Portal as per details given below:-

Sr. No	No of DINs	Director Identification Number	obtained on
1	First one	Din 03191514	23 August 2010
2	Second one	DIN 09018479	04 January 2021

In this case the concerned director himself had admitted obtaining and possessing dual DIN and filed the surrender of the first DIN bearing no. 03191514 which was surrendered was associated with M/s. SPS Hyundai Private Limited and the second (new) DIN bearing no 09018479 was applied while incorporating M/s. SPS Motors Private Limited. The Regional Director rejected the surrender of DIN application stating that the surrender could not be allowed as per Rule 11(f) of the Companies (Appointment & Qualifications of Directors) Rules 2014 since the second DIN bearing no 09018479 was obtained in violation of section 155 of the Companies Act 2013. The Registrar of Companies, Chennai on perusal of the said default, passed the adjudication order after following the procedure of law on 10th July 2023 as per the order details stated in the subsequent paragraph.

Adjudication order passed by the Registrar of Companies / Adjudication Officer

4. The Registrar of Companies / Adjudication Officer, in exercise of the powers conferred on him vide Notification dated 24th March, 2015 and pursuant to section 454(1) & (3) of the Companies Act 2013 after having considered the reply submitted by the company in response to the notice issued and the submissions made at the time of personal hearing, imposed the a total penalty of Rs. 5,03,500 on the concerned director for the violation of section 155 of the Companies Act 2013 vide his order bearing no. ROC/CHN/Thiyagarajan/ ADJ Orders/S.155/2023 dated 10th July 2023.

Sr. No	Name of the defaulting Director	Penalty for the first default	Additional penalty for continuing offences	Total Penalty imposed
		Rupees	Rupees	Rupees
1	Shri. Thiyagarajan Parthasarathy	50,000	907 days* 500=4,53,500	5,03,500
			Total Penalty	5,03,500
Default of delayed period computed by the Registrar of Companies in this case is 907 days				

Appeal filed by the director

5. Against the order of the Registrar of Companies of Chennai, the concerned director Shri Thiyagarajan Parathsarathy, director of SPS Motors Private Limited filed an appeal under section 454 (5) of the Companies Act, 2013 in Form ADJ, on 10th July 2023 against the Adjudication order No. ROC/CHN/ Thiyagarajan/ ADJ/ Order/ Sec.155/ 2023 dated 10th July 2023, for default in compliance with the requirements of section 155 of the Companies Act 2013.

Main Contention of the appeal

6. The appeal filed by the concerned director made a request to the Regional Director to take a lenient view since there was no intentional or deliberate action on the part of the director to violate any provisions of the law and also taking into consideration the fact that no prejudice had been caused to the public interest. The director made a prayer for setting aside of the impugned order passed by the Registrar of Companies of Chennai dated 10th July 2023.

Issue of Personal hearing notice by the Regional Director

7. Upon receipt of the appeal, the Regional Director verified the appeal filed by the director and it was filed within the period of limitation. The Regional Director granted an opportunity of being heard and the personal hearing was fixed as on 3rd October 2023 and accordingly the director was directed to be present for the personal hearing before the appellate authority for hearing the appeal.

The day of the personal hearing

8. The concerned director on this matter had appointed an authorized representative to represent him and make submission on behalf of the director. The authorized representative had appeared on behalf of the director on the day of the personal hearing i.e. on 3rd October 2023 and represented the matter and made the oral submissions. The authorized representative during the personal hearing reiterated the grounds taken while filing the appeal as mentioned under the heading content of appeal and made a request to the Regional Director to take a lenient view on this matter and prayed for setting aside of the impugned order passed by the Registrar of Companies of Chennai dated 10th July 2023 since the default committed was unintentional and no prejudice is caused to the public interest.

Opinion formed by the Regional Director

9. The Regional Director, upon going through contents of the appeal petition and also taking into consideration of the oral submissions made by the authorized representative on behalf of the director, came to a conclusion that there was a ground in interfering with the impugned adjudication order dated 10th July 2023 of the Registrar of Companies to the extent of reducing the quantum of penalty.

Conclusion reached by the Regional Director

10. The Regional Director, based on the opinion formed upon hearing the submissions made by the authorized representative on behalf of the director during the hearing held on 3rd October 2023 decided to reduce the penalty imposed by the Registrar of Companies of Chennai from Rs. 5,03,500 to Rs.50,000/- and accordingly passed the following order.

Order passed by the Regional Director

11. The Regional Director, as concluded above and the opinion formed by him as stated in the earlier para, passed the order by reducing the penalty amount imposed by the Registrar of Companies, Chennai in his adjudication order passed by him and the revised order passed by the Regional Director was as under:-

Details showing the revised penalty imposed by the Regional Director (for violation of section 155 of the Companies Act 2013)

Name of the defaulting Director	Penalty for the first default	Penalty for continuing offences	Penalty imposed by	
			Registrar of Companies	Revised by Regional Director
	Rupees	Rupees	Rupees	Rupees
Shri. Thiyagarajan Parthasarathy	50,000	907 days* 500 =4,53,500	5,03,500	50,000
Total Penalty			5,03,500	50,000

The order of the Regional Director directed the concerned director to pay the penalty within 15 days from the date of hearing.

Action taken by the concerned director

12. As per the directions given by the Regional Director, the director had remitted the penalty amount and had submitted the relevant receipt evidencing payment of penalty as per details provided below:

Sr. No.	Name of the Officers-in-default	SRN	Date	Total amount
1	Shri. Thiagarajan Parthasarathy	X57920134	07.11.2023	Rs. 50,000

Issue of the order by the Regional Director

13. The Regional Director, upon receipt of the details of remittance of the penalty, incorporated the same in the order and issued the order dating 12th January 2024 with a direction to the director to file this order in e-form No. 1NC-28 within a period of 30 days from the date of receipt of this order with Ministry of Corporate Affairs Portal.

Despatch of the order

14. The order in appeal was sent by the Regional Director of Southern Region to the concerned director with a copy marked to the Registrar of Companies at Chennai. The order copy was also sent to the Officer in Charge, e-Gov. Cell, Ministry of Corporate Affairs, A-Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi for information and also by mail to Deputy Director-Gov. Cell, Ministry of Corporate Affairs for publishing the order at the website of the MCA site.

Complete order for reading

15. The readers may like to go through the complete details of the orders passed by the Regional Director and by the Registrar of Companies as per order details provided below:

a. Order in appeal passed by the Regional Director (Southern Region) Chennai on 12th January 2024 (hearing took place on 3rd October 2023) bearing order ADJ/ 11/ RD(SR)/2023-24 in the matter of the Companies Amendment Act 2016 read with section 454(7) of Companies Act 2013 in the matter of M/s. SPS Motors Private Limited and the relevant website is <https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/rd-adjudication-orders.html> (order uploaded on 12th January 2024 under RD – South titled as in the matter of Companies Act 2016 section 454(7) of the Companies Act 2013 in the matter of M/s. SPS Motors Private Limited)

b. Adjudication order passed by the Registrar of Companies, Adjudicating Officer, Tamil Nadu, Chennai, and Andaman & Nicobar Islands vide order no. ROC/CHN/ Thiagarajan/ ADJ/ Order/Sec.155/2023

10th July 2023 order in the matter of adjudication of penalty under section 454 (3) of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication of Penalties) Rules 2014 for violation of provisions of section 155 of the Companies Act 2013 by Shri. Thiyagarajan Parthasarathy.

Conclusion

16. Appeal could be made against the adjudication order passed by the Registrar of Companies by the company and its directors pursuant to the provisions of section 454 (5) of the Companies Act 2013. Such appeals are required to be made to the Regional Director having jurisdiction in the matter within a time limit of 60 days from the date of copy of adjudication order is received by the aggrieved person. In this particular case, the Regional Director took note of the reason stated by the director who had obtained dual DIN considering that the default had been committed by the director with no intentional or deliberate action on his part to violate any provisions of the law and also taking into consideration the fact that no prejudice had been caused to the public interest and granted a relief to the director from the total penalty of Rs. 5.04 lakh to Rs.50,000.

After going through the details of this case one could conclude in saying that the aggrieved person should go for an appeal in cases of merit / extra-ordinary circumstances, and they would be able to get the relief at the Regional Director's level on appeal. It is up to the aggrieved person to analyse order, its merit and demerits and take an appropriate decision for going on appeal.

Reference:-

- (i) Companies Act 2013
- (ii) Companies Amendment Act 2016
- (iii) Companies (Appointment and Qualification of Directors) Rules 2014
- (iv) Companies (Adjudication of Penalties) Rules 2014
- (v) Companies (Adjudication of Penalties) Amendment Rules 2019
- (vi) Adjudication order passed by the Registrar of Companies, Adjudicating Officer, Tamil Nadu, Chennai, and Andaman & Nicobar Islands vide order no. ROC/CHN/ Thiyagarajan/ ADJ/ Order/Sec.155/2023 dated 10th July 2023 order in the matter of adjudication of penalty under section 454 (3) of the Companies Act 2013 read with Rule 3 of the Companies (Adjudication of Penalties) Rules 2014 for violation of provisions of section 155 of the Companies Act 2013 by Shri. Thiyagarajan Parthasarathy
- (vii) Order in appeal passed by the Regional Director (Southern Region) Chennai on 12th January 2024 (hearing took place on 3rd October 2023) bearing order ADJ/ 11/ RD(SR)/2023-24 in the matter of the Companies Amendment Act 2016 read with section 454(7) of Companies Act 2013 in the matter of M/s. SPS Motors Private Limited

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