VEDANAM वेदनम्

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WHY VEDANAM?

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

Vedanam is a thoughtfully curated newsletter designed to provide legal professionals, scholars, and enthusiasts with the latest developments, trends, and analysis from the dynamic world of law.

We hereby release our **October** 2024 issue.
Stay informed, educated and empowered with our comprehensive legal Newsletter **"Vedanam"** for the year 2024.

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

MCA UPDATE: COMPANIES (INDIAN ACCOUNTING STANDARDS) THIRD AMENDMENT RULES, 2024.

The Central Government vide notification has issued the Companies (Indian Accounting Standards) Third Amendment Rules, 2024. The amendment provides that an insurer or insurance company may provide its financial statement as per Ind AS 104 for the purposes of consolidated financial statements by its parent or investor or venturer till the Insurance Regulatory and Development Authority notifies the Ind AS 117 and for this purpose.

The amendment has also published the Ind AS 104.

Link: Companies (Indian Accounting Standards) Third Amendment Rules, 2024

MCA UPDATE: INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (FORM OF ANNUAL STATEMENT OF ACCOUNTS) AMENDMENT RULES, 2024

These rules may be called the Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024.

In the Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Rules, 2018, in rule 5, in sub-rule (2), for the words “one Member”, the words “the chief executive officer” shall be substituted.

Link: Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024

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

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

In the Companies (Adjudication of Penalties) Rules, 2014, in sub-rule (1) of rule 3A, the following proviso shall be inserted, namely:-

“Provided that the proceedings pending before the Adjudicating Officer or Regional Director on the date of such commencement shall continue as per provisions of these rules existing prior to such commencement.”.

Link: Companies (Adjudication of Penalties) Second Amendment Rules, 2024.

SEBI UPDATE: MEASURES TO STRENGTHEN EQUITY INDEX DERIVATIVES FRAMEWORK FOR INCREASED INVESTOR PROTECTION AND MARKET STABILITY

This circular issued by SEBI (Securities and Exchange Board of India) outlines several measures to strengthen the equity index derivatives framework for better investor protection and market stability.

Upfront Collection of Option Premium (Effective February 1, 2025):
To discourage leverage and mitigate risk, Trading/Clearing Members are required to collect option premiums from buyers upfront.

Removal of Calendar Spread Treatment on Expiry Day (Effective February 1, 2025):
The benefit of offsetting positions (calendar spread) will not be available on the day of contract expiry due to heightened risk on expiry days.

Intraday Monitoring of Position Limits (Effective April 1, 2025):
Stock Exchanges will take at least four random intraday snapshots to monitor position limits, ensuring positions do not exceed permissible limits.

Revised Contract Size for Index Derivatives (Effective November 20, 2024):
The minimum contract value for index derivatives is raised to ₹15 lakhs, to ensure that higher-value contracts maintain the risk profile of participants.

Rationalization of Weekly Index Derivatives (Effective November 20, 2024):
Exchanges will now offer weekly expiry index derivatives for only one benchmark index, reducing speculative trading.

Increase in Tail Risk Coverage on Expiry Day (Effective November 20, 2024):
An additional 2% Extreme Loss Margin (ELM) will be levied on short option contracts on the day of their expiry.

Link: Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability

SEBI UPDATE: REVIEW OF STRESS TESTING FRAMEWORK FOR EQUITY DERIVATIVES SEGMENT FOR DETERMINING THE CORPUS OF CORE SETTLEMENT GUARANTEE FUND (CORE SGF)

SEBI introduced new stress testing methodologies for the equity derivatives segment to better account for the changing

market dynamics and assess risks.
The new methodologies aim to enhance the determination of the Minimum Required Corpus (MRC) for the Core Settlement Guarantee Fund (Core SGF).
Under the new stress testing methods: More robust methods are added to address the changing market dynamics.

The new methods include Stressed Value at Risk (VaR), which uses volatility from stress periods and Monte Carlo simulations to calculate price movements, with option volatility shocked by 100 per cent.

Additionally, a filtered historical simulation adjusts past data to reflect current volatility using an Exponentially Weighted Moving Average (EWMA), and a factor model considers the highest 3-day Nifty movements adjusted by the stock's beta.
The regulator has asked clearing corporations to define, update, and review stress periods regularly, using a 3-day Stress Period of Risk.
To meet the increased corpus requirements for equity derivatives, the clearing corporations can transfer excess funds from the equity cash segment (ECM) to the equity derivatives segment (EDX).

Link: Review of Stress Testing Framework for Equity Derivatives segment for determining the corpus of Core Settlement Guarantee Fund

SEBI UPDATE: RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 – REG.

The SEBI circular provides an update on relaxations granted for compliance with specific provisions under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).

Extension of Relaxations by SEBI:
On October 7, 2023, SEBI relaxed compliance with **Regulation 36(1)(b)** and **Regulation 44(4)** of the LODR Regulations. These pertain to requirements for conducting Annual General Meetings (AGMs) and general meetings in electronic mode, allowing companies to forgo sending physical copies of certain financial documents for meetings held until **September 30, 2024**.
MCA Extension:
The Ministry of Corporate Affairs (MCA) issued **General Circular No. 09/2024** on September 19, 2024, further extending the relaxation from sending physical copies of financial documents (such as the financial statement, Board's report, and Auditor's report) to shareholders for AGMs conducted **until September 30, 2025**.

SEBI's Decision:
In light of the MCA's extension and representations received by SEBI, the relaxation for Regulation 36(1)(b) and Regulation 44(4) has now been extended until September 30, 2025.

Conditions for Compliance:
Listed entities must ensure they comply with the conditions laid down in Section VI-J, Chapter VI of SEBI's Master Circular dated July 11, 2023, while availing of these relaxations.

Link: Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg

SEBI UPDATE: TIMELINES FOR DISCLOSURES BY SOCIAL ENTERPRISES ON SOCIAL STOCK EXCHANGE ("SSE") FOR FY 2023-24.

SEBI vide Circular dated May 27, 2024 had prescribed outer timelines for annual disclosures and annual impact report under Regulation 91C(1) and Regulation 91E(1) respectively of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") by Social Enterprises on Social Stock Exchange for FY 2023-24.

In partial modification to the said Circular, the outer timeline for annual disclosures under Regulation 91C(1) and annual impact report under Regulation 91E(1) of LODR Regulations by Social Enterprises on Social Stock Exchange, for FY 2023- 24 has been extended upto January 31, 2025.

Link: Timelines for disclosures by Social Enterprises on Social Stock Exchange ("SSE")

SEBI UPDATE: SPECIFIC DUE DILIGENCE OF INVESTORS AND INVESTMENTS OF AIFS

SEBI Alternative Investment Funds (AIFs)) Regulations, 2012 ('AIF Regulations'),inserted vide notification dated April 25, 2024, every AIF and their managers to exercise specific due diligence with respect to investors and investments in a bid to prevent circumvention of various laws and ensure compliance with regulatory frameworks.

AIFs, their managers, and key personnel are required to conduct the due diligence on their investors and investments. Under this, AIFs designated as Qualified Institutional Buyers (QIBs) or Qualified Buyers (QBs) must ensure that investors who are not eligible for QIB or QB status on their own do not avail of the respective benefits through the AIF.

Additionally AIFs are required to avoid facilitating the ever-

greening of stressed loans/assets for RBI-regulated entities, adhering to RBI's norms for income recognition, asset classification, provisioning, and restructuring.

Due diligence is required for investments from countries sharing land borders with India, in line with the Foreign Exchange Management Rules.

If any investor or group of investors contributes 50 per cent or more to the AIF's scheme, detailed due diligence is required. If the scheme includes RBI-regulated entities, additional checks are necessary to ensure compliance with norms.

For existing investments, AIFs need to report any that fail the due diligence checks or confirm compliance by April 7, 2025. In case, due diligence is not passed, the investor may be excluded from the investment or the investment will not proceed. Further, AIF managers must submit reports on the status of existing investments by April 7, 2025.

Link: Specific due diligence of investors and investments of AIFs

SEBI UPDATE: EXTENSION OF TIMELINE FOR IMPLEMENTATION OF SEBI CIRCULAR SEBI/HO/MIRSD /MIRSD-POD1/P/CIR/2024/75 DATED JUNE 05, 2024

To protect client's securities as part of enhancement of operational efficiency and risk reduction, SEBI vide circular dated June 05, 2024 mandated pay-out of securities directly to the client's demat account. The circular was to come in to effect from October 14, 2024.

In this regard, the final operational guidelines/implementation standards were to be issued by CCs to the market by August 05, 2024. However, the said guidelines were issued by CCs at the end of August 2024 on account of extensive consultation in Brokers' Industry Standards Forum (Brokers' ISF).

Further, based on the review meeting held by SEBI with MIIs and based on representation received from Brokers' ISF, it has been decided that the circular shall come into effect from November 11, 2024, in order to ensure smooth implementation of pay-out of securities directly to the client's demat account, without any disruption to the markets players and investors.

Link: Extension of timeline for implementation of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024

SEBI UPDATE: CHANGE IN TIMING FOR SECURITIES PAYOUT IN THE ACTIVITY SCHEDULE FOR T+1 ROLLING SETTLEMENT

SEBI vide circular dated June 5, 2024, has mandated that the pay-out of securities be credited directly to the client account by the Clearing Corporations (CC).

As prescribed in the aforementioned Circular, under Phase -1, the securities for pay-out in the equity cash segment (including netted cash and F&O Physical Settlement) shall be credited directly to the respective client's demat account by the Clearing Corporations.

As a consequence of the above, the timing of the payout of securities shall be revised from 1:30 PM to 3:30 PM. Thus, as a result of Direct Payout, the securities shall be credited to the clients' demat account on the same settlement day instead of one working day from the receipt of pay-out from the Clearing Corporation.

Link: Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement

SEBI UPDATE: MONITORING SHAREHOLDING OF MARKET INFRASTRUCTURE INSTITUTIONS (MIIS)

SEBI circular, issued addresses the monitoring of shareholding of Market Infrastructure Institutions (MIIs), including stock exchanges, clearing corporations, and depositories, both listed and unlisted.

Applicability: The framework for monitoring shareholding norms for listed entities is extended to all MIIs, mandating quarterly disclosure of their shareholding patterns on their websites.

Designated Depository (DD): Each MII must appoint a DD to monitor shareholding limits under SECC Regulations, 2018, and D&P Regulations, 2018. The DD must not be an associate of the MII.

The DD shall monitor and inform the MII and stock exchange on which its shares are listed (in case of listed MII), as and when the threshold limit of 5% or 15%, as applicable under SECC Regulations, 2018 and D&P Regulations, 2018, is breached and take appropriate consequential actions.

The DD shall monitor and inform the MII and stock exchange on which its shares are listed (in case of listed MII), as and when threshold limit of combined holding of 49% of all persons' resident outside India (directly or indirectly, either individually or together with persons acting in concert) in the paid-up equity share capital of an MII is breached and take consequential actions.

For Stock Exchanges:

The DD shall:
Have mechanism for coordination between the depositories for sharing of information regarding the shareholding of the stock exchange and ensure that the shareholding of Trading Members (TMs), their associates and agents does not exceed 49% of the paid-up equity share capital of the stock exchange
Send alerts to the stock exchange and TMs, their associates and agents about the breach of the caution shareholding limit of 45% by TMs, their associates and agents and the said information shall also be disclosed on the exchange website and the website of stock exchange where it is listed (in case of listed stock exchange).
Inform to the stock exchange, its RTA, the stock exchange where it is listed (in case of listed stock exchange) and other depository about any breach of shareholding limit of 49% by TMs, their associates and agents. Stock exchange shall disseminate such breach on its website and the website of stock exchange where it is listed (in case of listed stock exchange).

For recognized Clearing Corporations (CCs)
The DD shall monitor that at least 51% of paid-up equity share capital of a CC shall always be held by one or more recognized stock exchange(s) and no recognized stock exchange shall, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 15% of the paid-up equity share capital in more than one CC and take consequential actions.

The provisions of this circular shall come into effect from 90th day from the date of issuance of the circular

Link: Monitoring Shareholding of Market Infrastructure Institutions (MIIs)

SEBI UPDATE: CORRIGENDUM TO CIRCULAR ON EASE OF DOING BUSINESS IN THE CONTEXT OF STANDARD OPERATING PROCEDURE FOR PAYMENT OF "FINANCIAL DISINCENTIVES" BY MARKET INFRASTRUCTURE INSTITUTIONS (MIIS) AS A RESULT OF TECHNICAL GLITCH

Standard Operating Procedure for payment of "Financial Disincentives" by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch

have been issued. The abovementioned Circular is applicable to all the MIIs including the Commodity Derivatives Exchanges/Clearing Corporations. However, the aforesaid amendment does not explicitly give reference to relevant sections of the Master Circular for Commodity Derivatives Segment dated August 04, 2023.

Accordingly, references to relevant sections of Master Circular for Commodity Derivatives Segment dated August 04, 2023, to be read with the following paragraphs of above-mentioned SEBI Circular dated September 20, 2024, are as under.

Para 1 and 4 of SEBI Circular dated September 20, 2024, shall include reference to para 16.8 of Master Circular for Commodity Derivatives Segment dated August 04, 2023.
Para 4.1 of SEBI Circular dated September 20, 2024, shall include para 16.8.1 of Master Circular for Commodity Derivatives Segment dated August 04, 2023.
Para 4.2 of SEBI Circular dated September 20, 2024, shall include Clauses 3,4,5 of Annexure-ZF to the Master Circular for Commodity Derivatives Segment dated August 04, 2023.
Para 4.3 of SEBI Circular dated September 20, 2024, shall include Clause 6 of Annexure-ZF to the Master Circular for Commodity Derivatives Segment dated August 04, 2023.
Para 4.4 of SEBI Circular dated September 20, 2024, shall include Clauses 7 and 8 of Annexure-ZF to the Master Circular for Commodity Derivatives Segment dated August 04, 2023.

Further, in line with Para 4.5 of SEBI Circular dated September 20, 2024, following text shall be inserted after Clause 2.4 of Annexure-ZE of the Master Circular for Commodity Derivatives Segment dated August 04, 2023.
SEBI on identification of the Technical Glitch resulting into Financial Disincentive to the MIIs, or upon receipt of the information of any such instance shall provide an opportunity to the concerned MIIs to make their submissions in respect of the facts of the case.
MIIs shall carry out internal examination pertaining to occurrence of technical glitches to ascertain individual accountability and take appropriate action including suitable recording and reckoning in the performance appraisal of those individuals. SEBI would retain the right to initiate enforcement action against the individuals at the MII, if there is sufficient ground to do so.

Link: Corrigendum to Circular on Ease of Doing Business in the context of Standard Operating Procedure for payment of “Financial Disincentives” by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch

SEBI UPDATE: MONITORING OF POSITION LIMITS FOR EQUITY DERIVATIVE SEGMENT

Current Limitations:
Previously, the overall position limit at the Trading Member (TM) level (for both proprietary and client positions) was set at the higher of INR 500 crores or 15% of total Open Interest (OI) in the market. These limits applied separately for open positions in futures and options contracts on any underlying index.

Revised Position Limits:
Based on feedback from the market and deliberations with the Secondary Market Advisory Committee (SMAC), the position limits for TMs (cumulatively for client and proprietary trades) have been increased to the higher of INR 7,500 crores or 15% of total OI in the market.
These limits will continue to apply separately to index futures and index options contracts.

Monitoring of Open Interest:
From April 1, 2025, market participants' positions in the equity derivatives segment will be monitored based on the total market OI at the end of the previous trading day.
If market OI drops compared to the previous day, market participants could breach the new limits passively, without adjusting their positions. No penalties or unwinding of positions will be required in such cases of passive breaches.

Implementation:
The new position limits will take effect immediately.
The monitoring of market participants' positions based on the previous day's OI will be implemented from April 1, 2025.

Link: Monitoring of position limits for equity derivative segment

SEBI UPDATE: INTRODUCTION OF LIQUIDITY WINDOW FACILITY FOR INVESTORS IN DEBT SECURITIES THROUGH STOCK EXCHANGE MECHANISM

SEBI introduced a liquidity window facility for investors in the debt securities through a stock exchange mechanism

The liquidity window facility allows investors holding listed debt securities to sell them back to the issuer using a put option on specific dates, ensuring liquidity.

This facility, available from November 1, will be of immense utility to investors, especially retail investors, and can serve to enhance their investment in such debt securities.

The issuers can choose whether

to offer this facility for debt securities at the time of issuance. It applies to new issuances of debt securities, either through public offers or private placements.

The facility requires board approval and monitoring by the Stakeholders Relationship Committee (SRC) or an equivalent board-level committee. It must be transparent, objective, and non-discriminatory toward eligible investors.

The facility will be available for a year after the issuance, and securities under this scheme cannot be re-issued, with such ISINs excluded from regulatory ISIN limits.

The issuers may restrict eligibility to either all investors or only retail investors, provided they hold the securities in demat form.

At least 10 per cent of the issue size must be allocated for the liquidity window, with sub-limits capping the number of securities tendered per window; if demand exceeds the limit, acceptance will be proportionate.

The window will remain open for three working days and can operate on a monthly or quarterly basis, with notifications sent via SMS or WhatsApp at the start of the financial year.

Investors can exercise the put by blocking securities in their demat accounts during trading hours, with the option to modify or withdraw bids. The settlement will occur within four working days, with payments made one day after the window closes, and issuers cannot offer more than a 100-basis-point discount on the valuation plus accrued interest.

Issuers are required to manage the purchased securities within 45 days, either selling them on exchanges or extinguishing them, with any sales replenishing the usage limits for future windows.

Reports on window usage are required to be submitted to stock exchanges within three working days, and issuers must disclose ISIN-wise details, such as outstanding amounts, coupon rates and schedules, on their websites and update stakeholders within 24 hours of change.

Link: Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism

SEBI UPDATE: CLARIFICATION WITH REGARD TO USAGE OF 3 – IN – 1 TYPE ACCOUNTS FOR MAKING AN APPLICATION IN PUBLIC ISSUE OF SECURITIES

It is clarified that, in addition to existing modes of making an application in public issue of securities as specified under para 2 of the aforesaid Master Circular and notwithstanding the provision specified under para 2 of SEBI circular dated September 24, 2024, investors may continue to submit the bid-cum application form online using the facility of linked online trading, demat and bank account (3-in-1 type accounts).

Link: Clarification with regard to usage of 3 – in – 1 type accounts for making an application in public issue of securities

SEBI UPDATE: INCLUSION OF MUTUAL FUND UNITS IN THE SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

The inclusion of mutual fund units under the SEBI (Prohibition of Insider Trading) Regulations, 2015

Inclusion of Mutual Fund Units in PIT Regulations

Mutual fund units are now explicitly covered under SEBI's insider trading regulations.

The rules, amended in 2022, will apply from November 1, 2024.

Key Obligations for Asset Management Companies (AMCs):

Disclosure of Holdings: Designated persons (DPs) of AMCs, trustees, and their immediate relatives must disclose their holdings in mutual fund units on a quarterly basis. The first disclosure, as of October 31, 2024, must be made by November 15, 2024, via the stock exchanges.

Transaction Reporting: Any transactions involving mutual fund units exceeding INR 15 lakhs (in one or a series of transactions during a calendar quarter) by DPs must be reported to the compliance officer within two business days.

Disclosure of Transactions: Such reported transactions will be publicly disclosed in a specified format.

Handling Violations: Violations of the PIT Regulations will be reported using the format provided in Annexure C.

Clause 6.6 of the Master Circular shall not be applicable for investments and redemption of mutual fund units. For mutual funds units, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, as amended from time to time, shall be followed strictly by the Trustees, Asset Management Companies and their employees and directors.

Clause 6.6.2.1 (a) of the Master

Circular stands modified as under: “These Guidelines cover transactions for purchase or sale of any securities such as shares, debentures, bonds, warrants, derivatives.”

The following is inserted as Clause 6.6.2.1 (b)(4) in the Master Circular:
“Investments in units of schemes floated by mutual funds /AMCs where the concerned persons (in terms of the applicability stated at 6.6.1.1.a above) are employed.”

Clause 6.6.2.3(f) of the Master Circular stands modified as under:
“All employees shall refrain from profiting from the purchase and sale or sale and purchase of any security within a period of 30 calendar days from the date of their personal transaction. However, in cases where it is done, the employee shall provide a suitable explanation to the Compliance Officer, which shall be reported to the Board of the AMC and the Trustees at the time of review.

Link: Inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI UPDATE: ASSOCIATION OF PERSONS REGULATED BY THE BOARD AND THEIR AGENTS WITH CERTAIN PERSONS

Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024 and Securities and Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2024 have been notified by SEBI on August 26, 2024.

These regulations inter alia provide that persons regulated by the Board (including recognised stock exchanges, clearing corporations and depositories), and agents of such persons shall not have any direct or indirect association with another person who-

Provides advice or recommendations related to securities without being registered with SEBI or permitted by SEBI.
Makes claims regarding returns or performance, explicitly or implicitly, unless authorized by SEBI.

The prohibition **does not apply** to associations through a "specified digital platform."

A "specified digital platform" is defined as one that has mechanisms in place for preventive and curative actions, ensuring it is not used for unauthorized activities (i.e., giving advice or making

performance claims) as outlined in clauses (i) and (ii). SEBI will specify guidelines for the recognition of such platforms separately.

The term "another person" under these amendments **does not include persons engaged in investor education**, provided that such persons do not directly or indirectly engage in offering advice or making performance claims related to securities.

The guidelines on the preventive and curative measures for the digital platforms for their recognition as specified digital platform are being specified separately, the persons regulated by the Board (including recognised stock exchanges, clearing corporations and depositories), and their agents are advised to terminate their existing contracts, if any, with persons engaged in the activities mentioned in clauses (i) or (ii) of paragraph 2 of this circular, within three months from the date of issuance of this circular.

Link: Association of persons regulated by the Board and their agents with certain persons

SEBI UPDATE: MODIFICATION IN ANNEXURE TO COMMON APPLICATION FORM (CAF)

To provide the flexibility to existing and new FPIs, the 'Annexure to Common Application Form' attached as Annexure B to the FPI Master Circular is modified as follows:

The following additional option is inserted under 'Section B-II: NRI/OCI/RI – Entitlement in FPI' in Para 5 of Part B titled 'Additional information' and shall be applicable only in case of applicants based in IFSCs in India:

"We confirm that NRIs/OCIs/RIs as investors in the FPI and contributions by single NRI/OCI/RI including those of NRI/OCI/RI controlled Investment Manager are below 25 percent of the corpus of the FPI. The aggregate contributions by NRI/OCI/RI are intended to be above 50% / are above 50% of the corpus of the FPI and we shall at all times be in compliance with the SEBI (Foreign Portfolio Investors) Regulations, 2019 and Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors as amended from time to time. [Applicable only in case of eligible applicants from International Financial Services Centres in India]"

Further, the information, documents and declaration required to be submitted by an FPI based in IFSC in India that have/intends to have up to hundred percent NRI/RI/OCI participation in terms of the aforementioned Circular dated June 27, 2024, shall be provided

in the specified format.

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

Link: Modification in Annexure to Common Application Form (CAF)

SEBI UPDATE: CLARIFICATION WITH RESPECT TO ADVERTISEMENT CODE FOR RESEARCH ANALYSTS (RAS)

It is clarified that Research Report and research recommendations of an RA are not considered advertisement unless anything contained in the research report is in the nature of promotion of products or services offered by an RA. Accordingly, the paragraph 8.1 a. ii. of the Master Circular shall read as under:

"The forms of communications, to which the advertisement code shall be applicable, shall include pamphlets, circulars, brochures, notices or any other literature, document, information or material published, or designed for use in any publication or displays (such as newspaper, magazine, sign boards/hoardings at any location), in any electronic, wired or wireless communication (such as electronic mail, text messaging, messaging platforms, social media platforms, radio, telephone, or in any other form over the internet) or over any other audio-visual form of communication (such as television, tape recording, video tape recordings, motion pictures) or in any other manner whatsoever.

Further, a research report, irrespective of the mode of its dissemination to any investor or prospective investor, shall be construed as an advertisement if anything contained in the said research report is either expressly or impliedly in the nature of promotion of products or services offered by an RA."

Link: Clarification with respect to advertisement code for Research Analysts (RAs)

SEBI UPDATE: PERIODIC REPORTING FORMAT FOR RESEARCH ANALYSTS AND PROXY ADVISERS

RAs shall submit their periodic report to RAASB and PAs shall submit their periodic reports to SEBI. The periodic reports shall be submitted by RAs/PAs within 30 days from the last date of the reporting period.

RAs/PAs shall submit periodic report for half-yearly periods ending on September 30 and March 31 of every financial year. The first reporting period shall be half-yearly period ending on March 31, 2025 and reports thereof shall be required to be

submitted by April 30, 2025. Hence, a time of around six months has been provided to RAs and PAs for submission of their first periodic report to give them sufficient time for making necessary arrangements for providing the required data.

This circular shall become applicable with immediate effect.

Link: Periodic Reporting format for Research Analysts and Proxy Advisers

SEBI UPDATE: (A) ANNUAL COMPLIANCE CERTIFICATE FOR CLIENT LEVEL SEGREGATION BY NONINDIVIDUAL INVESTMENT ADVISERS; (B) TIMELINE FOR SUBMISSION OF PERIODIC REPORTS

(A) Annual Compliance Certificate for Client Level Segregation by nonindividual Investment Advisers

It has been decided to allow a non-individual IA to obtain an annual compliance certificate from any auditor.

In view of the above, the paragraph 1.2 (i) (i) of the Master Circular shall stand modified as under:

"1.2. (i) Client Level Segregation of Advisory and Distribution Activities

(i) The IAs shall maintain on record an annual certificate from an auditor confirming compliance with the client level segregation requirements as specified in Regulation 22 of the IA Regulations. Such annual certificate shall be obtained within 6 months of the end of the financial year and form part of compliance audit, in terms of Regulation 19(3) of the IA Regulations."

(B) Timeline for submission of periodic reports - 30 days from the end of reporting period

It has been decided to grant a period of 30 days to make submission of periodic reports to IAASB.

Accordingly, paragraph 20.6.ii of the Master Circular shall stand revised as under:

"20.6.ii For the subsequent half-yearly periods, IAs shall submit periodic reports within 30 days from the end of the half-yearly period for which details are to be furnished."

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

Link: Annual Compliance Certificate for Client Level Segregation by Non-individual Investment Advisers and timeline for submission of periodic reports

RBI UPDATE: GOLD LOANS - IRREGULAR PRACTICES OBSERVED IN GRANT OF LOANS AGAINST PLEDGE OF GOLD ORNAMENTS AND JEWELLERY

The Reserve Bank has recently carried out a review of the adherence to prudential guidelines as well as practices being followed by SEs with regard to loans against pledge of gold ornaments and jewellery.

The review, as well as the findings of the onsite examination of select SEs by the Reserve Bank, indicate several irregular practices in this activity.

The major deficiencies include
(i) shortcomings in use of third parties for sourcing and appraisal of loans;
(ii) valuation of gold without the presence of the customer;
(iii) inadequate due diligence and lack of end use monitoring of gold loans;
(iv) lack of transparency during auction of gold ornaments and jewellery on default by the customer;
(v) weaknesses in monitoring of LTV; and
(vi) incorrect application of risk-weights, etc.

All SEs are, therefore, advised to comprehensively review their their policies, processes and practices on gold loans to identify gaps, including those highlighted in this advice, and initiate appropriate remedial measures in a time bound manner. Further, the gold loan portfolio should be closely monitored, especially in the light of significant growth in the portfolio in certain SEs. It should also be ensured that adequate controls are in place over outsourced activities and third-party service providers.

Action taken with regard to the above may be informed to the Senior Supervisory Manager (SSM) of Reserve Bank within three months of the date of this circular. Non-compliance with regulatory guidelines in this regard will be viewed seriously and will attract, among other things, supervisory action by RBI.

Link: Gold loans - Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery

RBI UPDATE: DIRECTIONS - COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

Section 15 of the FEMA, 1999, any contravention under section 13 of FEMA 1999 {except that of Section 3(a) of the Act} may, on an application made by the person committing such contravention (hereafter referred as 'applicant'), be compounded

within one hundred and eighty days from the date of receipt of such application, by the officers of the Reserve Bank, as prescribed in Rule 4 of the Compounding Rules, 2024.

Section 13(1) of the Act, if any person contravenes any provision of FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where the amount is quantifiable, or up to Rupees Two lakhs where the amount is not directly quantifiable, and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues.

Certain cases not eligible for compounding

In respect of a contravention committed by any person (applicant) within a period of three years from the date on which a similar contravention was committed and the same was compounded, such contraventions shall not be compounded, and the relevant provisions of the Act shall apply. Any contravention committed after the expiry of a period of three years from the date on which a similar contravention was previously compounded shall be deemed to be a first contravention.

No compounding application shall be processed unless the requisite administrative action is completed by the applicant.

Explanation: Administrative action shall mean such action as may be necessary with respect to the transactions involved in such contravention (as per Rule 8(1) of the Compounding Rules, 2024) and shall include such corrective action that shall be undertaken by the applicant to bring the transaction involved in contravention in compliance with applicable provisions of FEMA. An indicative (but not exhaustive) list of such administrative actions include:

(i) Obtaining requisite approvals/ permissions from the Government or Reserve Bank or any other statutory authority concerned, as case may be;

(ii) Unwinding/ reversing the transaction;

(iii) Repatriating the receivables due;

(iv) Compliance with pricing guidelines or submission of valuation certificate;

(v) Compliance with reporting requirements;

(vi) any other such corrective action as may be required

Contraventions of serious nature viz. transactions suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation or where the contravener fails to pay the sum for which

contravention was compounded within the specified period in terms of the compounding order, shall be referred to the DoE for further investigation and necessary action under the Act.

Further, in terms of the Rule 9 of Compounding Rules, 2024, transactions, in which amount involved is not quantifiable or, attracting provisions of Section 37A of the Act or, where the Adjudicating Authority has already passed an order imposing penalty under section 13 of the Act or where the DoE is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, contraventions of such transactions shall not be eligible for compounding by the Reserve Bank.

Also, in terms of Rule 4(1) of Compounding Rules, 2024, transactions involving contravention of Section 3(a) of the Act shall not be eligible for compounding by the Reserve Bank.

It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the person involved in contravention, the Reserve Bank shall examine whether:
1. such contravention(s) may be compounded, and necessary compounding procedure must be followed or
2 the issues involved are sensitive serious in nature and, therefore, need to be referred to the DoE for adjudication or further investigation.

Link: Directions - Compounding of Contraventions under FEMA, 1999

RBI UPDATE: DUE DILIGENCE IN RELATION TO NON-RESIDENT GUARANTEES AVAILED BY PERSONS RESIDENT IN INDIA

The Reserve Bank of India (RBI) has come across instances of guarantees (including Standby Letters of Credit [SBLCs] and / or performance guarantees) issued by persons resident outside India, favouring persons resident in India, which are not permitted under the extant FEMA regulations.

AD Category-I banks may ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with the FEMA regulations. The contents of this circular may be brought to the notice of your constituents.

Link: Due diligence in relation to non-resident guarantees availed by persons resident in India

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

Government of India, vide Trade Notice dated September 30, 2024, has allowed for an extension of the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') for three months up to December 31, 2024, with the following modifications to the Scheme:

1. Fiscal benefits of each MSME, on aggregate, will be restricted to ₹50 lakhs for the Financial Year 2024-25 till December 31, 2024.
2. Accordingly, MSME manufacturer exporters who have already availed equalisation benefits of ₹50 lakhs or more in the Financial Year 2024-25 till September 30, 2024, will not be eligible for any further benefit in the extended period.

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

RBI UPDATE: IMPLEMENTATION OF CREDIT INFORMATION REPORTING MECHANISM SUBSEQUENT TO CANCELLATION OF LICENCE OR CERTIFICATE OF REGISTRATION

All CIs, whose licence or CoR has been cancelled by the Reserve Bank of India shall be categorised as "Credit Institutions" under Section 2(f)(vii) of CICRA.

These CIs shall continue to report credit information of the borrowers on-boarded and reported to CICs prior to cancellation of their licence or CoR to all the four CICs till the loan life cycle is completed or the credit institution is wound up, whichever is earlier.
These CIs shall have access to Credit Information Reports pertaining to only those borrowers which were onboarded and reported to CICs before the cancellation of their licence/CoR.

CICs shall not charge the annual and membership fees from these CIs.

CICs shall tag these CIs as "Licence Cancelled Entities" in the CIR. CICs shall base this tagging on the information

available on the website of the Reserve Bank of India or the cancellation of licence order received from RBI.

Provisions of this circular shall also be applicable to those entities whose licence/CoR has been cancelled by the Reserve Bank of India prior to issuance of this circular.

All other instructions regarding credit information reporting by CIs to CICs shall remain unchanged.

Link: Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration

RBI UPDATE: SUBMISSION OF INFORMATION TO CREDIT INFORMATION COMPANIES (CICS) BY ARCS

Submission of information to Credit Information Companies'1, ARCs had been advised to become a member of at least one CIC. In order to align these guidelines with the guidelines applicable to banks and NBFCs and with a view to maintain a track of borrowers' credit history after transfer of loans by banks and NBFCs to ARCs, these guidelines have been revised as under.

Membership of CICs: ARCs shall become members of all CICs and submit the requisite data to CICs as per the Uniform Credit Reporting Format prescribed2 by the Reserve Bank, as amended from time to time.

Submission of information: ARCs shall keep the information collected/ maintained by them, updated regularly on a fortnightly3 basis or at such shorter intervals as mutually agreed upon between the ARC and the CIC in terms of Regulation 10 (a) (i) and (ii) of the Credit Information Companies Regulations, 2006.

Rectification of rejected data: ARCs shall rectify the rejected data received from CICs and upload the same with the CICs within seven days of receipt of such data.

Adoption of best practices: ARCs shall have a standard operating procedure (SOP) in place for CIC related matters which shall, inter alia, include the following best practices:

1. ARCs shall provide requisite customer information, including identifier information, to CICs.
2. ARCs shall ensure that the records submitted to CICs are updated regularly and that no instances of repayment, including that of the last instalment, are left unreported.
3. Instances of non-updation of repayment information may be

4. ARCs shall appoint a nodal officer for dealing with CICs.
5. Customer grievance redressal shall be given top priority especially in respect of complaints relating to updation/ alteration of credit information.
6. Grievance redressal in respect of credit information should be integrated with the existing systems, if any, for grievance redressal.
7. ARCs should abide by the period stipulated under CICRA and the Rules and Regulations framed thereunder in respect of updation, alteration of credit information, resolving disputes, etc. Procedure prescribed under Rules 20 and 21 of the Credit Information Companies Rules, 2006 in this regard should be adhered to. Deviations from stipulated time limits should be monitored and commented upon in the periodical reports/ reviews put up to the Board.

Applicability
These guidelines shall be applicable to all ARCs.

Link: Submission of information to Credit Information Companies (CICs) by ARCs

RBI UPDATE: RESERVE BANK OF INDIA (ACCESS CRITERIA FOR NDS-OM) DIRECTIONS, 2024

These Directions shall be called the Reserve Bank of India (Access Criteria for NDS-OM) Directions, 2024.

These Directions shall come into force with effect from October 18, 2024.

Eligible Entities
The following entities shall be eligible for direct access to NDS-OM subject to fulfilment of all requirements and conditions stipulated in these Directions:
1. Banks;
2. Standalone Primary Dealers;
3. Non-Banking Financial Companies including Housing Finance Companies;
4. All India Financial Institutions;
5. Mutual Funds;
6. Provident Funds;
7. Pension Funds;
8. Insurance Companies;
9. Regulated Market Infrastructure Institutions (MIIs) for investing their settlement guarantee fund in Government securities, as the Reserve Bank may specifically permit subject to such terms and conditions that it may prescribe; and
10. Any other entity that the Reserve Bank may specifically permit.

Requirements for seeking direct access to NDS-OM
Entities that are eligible to seek direct access to NDS-OM shall fulfil the following requirements:
1. SGL account with the Reserve Bank;
2. Current account with the Reserve Bank or a Designated Settlement Bank; and
3. Membership of securities settlement segment of Clearing Corporation of India Limited (CCIL).

Link: Reserve Bank of India (Access Criteria for NDS-OM) Directions, 2024

RBI UPDATE: DIRECTIONS FOR CENTRAL COUNTERPARTIES (CCPS)

The Direction for Central Counterparties dated June 19, 2019 stands repealed.

Based on a periodic review of the Directions for CCPs, the updated directions governing the functioning of CCPs are below

Applicability

The provisions of these directions shall apply to a domestic central counterparty authorised to operate in India under Payment and Settlement Systems Act, 2007 and foreign CCPs recognised by the Reserve Bank of India (RBI) under Payment and Settlement Systems Act, 2007 for their operations including clearing and settlement in India.
Central Counterparty" (CCP) means a system provider, who by way of novation interposes between system participants in the transactions admitted for settlement, thereby becoming the buyer to every seller and the seller to every buyer, for the purpose of effecting settlement of their transactions.

Link: Directions for Central Counterparties (CCPs)

IBBI UPDATE: EXTENSION OF TIME FOR FILING FORMS TO MONITOR LIQUIDATION PROCESSES UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AND THE REGULATIONS MADE THEREUNDER

Vide Circular dated 28.06.2024 the liquidators were directed to file forms relating to the liquidation process latest by 30.09.2024.

In this regard, representations have been received from the liquidators and Insolvency Professional Agencies for extending the date citing the technicalities and issues involved in the submission of the forms.

Considering the above-mentioned representations and difficulties faced by the liquidator, it has been decided to extend the last date of submission of the forms till 30.11.2024.

Link: Extension of time for filing Forms to monitor liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

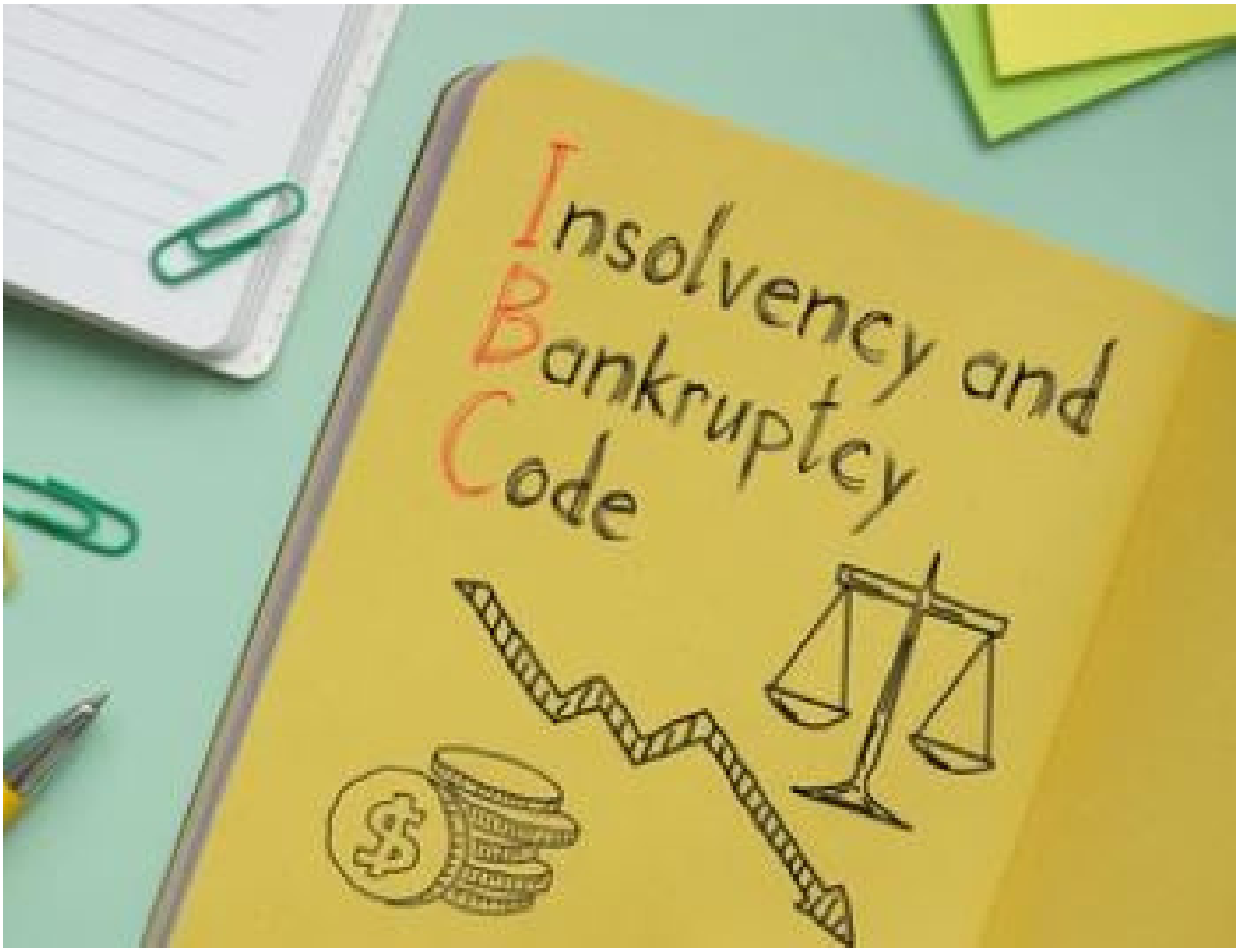
IBBI UPDATE: EXTENSION OF TIME FOR FILING FORMS TO MONITOR VOLUNTARY LIQUIDATION PROCESSES UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AND THE REGULATIONS MADE THEREUNDER.

Vide Circular dated 28.06.2024 the liquidators were directed to file forms relating to the voluntary liquidation latest by 30.09.2024.

In this regard, representations have been received from the liquidators and Insolvency Professional Agencies for extending the date citing the technicalities and issues involved in the submission of the forms.

Considering the above-mentioned representations and difficulties faced by the liquidator, it has been decided to extend the last date of submission of forms till 30.11.2024.

Link: Extension of time for filing Forms to monitor voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder



IBC CASE LAW: CAN A CLAUSE OF AN APPROVED RESOLUTION PLAN RELATING TO PUBLIC SHAREHOLDING, WHICH DOES NOT CONFORM WITH RULE 19A(5) OF SECURITIES CONTRACTS (REGULATION) RULES, 1957, BE MODIFIED? – KUNDAN MINERALS AND METALS LTD. VS. NATIONAL STOCK EXCHANGE OF INDIA LTD. – NCLT KOLKATA BENCH

Brief about the decision:

Facts of the case

- On 04.10.2023, the Adjudicating Authority approved the Resolution Plan submitted by the SRA – Kundan Care Ltd. in respect of the Corporate Debtor Eastern Sugar & Industries Ltd. who was admitted in CIRP on 11.02.2022.
- While approving the resolution plan, this Adjudicating Authority has granted liberty to move any application if required in connection with the implementation of the plan.
- The approved resolution plan provides the reduction of the public shareholding to 2.28% (in shares 13,83,603).
- The Board of Directors in its board meeting dated 29.05.2024, passed a resolution proposing the reduction of paid-up share capital of the corporate debtor. It was decided to reduce public shareholding from 2,91,50,100 shares to 30,24,949 shares (5%) i.e. in approved Resolution Plan, the public shareholding was 2.28%, however, in board resolution of new management, the public shareholding has been increased to 5% to comply Rule 19A (5) of the Securities Contracts (Regulation) Rules, 1957.
- Rule 19A (5) of the Securities Contracts (Regulation) Rules, 1957 is reproduced here (which was amended on 18.06.2021):

  Continuous Listing Requirement. 19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty-five per cent.:
  xxx xxx xxx
  (5) Where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India:
  Provided that, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of [twelve] months from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

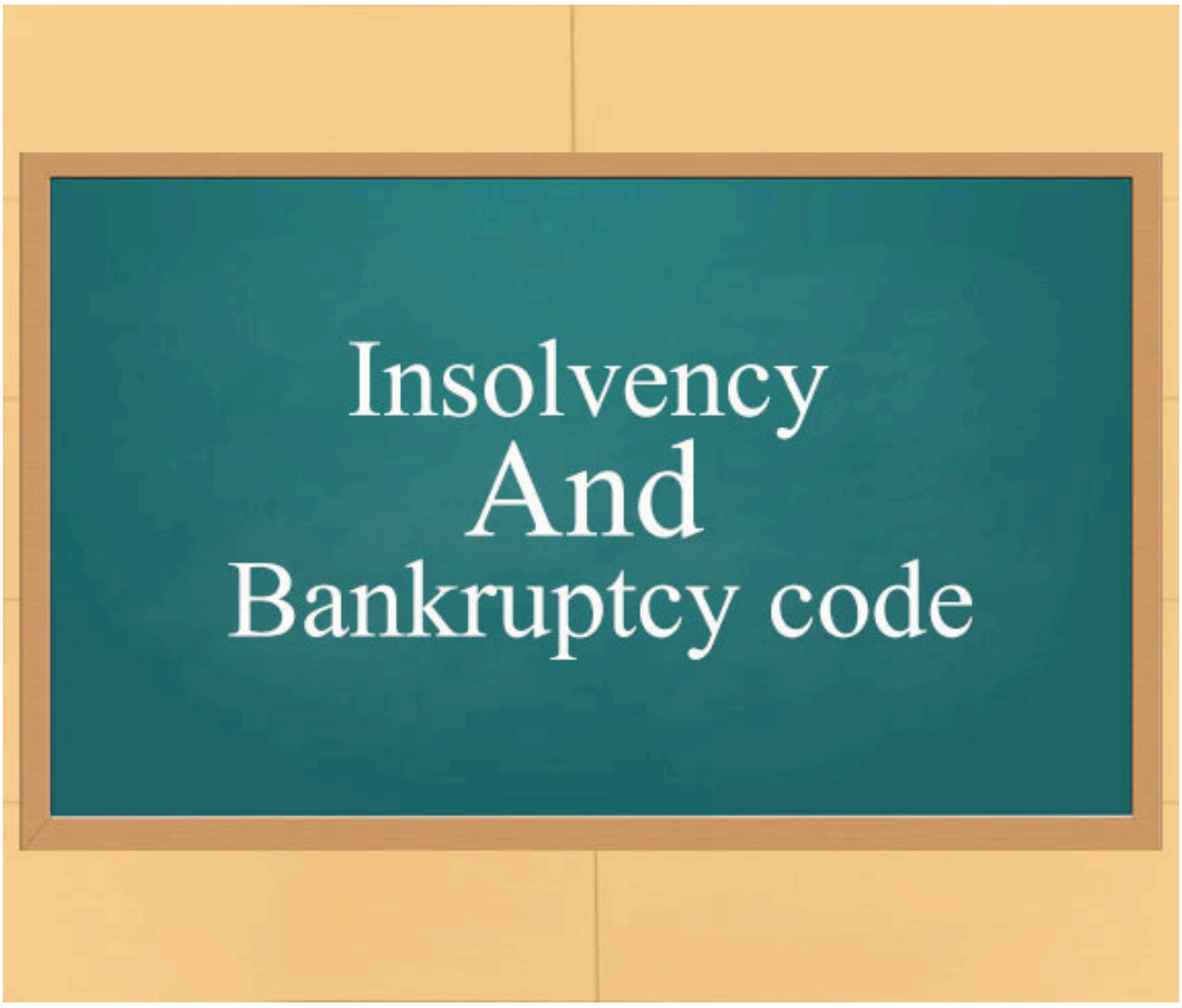
- The NSE on 20.06.2024, through a letter asked for certain clarifications from the applicant SRA in respect of the difference in the number of shares being allotted to the public between the Adjudicating Authority's approved plan and the resolution of board of directors in its meeting dated 29.05.2024.
- On 10.07.2024, the NSE further issued a letter requesting the corporate debtor to provide the details pertaining to such differences in the numbers of public shares.
- The corporate debtor through a letter dated 15.07.2024 informed the NSE that they have increased the public shareholding from 2.28%, as provided in the Resolution Plan to 5% as proposed in the Board Resolution, to the comply with the provisions under Rule 19A (5) of the SCR Rules, 1957, to maintain minimum public shareholdings requirement of 5%, as a result of the implementation of the resolution plan approved under Section 31 of the I&B Code, 2016.
- On 06.08.2024, the NSE further informed the corporate debtor regarding the variation of the public shares in respect of the approved plan and the board resolution and asked to provide a revised plan approved by NCLT considering the treatment of 'capital restructuring' as per board resolution.
- Hence, the Applicant Kundan Minerals and Metals Ltd. (formerly known as Kundan Care Limited), who is the Successful Resolution Applicant (SRA) of the Corporate Debtor Eastern Sugar & Industries Ltd., by way of this application preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016against the Respondent National Stock Exchange of India Limited, Mumbai, has sought the following reliefs:
- a) Allow the present application.
- b) To declare that the SRA is well within its rights to cure defaults made by the RP so as to remain a going concern and meaningfully conclude the CIRP after the RP has become functus officio and that such right shall include the applicant's right to raise public shareholding to 5% in compliance with regulations of SEBI.
- c) Any other order(s) may deem fit and proper.
- The main allegation against the corporate debtor raised by the respondent NSE is that the shareholdings being allotted to the public as provided in the resolution plan approved on 04.10.2023, by NCLT is 2.28% which is non-compliant with the mandate as enshrined under Rule 19A (5) of the SCR Rules.

Decision of Adjudicating Authority

- In terms of Clause 6.1 of the resolution plan dated 17.11.2022, the public shares were proposed to be reduced to 14,57,505 which was further reduced to 13,77,853 through the addendum dated 23.11.2022 (Clause D). (p21)

- The Board of Directors vide its resolution dated 29.05.2024, approved the allotment of 30,24,949 equity shares to the existing public shareholders pursuant to the reduction of share capital which provides the voting share held after the approval of the plan is 4.98%.
- It is a trite, axiomatic, and settled position of law that once a resolution plan is approved by the CoC and subsequently, approved by the Adjudicating Authority, the same cannot be modified or changed. But the Hon'ble Tribunal finds that the present situation is quite different. The present application has been preferred for modification of a particular clause relating to public shareholdings which does not conform with Rule 19A(5) of the SCR Rules which mandates that every listed company shall maintain a public shareholding of at least 5% as a consequence of the implementation of the resolution plan approved by the Adjudicating Authority.(p23)
- It was the duty of the RP to examine the resolution plan received by him to confirm that the plan or any part of the plan was not in violation of any existing laws in terms of Section 30(2)(e) of the I&B Code.
- The intention of the legislature behind inserting clause (e) to Section 30(2) is very lucid that the resolution of a corporate debtor must be in a lawful manner and sans any violating any existing laws. Thus, mere failure to discharge the duty by RP in respect of verification of substantive rules of maintaining minimum 5% public shareholding in the plan, which is approved by this Adjudicating Authority, a resolution of the corporate debtor as well as the implementation of a resolution plan should not be jeopardized.
- In an identical circumstance has already been dealt with by the Coordinate Bench NCLT, Hyderabad (Bench – I) in Ganapa Narsi Reddy v. BSE Limited in I.A. (IB) No. 1576 of 2023 in C.P. (IB) No. 115/9/HDB/2020 order dated 20.02.2024, wherein the Coordinate Bench has allowed the application of the SRA praying to approve the amendment to the approved resolution plan to comply the rule 19A (5) of SCR Rules.
- Now, in respect of the approval of the amended resolution plan, the Coordinate Bench NCLT, New Delhi (Court No. III) has approved the amendment of resolution plan in a matter of Mr. Mohd. Nazim Khan v. M/s. Redhex IT Solutions Pvt. Ltd. & Anr. in IA-730/2023 in (IB) 2602 (ND)/2019.
- In respect of jurisdiction to amend the plan, Section 60(5)(c) of the I&B Code has catered to jurisdictional authority to entertain or dispose of the present application in consideration of the facts and circumstances herein.
- Further, Rule 11 of the NCLT Rules, 2016 provides an 'Inherent Powers' to the Adjudicating Authority to pass an order to meet the ends of justice or to prevent abuse of the process of the Tribunal.

- The modification sought in the resolution plan approved on 04.10.2023, is not for any change or modification of plan value or its distribution. The modification is in fact beneficial to the public shareholders at large.
- While approving the resolution plan on 04.10.2023, in I.A. (IB) No. 1550/KB/2022 in CP (IB) No. 1632/KB/2018, the Hon'ble Tribunal have granted a liberty at para 44 of the Order for moving any Application if required in connection with implementation of this Resolution Plan. Thus, the instant application is well within its jurisdiction and maintainable accordingly.
- Hence, it appropriate to allow the reliefs sought herein by the applicant SRA and allow the amendment of the resolution plan approved by us on 04.10.2023, as sough for.
- In view above, the present application being I.A. (IB) No. 1720/KB/2024, preferred by Successful Resolution Applicant of Eastern Sugar & Industries Limited, corporate debtor herein, is allowed and disposed of, in terms of Section 60(5) of the I&B Code read with Rule 11 of the NCLT Rules, 2016.



IBC CASE LAW: A PURCHASER BACKING OUT FROM THE TRANSACTION THE CONSEQUENCES AS AVAILABLE IN LAW HAVE TO FOLLOWED AND TAKE RECOURSE – KULDEEP VERMA VS. GOVERNMENT OF KERALA AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- The liquidator proposed sale of the shares of subsidiary company namely, M/s Hindustan Newsprint Ltd. which was approved by the Adjudicating Authority on 25.11.2019 and the Govt. of Kerala has offered to purchase the share for amount of Rs. 25 Cr. Payable in 3 months.
- However, Govt. of Kerala backed out from the purchase of the shares.
- The Adjudicating Authority rejected an IA filed by the liquidator seeking direction to the Govt. of Kerala to purchase the shares and pay the consideration.

Decision of Adjudicating Authority

- The Hon'ble Appellate Tribunal notes that the State of Kerala has offered to purchase the shares of subsidiary which also had the approval of the NCLT on 25.11.2019 however the subsidiary company M/s. Hindustan Newsprint Ltd. went to the CIRP on 28.11.2019 subsequent to the approval by the NCLT which was reason for the State of Kerala to back out from the transaction and it has refused to purchase the same.(p7)
- A purchaser backing out from the transaction the consequences as available in law have to followed and take recourse, but no direction could be issued to compel the State to purchase the share.(p8)
- The Adjudicating Authority did not commit any error in rejecting the IA filed by the liquidator. The appeal is disposed of.(p8-9)

CAN A POWER OF ATTORNEY (POA) EXECUTED IN FAVOR OF THE DIRECTORS OF A CORPORATE DEBTOR FOR CARRYING OUT DEVELOPMENT BE CANCELED BY RESOLUTION PLAN? – DHARMESH JAIN VS. JAYESH SANGHRAJKA AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- The Corporate Debtor- Nirmal Lifestyle Realty Pvt. Ltd. entered into MoU with Ralliwolf Limited on 01.10.2004 in terms whereof Ralliwolf agreed to sell land admeasuring 20262 sq. mtrs. along with all the structures thereon to the corporate debtor for consideration of Rs.7 Crores on as is where is basis.
- The amount of Rs.7 Crore was paid by the corporate debtor to Ralliwolf.
- A registered Development Agreement dated 04.08.2005 was entered between the Ralliwolf Ltd. and the Corporate Debtor stating that under MOU dated 01.10.2004 owner had agreed to sell the property to the developers on as is where is basis. Pending sale of the said property, developers have requested the owner to permit the developers to develop the said property by constructing new buildings and structures thereon. The development agreement provided that in consideration of MOU and in further consideration of an amount of Rs.7 Crores paid by the developers to the owner, the owner gives license authorises and permits the developers to enter upon all that piece and parcel of the land for the purpose of commencing and carrying out the work of development and construction, pending the transfer of the said property by the owner to the developers or their nominees.
- The Development Agreement contained the terms and conditions for rights and obligations of the developers. Several clauses of the Development Agreement shall be noticed hereinafter. Clause 6 (ii) of the Development Agreement also contemplated execution and handing over to the developers a Power of Attorney in favour of the nominee/s of the developers with a view to enable the developers to expeditiously make and submit the applications, plan etc. In pursuance of clause 6(ii) of the Development Agreement, a General Power of Attorney dated 06.08.2005 was executed in favour of Mr. Dharmesh Jain and his wife Mrs. Anju Jain by Ralliwolf Limited to enable the Corporate Debtor to undertake the development activities with respect to the property.

- Proceedings under Section 7 of IBC against the corporate debtor was commenced vide order dated 06.12.2021 of the Adjudicating Authority.
- Respondent No.2- Oberoi Constructions Ltd. submitted a Resolution Plan on 15.07.2022. After negotiations and deliberations between the CoC and the SRA, a revised Resolution Plan was submitted where SRA sought that the Power of Attorney executed in favour of the Appellant and his wife shall stand cancelled.
- On 01.09.2022, the Committee of Creditors (CoC) approved the Resolution Plan submitted by the SRA. Waiver sought by the SRA in clause 7.33 of the Resolution Plan was accepted by the Adjudicating Authority. After approval of the Resolution Plan, the Resolution Professional filed an IA No.2455 of 2022 on 01.09.2022 before the Adjudicating Authority for approval of the Resolution Plan.
- Clause 7.33 of the Resolution Plan is reproduced here:

  "7.33: The General Power of Attorney dated 6th August 2005 registered with the office of the Sub-Registrar of Assurances under Serial No. 4844 of 2005 was executed by Ralliwolf in favour of (i) Mr. Dharmesh Jain, and (ii) Mrs. Anju Jain (since deceased), shall stand cancelled without any further act or deed and without the necessity of executing any separate deeds, documents and writing for effectuating the same, by order of the NCLT sanctioning this Resolution Plan."

- The Appellant who had been suspended Director and shareholder of the corporate debtor filed an IA No.3689 of 2022 seeking rejection of the waiver sought by the SRA in clause 7.33 of the Resolution Plan.
- Adjudicating Authority by the impugned order dated 07.03.2024 has rejected IA No.3689 of 2022 with cost of Rs.1 Lakh.
- Aggrieved by the order dated 07.03.2024, Company Appeal (AT) (Insolvency) No.825 of 2024 has been filed by the Appellant. CoC was also subsequently impleaded as one of the Respondents in Company Appeal (AT) (Insolvency) No.825 of 2024.

Decisison of Appellate Tribunal

A. Adjudicating Authority has jurisdiction to declare cancellation of the PoA

- From clause 6(ii) of the registered Development Agreement, it is clear that the Ralliwolf undertook to execute PoA in favour of the nominee/s of the developers and further with a view to enable the developers to expeditiously make and submit the applications, plan etc. and to otherwise obtain all building permissions and all powers incidental thereto. Further clause (iv) of the General PoA clearly indicate that the PoA was issued to enable the developers to develop the said property. Thus, PoA in favour of the Appellant as a

nominee of the corporate debtor was to enable the developers to develop the said property. No rights were given to the PoA holder in the subject land.(p13)

- The Appellant in the PoA was nothing but nominee of the corporate debtor and Appellant being suspended director of the corporate debtor was treated as nominee of the corporate debtor for the purpose of facilitating the developers. The developers being corporate debtor, PoA was not executed in an individual capacity of the appellant nor gave any right to the subject land. When the Resolution Plan submitted by the SRA is approved and the corporate debtor is being taken over by the SRA, the development of property and all other steps as per the Resolution Plan has to be taken by the SRA. The PoA dated 06.08.2005 which was executed in favour of the Appellant served its purpose and cannot be relied for any right which can be claimed by the Appellant in the process. Appellant who was contemplated to extend its co-operation as nominee of the corporate debtor in developing the property is now taken a stand to create obstacles in revival of the corporate debtor to carry out function by the SRA who now takes over the corporate debtor after approval of the Resolution Plan.
- When PoA which was given for a particular purpose to the Appellant as nominee of the corporate debtor and Resolution Plan is approved by the CoC of the corporate debtor, the approval of the Resolution Plan is in commercial wisdom of the CoC and in event, the Resolution Plan declare the PoA which was given in favour of the Appellant as nominee of the corporate debtor as cancelled, the said clause of the Resolution Plan cannot be allowed to be challenged by the Appellant nor Appellant was given any rights in the subject property so as to assert any right.
- The endeavour of the Appellant is nothing but creating obstacles in revival of the corporate debtor in which he was suspended director. The Hon'ble Appellate Tribunal also affirms the findings and imposition of cost of Rs.1 lakh that application was filed by the Appellant is nothing but a vexatious and dishonest attempt.
- It is no more res-integra that the development rights can be claimed by the corporate debtor. The basis of the application filed by the Appellant was PoA dated 06.08.2005 and whether on the basis of the said PoA, clause of the Resolution Plan can be impugned by the Appellant was the question to be answered. As held by us, the PoA was executed in favour of the Appellant who was a nominee of the corporate debtor, only to facilitate the developers in carrying out the development and no rights were given to the Appellant in their individual capacity on the property. None of the rights of the Appellant, thus, can be said to be affected by approval of the Resolution Plan. PoA has out lived its purpose and has rightly held to be cancelled in the clause 7.33. We thus, do not find any error in the order of the Adjudicating Authority rejecting IA No.3689 of 2022.

B. Conditional and contingent Resolution Plan

- From clause 6(ii) of the registered Development Agreement, it is clear that the Ralliwolf undertook to execute PoA in favour of the nominee/s of the developers and further with a view to enable the developers to expeditiously make and submit the applications, plan etc. and to otherwise obtain all building permissions and all powers incidental thereto. Further clause (iv) of the General PoA clearly indicate that the PoA was issued to enable the developers to develop the said property. Thus, PoA in favour of the Appellant as a

- Counsel for the Appellant referring to Clause 8.4 of the Resolution Plan sought to contend that the Resolution Plan was conditional and contingent which could not have been approved. He has referred to Clause 8.4(iii) which contemplate that if the clarification/permission as specified in clause 8.4(ii) is not obtained prior to expiry of 180 days, the Resolution Plan shall stand terminated.(p22)
- The law is well settled that the Resolution Plan which is approved by the CoC cannot be allowed to be withdrawn and any clause which contemplate withdrawal of the plan is unenforceable. Law in this case is settled by the Hon'ble Supreme Court in Ebix Singapore Pvt. Ltd. vs. COC of Educomp Solutions Ltd. and Anr. (2021) ibclaw.in 153 SC.(p23)
- Present is not a case where any violation of Section 30(2) has been even alleged by the Appellant. The Hon'ble Supreme Court has laid down time and again that the jurisdiction of the NCLT and NCLAT is limited jurisdiction to see as to whether the Resolution Plan is in compliance of Section 30(2). Judgment of the Hon'ble Supreme Court in K. Sashidhar vs. Indian Overseas Bank & Ors. (2019) ibclaw.in 08 SC is referred. Appellant has not been able to point out any other ground on the basis of which approval of the Resolution Plan can be faulted.(p26)

C. Disposed of

- The Hon'ble Appellate Tribunal thus, does not find any ground to interfere with the order dated 09.08.2024 passed by the Adjudicating Authority approving the Resolution Plan submitted by the Respondent No.2. The Hon'ble Appellate Tribunal does not find any merit in both the Appeals. Both the Appeals are dismissed.(p27-28)

IF CIRP HAVING COME TO AN END AND LIQUIDATION HAS NOT BEEN ORDERED, NO FURTHER STEPS ARE REQUIRED TO BE TAKEN BY RP, CIRP PROCEEDINGS MAY BE TREATED TO BE CLOSED AND RESOLUTION PROFESSIONAL CANNOT FILE APPLICATION FOR DISSOLUTION UNDER SECTION 54 OF IBC | RP CAN INTIMATE THE ROC FOR STRIKING OFF THE NAME OF CORPORATE DEBTOR FROM THE REGISTER OF THE COMPANIES – JANAK JAGJIVAN SHAH RP RAINBOW INFRABUILD PVT. LTD. VS. COC OF RAINBOW INFRABUILD PVT. LTD. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- The Adjudicating Authority admitted Section 7 application on 09.11.2023.
- M/s. AVB Global Ventures Pvt. Ltd. is the Financial Creditor who initiated proceedings under Section 7 and the claim of AVB Global Ventures Pvt. Ltd. was accepted and admitted in the CIRP to the extent of Rs.2,57,12,668/-.
- The Financial Creditor was the sole CoC Member with 100% vote share.
- The third Meeting of the CoC was held on 06.02.2024, where it was noted that Form-G did not fetch any EoI. It was noted that even after second publication of Form-G, no EoI was received.
- The valuers were appointed by the RP in pursuance of the resolution of the CoC. Valuation of the Corporate Debtor was reported as Rs.1,535/-, which was cash and bank balance as on the CIRP commencement date.
- Fifth CoC Meeting was held on 29.04.2024. The RP informed the CoC that since permitted period of CIRP is going to over on 06.05.2024 and no EoI has been received, liquidation process should be initiated. The CoC resolved not to initiate liquidation process and decided to file an application for dissolution of the Corporate Debtor.
- In pursuance of the resolution passed by the CoC in its fifth Meeting dated 29.04.2024, an IA was filed by the RP which came to be rejected by the Adjudicating Authority.

Decision of Adjudicating Authority

- The Adjudicating Authority took the view that Application under Section 54 of IBC for dissolution of the Corporate Debtor can be filed only when assets of the Corporate Debtor are liquidated. The

- Adjudicating Authority has also referred to the provisions of Regulation 14 of IBBI (Liquidation Process) Regulations, 2016 and Section 54 of the IBC and opined that in exercise of power conferred under Section 54 of the IBC, the Adjudicating Authority is not inclined to order dissolution of the Corporate Debtor. Consequently, the Application was rejected.
- The application was rejected and RP was directed to carry out transaction audit from 01.04.2020 to the date of commencement of the CIRP, which order is under challenge in this Appeal.
- Aggrieved by the order passed by Adjudicating Authority dated 11.06.2024, this Appeal has been filed.

Contention

- Learned Counsel for the Appellant in support of the Appeal contends that the Corporate Debtor only Rs.1,535/-, CoC decided not to take steps for liquidation of the Corporate Debtor.
- The CoC decided not to bear any expenses on liquidation, hence, the dissolution of Corporate Debtor was approved.
- The learned Counsel for the Appellant has placed reliance on the judgment of this Tribunal, Chennai Bench in Shyson Thomas v. Mr. Madhugiri Venkatarayappa Sudarshan (RP) *(2023) ibclaw.in 366 NCLAT*, which was a case where Promoter/ Director of the Corporate Debtor had filed the Appeal challenging the order of the Tribunal dated 24.06.2020, by which order Adjudicating Authority had allowed dissolution of the Corporate Debtor.

Decision of Appellate Tribunal

A. Directions for Transaction Audit

- The Adjudicating Authority directed RP to carry out transaction audit from 01.04.2020 to the date of commencement of the CIRP. The CoC in its second Meeting had already taken the decision not to conduct the transaction/ forensic audit of the Company.
- The Hon'ble NCLAT holds that:
- In the CoC Meeting, it was noted that CIRP is coming to an end in May 2024, the CIRP having already come to an end on 06.05.2024, there being no prayer for extension of CIRP period, we fail to see any reason for direction of transaction audit as directed by the Adjudicating Authority. The liquidation value of the CD was already obtained, which was Rs.1,535/- only.
- There was no cash or cash balance except of a meagre amount of Rs.1,451/- no other assets were found and CIRP having come to an end, direction by the Adjudicating Authority dated 11.06.2024 for transaction audit is unsustainable and is set aside.(p15)

B. CIRP having been unsuccessful and no liquidation order having been passed, recourse to Section 54 of IBC could not have been taken by the RP

- In the present case, the Adjudicating Authority has neither directed for any liquidation, nor liquidation has actually been conducted.(p16)
- The Adjudicating Authority has not exercised its jurisdiction in allowing the application filed by the CD for dissolution referring to Section 54 of the IBC and Regulation 14 of the Liquidation Regulations. The scheme of the IBC clearly provides that dissolution is a step subsequent to the Corporate Debtor having been completely liquidated.(p18)
- In the present case, the liquidation proceedings have not been undertaken and resorting to Section 54 could not have been taken as per the scheme of the IBC. The facts of the present case indicate that CIRP has been completed without any Plan having been received, inspite of Form-G published twice. The Adjudicating Authority did not pass any order for liquidation, which could have been passed under Section 33(1). Thus, the CIRP having been unsuccessful and no liquidation order having been passed, recourse to Section 54, could not have been taken by the RP.(p18)

C. Striking off the name of Corporate Debtor from the Register of the Companies in case of unsuccessful CIRP

- Under the Companies Act, Chapter XVIII, containing the heading “Removal of names of companies from the Register of Companies”, provides ample jurisdiction to Registrar of Companies to remove the name of a Company from Register of Companies. Section 248 empowers the Registrar, who on being satisfied by reasonable cause as mentioned in sub-clause (1) or as is covered by sub-clauses (c), (d) and (e), Registrar can strike off the name of the Company from the Register of Companies.(p19)
- In the present case, the RP could have intimated the Registrar of Companies for striking off the name of the Company. In the facts of the present case, where company is not carrying on any business and there are no assets of the Company, dissolution of the Company under Section 54, is a step, which could have been taken as per the statutory scheme of the IBC.(p19)
- Shyson Thomas v. Mr. Madhugiri Venkatarayappa Sudarshan (RP) (2023) ibclaw.in 366 NCLAT was a case where Adjudicating Authority exercising its jurisdiction has directed for dissolution by allowing the application. In the present case, the Adjudicating Authority had rejected the application, relying on the provisions of Section 54 of the IBC and Regulations 14 of the Liquidation Regulations.(p19)

- In the present case, CoC consisted of sole Financial Creditor, who had initiated the CIRP against the Corporate Debtor. When the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking off the name of Company from the Register of the Companies.(p20)

D. Disposed of

In view of our foregoing discussions and conclusions, the Hon'ble Appellate Tribunal disposes of this Appeal with following direction:

- The impugned order dated 11.06.2024 directing for carrying out transaction audit, is set aside.
- The RP may send intimation to Registrar of Companies, giving the facts and details, praying that Company's name be struck off from the Register of Companies
- The CIRP having come to an end and liquidation has not been ordered, no further steps are required to be taken by the RP. The CIRP proceedings may be treated to be closed.

Parties shall bear their own costs.(p21)

ONCE THE CLAIM WAS RETURNED BY RESOLUTION PROFESSIONAL, THERE IS NO SUBSTANTIVE CLAIM TO BE INCLUDED IN THE RESOLUTION PLAN IN THE ABSENCE OF RE-SUBMISSION OF THE SAID CLAIM | MERELY BECAUSE THE WAIVER WAS NOT ALLOWED BY THE NCLT WHILE APPROVING THE RESOLUTION PLAN WOULD NOT, IPSO FACTO, RESURRECT THE RIGHT OF CLAIM – UNION OF INDIA VS. OCL IRON AND STEEL LTD. – DELHI HIGH COURT

Brief about the decision:

Facts of the case

- OCL Iron and Steel Ltd. (Respondent) executed a Coal Mine Development and Production Agreement dated 02.03.2015 with the appellant/ Nominated Authority of the Ministry of Coal, Government of India in respect of allocation and development of Ardhagram coal mine. Clause 24.3.3 of the Coal Mine Agreement provided for forfeiture of the Performance Bank Guarantee (PBG) in the event of termination of the Agreement by Respondent.
- The NCLT, Cuttack Bench initiated CIRP against the Respondent at the behest of Indian Bank on 20.09.2021.
- During CIRP, On 31.12.2021, the appellant issued a communication terminating the Coal Mine Agreement for breach of its terms, specifically the non-renewal of the PBG for an amount of Rs. 92,25,20,000/-, which had lapsed on 20.03.2021, as per Clause 6.15 of the said Agreement.
- The Resolution Professional challenged the appellant's decision to terminate the Coal Mine Agreement before the NCLT, which was dismissed by the order dated 07.02.2023. Thereafter, an appeal was preferred before the NCLAT wherein interim order dated 24.01.22022 was restored thereby staying the operation of the Termination Order.
- The appellant submitted two claims to the Resolution Professional, (a) Form C dated 04.10.2021 as a Financial Creditor in respect of the claim of Rs.92,25,20,000/- towards the PBG, and (b) the incremental fixed cost of Rs. 9,21,44,029/-, which was due towards the prior allottee of the Ardhagram coal mine.
- On 06.01.2022, the Authorized Representative of Resolution Professional issued a communication to the appellant informing it that the claim pertaining to the PBG in Form C and other supporting documents did not disclose a *'financial debt'* and thus, the appellant was not found eligible to be a *"Financial Creditor"*. On 07.01.2022, another e-mail communication was addressed to the appellant,

permitting it to file its claim in an appropriate form with supporting documents, if so advised, for the consideration of the said claim by the Resolution Professional. However, no subsequent claim/form was submitted by it to the Resolution Professional.

- Subsequently, the Resolution Plan formulated by the successful Resolution Applicant was approved by the NCLT under Section 31(1) of the IBC on 20.03.2023.
- The new board of management of the Corporate Debtor was constituted in March-April, 2023. The reconstituted management of the respondent applied for participation in bidding process for the Lalgarh South coal mine on 15.02.2024. However, in the list of technically qualified bidders notified on 11.03.2024, the name of the respondent was omitted.
- The appellant vide communication dated 22.05.2024, debarred the respondent from participating in prospective coal mine auctions till the repayment of outstanding dues of Rs. 92,25,20,000/- arising from the failure to renew the PBG and the incremental fixed cost of Rs. 9,21,44,029/-which allegedly remained unsettled by the respondent.
- Being aggrieved, the Respondent filed the underlying writ petition challenging the decision of the appellant dated 22.05.2024.
- Vide impugned judgement dated 26.07.2024, reported in OCL Iron and Steel Ltd. v. Union of India (2024) ibclaw.in 706 HC, Hon'ble Single Judge had set aside the decision of the appellant dated 22.05.2024 disqualifying the Respondent from participating in coal mine auctions until outstanding dues are cleared, and held that the Respondent cannot be held accountable for liabilities that have been legally extinguished and that under the scheme of the IBC, the respondent is entitled to proceed on the principle of 'clean slate'.
- Aggrieved by such decision, present appeal has been preferred by the appellant.

Decision of High Court

- Once the claim was returned to the appellant to be re-filed, it did not take any action in pursuance thereto. Thus, there did not exist any claim to be processed by the Resolution Professional to be placed before the Committee of Creditors and thereafter, before the NCLT for approval of the Resolution Plan. Notwithstanding that, undeniably, the Resolution Plan was approved by the NCLT on 20.03.2023 and the second claim of the appellant in respect of Rs. 9.21 crores was calculated and disbursed to it by the successful Resolution Applicant. Despite having notice of all the above events and facts, the appellant neither objected nor challenged the Resolution Plan at any time till date.(p23)
- Besides, it is trite that once the Resolution Plan is formally approved by the NCLT, any other remaining claims etc. would be deemed to

have extinguished. This has been succinctly but authoritatively laid down by the Supreme Court in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors. (2021) ibclaw.in 54 SC.

- Except for a bald statement or an argument that the waiver sought by the Resolution Applicant against the said claim was denied by the NCLT, the appellant has failed to indicate as to what steps were taken by it to resurrect its claim once the Resolution Plan was approved or the steps taken after having received the compensation in respect of the other claim. Undoubtedly, the claim in respect of Rs.9.21 crores, stated to be due towards prior allottee of Ardhagram Coal Mine, stood included in the Resolution Plan and was indeed calculated and disbursed in accordance therewith. Yet, so far as the present claim is concerned, there is no document on record to indicate any action taken by the appellant for its redemption. Thus, the appellant appears to have let the claim get extinguished without a protest or demur. (p25)
- Merely because the waiver was not allowed by the NCLT while approving the Resolution Plan would not, ipso facto, resurrect the right of claim. In the opinion of this Court, the right of the appellant to the claim is clearly extinguished post approval of Resolution Plan.(p25)
- That apart, the Supreme Court in Ghanashyam Mishra (2021) ibclaw.in 54 SC (supra) has clearly laid down the theory/principle of "clean slate". According to the said theory, the successful Resolution Applicant in order to get a fresh breath or new lease of life, is permitted to proceed in resurrecting the "ongoing concern" and no surprise claims are flung or sprung upon it, lest the entire effort of revitalizing and restarting the Corporate Debtor are wasted. In view of the avowed principle too, this Court finds no reason to interfere with the impugned judgement.(p26)
- In so far as the case of *Swiss Ribbons Pvt. Ltd. and Anr. v. Union of India and Ors. (2019) ibclaw.in 03 SC* is concerned, there is no quarrel with the proposition that the Resolution Professional does not play any adjudicatory role. However, in the present case, the appellant, as noticed above, on facts, has permitted time to intervene and extinguish its right to claim. That apart, the appellant did not take any steps to challenge the Resolution Plan at all. Thus, the ratio of this judgement does not assist the case of the appellant.(p27)
- To that extent, the reliance on *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni and Anr. (2024) ibclaw.in 53 SC* would not enure to the benefit of the appellant. In that case, the aggrieved person had infact challenged the Resolution Plan itself whereas, in the present case, the appellant let the claim get extinguished by its own apathy.(p25)
- In the case of *Greater Noida Industrial Development Authority* (supra), the Supreme Court was considering a dispute similar to the

one in the present case, except, in that case, the aggrieved person therein challenged the Resolution Plan itself and the Supreme Court held that the form in which the claim was submitted with the Resolution Professional is inconsequential so long as a proper claim is laid. It further held that what needed to be considered respecting such claim is, whether it deserved to form part of the Resolution Plan.(p28)

- In the present case, though the appellant did submit the claim at hand, yet did not re-submit the same after it was returned. In other words, once the claim was returned, there was no substantive claim to be included in the Resolution Plan in the absence of resubmission of the said claim. Thus, it is not the lack of form which is of relevance in the present case, but the lack of a claim itself that would render the ratio inapplicable to the present case. This is also clear from the undeniable fact that the other claim submitted by the appellant simultaneously, was not only included in the Resolution Plan, but was also duly apportioned and disbursed to the appellant.(p28)
- In the present case, the appellant did not take appropriate steps in law to lay its claim in time and by prescription of law, that is the IBC, and supervening circumstances, claims not forming part of the Resolution Plan as approved, stood extinguished. Besides, the “clean slate” theory laid down in Ghanashyam Mishra (supra) would be rendered otiose if that interpretation were to be proposed. At the risk of repetition, it is already noted above that the other claim respecting prior allottee in Ardhagram Coal Mine was considered; made part of the Resolution Plan; approved and; was duly apportioned and disbursed to the appellant. Yet, the appellant chose not to pursue its remedies respecting the claim in question.(p29)
- Consequently, in view of the aforesaid analysis and findings, the Hon’ble High Court finds no reason, much less any cogent reason to interfere with the impugned order passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.(p30)
- Pending applications, if any, stand disposed of.(p31)

BREACH OF STATUTORY DUTY: ROC PENALIZES AUDITOR FOR NON-FILING OF RESIGNATION NOTICE WITH ROC

Background of the case

1. This particular case is in respect of one of the auditing firms who had breached the regulations specified in section 140 of the Companies Act, 2013 in respect of the notice of intimation to be sent to the Registrar of Companies by filing the e-form ADT-3 on the Ministry of Corporate Affairs portal. This breach occurred because the auditing firm failed to submit its resignation notice in the prescribed e-form ADT-3 as mandated by the Companies Act 2013 within the specified time, which amounted to a violation of section 140(2) of the Companies Act 2013. The auditing firm, realizing the default was committed much later, filed an intimation of resignation to the Registrar of Companies in a delayed period of 2076 days. As a result, penal provisions under section 140(3) of the Companies Act had been triggered. The auditing firm admitted that the firm had missed the filing of the notice of intimation in form ADT-3 and attributed the reason for the delay stating that their auditing firm was going through a constitution change in the Institute of Chartered Accountants of India by way of conversion into Limited Liability Partnership (LLP) and name change. The Registrar of Companies / Adjudication Officer. Bilaspur, Chhattisgarh, after following the procedure of law such as issuing the show cause notice and fixing a personal hearing, had concluded that the auditing firm violated the provisions of section 140 (2) of the Companies Act 2013 and levied a penalty upon the auditor an amount of Rs. 2 lakh for the violation. We shall go through this case in detail in order to understand the provisions of the Act and the default committed by the auditing firm, which finally resulted in a penalty.

The relevant provisions relating to this case

2. The relevant provision relating to this case is as per the provisions of section 140 (2) of the Companies Act 2013. As per the provisions of this section, the auditor who has resigned from the company should file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and also to the Registrar of Companies, and in case of companies referred to in sub-section (5) of section 139, the auditor should also file such statement with the comptroller and Auditor-General of India indicating the reasons and other facts as may be relevant with regard to his resignation.

Penal provisions for default / non-compliance

3. As per the provisions of sub-section (3) of section 140 of the Companies Act 2013, if the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

Regulatory action in case of default

4. In cases of non-compliance, the regulators could take necessary penal action by issuing a show cause notice, conducting a personal hearing, and passing the necessary adjudication order for defaulting auditors/auditing firms. In this connection, we can examine decided case law relating to the above provisions to understand the consequences arising out of non-compliance.

The relevant case

5. We shall go through the adjudication order dated 13th September 2024 passed by the Registrar of Companies, Bilaspur, Chhattisgarh in the matter of Companies Act 2013 and in the matter of adjudication proceedings under section 454 read with sub-section 3 of section 140 of the Companies Act 2013 and in the matter of M/s. Subh Laabh Polymers Private Limited, order bearing No. Di.No. 693 to 694.

Details of the company

6. M/s Subh Laabh Polymers Private Limited is a company incorporated on 16th June 1984 under the provisions of the Companies Act 1956 and has its registered office situated at Room No. 5, First Floor, Vastu Bhawan, Besides Bungalow 10 Golden Homes VIP Club Khaamardih, Sha Nkar Nagar, Raipur in the state of Chhattisgarh. The company has four directors on its board, as per the details on the MCA website. The company is a manufacturer of a wide range of water storage tank, HDPE syntel water tank, LDPE water tanks, syntel loft tank and such other items.

Appointment of the statutory auditor of the company

6.1. M/s. RK Singhania & Associates, a chartered accountants auditing firm, was appointed by the company as the statutory auditors of the company with effect from 1st April 2015 for a period of five years, i.e. up to the conclusion of the annual general meeting of the company for the financial year ending as of 31st March 2020.

Relevant facts of the case

7. The following were the relevant facts relating to this case.
   a. The Registrar of Companies undertook an enquiry as per the directions of the Ministry of Corporate Affairs, and during such enquiry, the following were observed by the Registrar.
   b. The company appointed M/s. RK Singhania & Associates, a chartered accountant, is the auditing firm as the statutory auditors of the company with effect from 1st April 2015 for a period of five years, i.e. up to the conclusion of the annual general meeting of the company for the financial year ending as of 31st March 2020.
   c. Further, the company appointed M/s. Navratan Chandak & Associates, another chartered accountant firm, as the statutory auditor of the company with effect from 1st April 2017 to 31st March 2022 for a period of five years, i.e. till the conclusion of the annual general meeting of the company for the financial year ending as on 31st March 2022.
   d. The Registrar of Companies further observed that the compliance under section 140 (2) of the Companies Act 2013 had not been complied with by the earlier auditing firm, i.e. M/s. RK Singhania & Associates and there was no filing of form ADT-3 reporting the resignation of the auditors to the Registrar of Companies as mandated by the Act.

With the above facts, the Registrar of Companies had a strong reason to believe that the violation of section 140(2) of the Companies Act 2013 taken place and the matter was reported to the Regional Directorate of the Ministry of Corporate Affairs vide his letter dated 27th June 2023.

Directors issued by the Directorate of MCA

8. The directorate of MCA had issued directions to the Registrar of Companies, Bilaspur, Chhattisgarh on 15th January 2024 to take necessary action for the observations reported by the Registrar of Companies and advised the Registrar to initiate the necessary penal action for the violation committed.

Action taken by the Registrar of Companies

9. As per the directions received from the directorate of Ministry of Corporate Affairs, the Registrar of Companies, Bilaspur, Chhattisgarh had issued a show cause notice and duly served the notice upon the M/s RK Singhania & Associates, the earlier auditing firm of the company under section 140 (2) of the Companies Act 2013 on 14th August 2024 asking them to clarify the matter along with the supporting documents.

Response from the Auditing firm i.e. M/s. RK Singhania & Associates

10. The auditing firm responded to the show cause notice issued by the Registrar of Companies, and the Registrar of Companies received the reply on 9th September 2024, written by the auditing firm dated 4th September 2024. The reply stated that the auditing firm resigned as the auditors of the company, and they had issued their resignation letter to the company on 2nd August 2017 in this respect.

The letter further stated that the auditing firm was going through a constitution change in the Institute of Chartered Accountants of India by way of conversion into a Limited Liability Partnership (LLP) and name change. Due to engagement on the above matter, the auditing firm missed out on the filing of a notice of resignation form ADT-3 to the Registrar of Companies. The firm realized its default in the year 2023, and soon after, the firm filed the ADT-3 form along with the applicable late fees in addition to the applicable fees for filing, and the firm provided the details of the SRN number. The firm admitted to filing the ADT-3 form by a delayed period of 2076 days.

Dispensation of the personal hearing

11. In view of the admission of the violation committed by the auditing firm, the personal hearing was dispensed with, and the Registrar of Companies / Adjudication Officer proceeded on this matter in deciding the case and passing the appropriate adjudication order.

Conclusion reached by the Registrar of Companies / Adjudication Officer

12. From the reply received from the company, the Registrar of Companies came to the conclusion that M/s RK Singhania & Associates, the statutory auditors of the company, had violated the provisions of sub-section (2) of section 140 of the Companies Act 2013 due to non-filing of notice of their resignation in the prescribed e-form ADT-3 at the Ministry of Corporate Affairs portal which was a violation of section 140(2) of the Companies Act 2013 which attracted penal provisions of section 140(3) of the Companies Act 2013.

Order passed by the Registrar of Companies/Adjudicating Officer

13. The following are the details of the order passed by the adjudicating officer on this matter, imposing the penalty on the auditing firm M/s. RK Singhania & Associates for the noncompliance under section 140(2) of the Companies Act 2013.
Having considered the facts and circumstances of the case and based

on the admission made by the auditing firm confirming the violation committed by them, the Registrar of Companies / Adjudicating Authority imposed a penalty on the auditing firm as per table below for violation of section 140(2) of the Companies Act 2013.

Nature of default	Relevant section under the Co's Act 2013	Name of person on whom the penalty imposed	No. of days default	Penalty imposed under section 446B of the Act			
			Days	Penalty u/r sec. 140(3)	Total penalty	Max. penalty	Penalty imposed
Non-filing of ADT-3	140(2) and 140(3)	On the auditor	2076	50,000 + 2076*500 or 8550 + 2076*500 which- ever is less	10,46,550	2,00,000	2,00,000
Total Penalty							**2,00,000**
Note: - Number of days default calculated from 31st August 2017 (30 days from the date of resignation) to 9th May 2023 (the date of filing of the ADT-3 form)							

a. The Adjudication Officer was of the opinion that the penalty was commensurate with the aforesaid default committed by the chartered accountant firm and stated that the penalty imposed shall have to be paid by the auditor from the personal sources/income.
b. The order directed that the auditor make the payment through online mode by using the website www.mca.gov.in (Misc. head), specifying the details of this order and the name of the auditor who was paying the penalty pursuant to Rule 3 (14) of the Companies (Adjudication of Penalties) (Amendment) Rules 2019 within 90 days from the date of receipt of this order.
c. The order further stated that an appeal against this order might be filed in writing with the Regional Director, North western Region, Ahmedabad, within a period of sixty days from the date of receipt of this order, in Form ADJ (available on Ministry website www.mca.gov.in) setting forth the grounds of appeal. The appeal shall have to be accompanied by a certified copy of this order. (Section 454(5) and Section 454(6) of the Companies Act 2013 read with the Companies (Adjudicating of Penalties) Rules 2014.
d. The order also drew the attention of the auditor to the provisions of section 454(8)(ii) of the Companies Act 2013, in the event of non-payment of the penalty amount, the person who was in default would be punishable with imprisonment which may extend to six months which shall not be less than twenty-five thousand rupees but which may extent to one lakh rupee or both.
e. Finally, the order ended up saying that the adjudication order stands disposed of with this order.

Despatch of the order

14. The order was sent by the Registrar of Companies in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the partner of the chartered accountant firm at their address and also to the Regional Director, (NWR), Ministry of Corporate Affairs, ROC, Bhavan, Opp. Rupal Park, Ahmedabad, for his information. The order also stated that it would be uploaded to the Ministry's website.

The complete order for reading

15. The readers may like to read the complete adjudication order dated 13th September 2024 passed by the Registrar of Companies, Bilaspur, Chhattisgarh in the matter of Companies Act 2013 and in the matter of adjudication proceedings under section 454 read with sub-section 3 of section 140 of the Companies Act 2013 and in the matter of M/s. Subh Laabh Polymers Private Limited, order bearing No. Di.No. 693 to 694. at the Ministry's website at https://www.mca.gov.in/ content/ mca/ global/en/data-and-reports/ rd-roc-info /roc-adjudication-orders.html (the order uploaded under the head ROC Chhattisgarh on 18th September 2024 titled as adjudication order for violation of section 140(2) of the Companies Act 2013 in the matter of M/s. Subh Laabh Polymers Private Limited.)

Conclusion

16. From the above case study, it is clear that the regulator can initiate action for any default or non-compliance by the auditors/auditing firm with respect to section 140(2) of the Companies Act 2013. The auditor/auditing firm, whenever they resign from the company, is required to mandatorily file the intimation to the Registrar of Companies within a period of thirty days from the date of resignation, a statement in the prescribed form ADT-3 with the Registrar of Companies and also intimate the company and the and in case of companies referred to in sub-section (5) of section 139, the auditor should also file such statement with the comptroller and Auditor-General of India indicating the reasons and other facts as may be relevant with regard to his resignation. Failure to file the required form ADT-3 within the stipulated time would attract a penalty under section 140(3) of the Companies Act 2013, as seen in this case, and hence, compliance is a must in order to avoid the penal action resulting in a penalty.

Reference:-

1. Companies Act, 2013
2. Companies (Audit & Auditors) Rules, 2014.
3. Companies (Management and Administration) Amendments Rules, 2021
4. Companies (Adjudication of Penalties) Rules, 2014
5. Companies (Adjudication of Penalties) Amendment Rules, 2019
6. Companies (The Registered offices and Fees) Rules, 2014
7. Adjudication order dated 13th September 2024 passed by the Registrar of Companies, Bilaspur, Chhattisgarh in the matter of Companies Act 2013 and in the matter of adjudication proceedings under section 454read with sub-section 3 of section 140 of the Companies Act 2013 and in the matter of M/s. Subh Laabh Polymers Private Limited

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