

# V VEDANAM वेदनम्

Issue: September 2024

## WHY VEDANAM?

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

Vedanam is a thoughtfully curated newsletter designed to provide legal professionals, scholars, and enthusiasts with the latest

developments, trends, and analysis from the dynamic world of law.

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

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Corporate Legal firm

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

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

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

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

The word "**shares**" has been replaced with "**securities**" throughout Schedule II of the rules.

In cases where a copy of legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction is submitted, the same shall be accompanied with-

(a) a notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and

(b) a no objection certificate from all legal heirs other than claimants, stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer.

The value of the securities as on the date of application shall be quantified by the applicant on the basis of the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value shall be quantified basis on the face value or the maturity value of the security, whichever is more.

### Schedule III-

Following explanations shall be inserted, namely: -

"Explanation I: A foreign national or non-resident Indian, in lieu of documents mentioned in item 1, shall be permitted to provide self-declaration of securities lost or misplaced or stolen which shall be duly notarised or apostilled or consularised in their country of residence, along with self-attested copies of valid passport and overseas address proof.

Explanation II: The value of the securities as on the date of application shall be quantified by the applicant based on the closing price of such securities at any one of the recognised stock exchange a day prior to

the date of such submission in the application, for listed securities and for unlisted securities, the value shall be quantified basis on the face value of the maturity value of the securities, whichever is more.

#### Schedule IV

The company shall take special contingency insurance policy from the insurance company towards the risk arising out of such claim in respect of verification report under sub-rule (3) of rule 7 or the revised verification report under the second proviso of sub-rule (7) of the said rule, as the case may be.

Link: [Investor Education and Protection Fund Authority \(Accounting, Audit, Transfer and Refund\) Second Amendment Rules, 2024](#)

## **MCA UPDATE: CLARIFICATION ON HOLDING OF ANNUAL GENERAL MEETING (AGM) AND EGM THROUGH VIDEO CONFERENCE (VC) OR OTHER AUDIO VISUAL MEANS (OAVM) AND PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY THE COMPANIES UNDER THE COMPANIES ACT, 2013 READ WITH RUES MADE THEREUNDER -EXTENSION OF TIMELINE-REG.**

#### Extension for AGMs:

Companies whose AGMs are due in the years 2024 or 2025 are now permitted to conduct their AGMs through VC or OAVM. This extension applies to AGMs scheduled for or before 30th September 2025.

#### No Extension of Statutory Time:

An essential clarification is included in the circular: it does not extend the statutory time for holding AGMs as per the Companies Act, 2013. Companies failing to adhere to the statutory timelines are still liable to face legal action under the appropriate provisions of the Act. This emphasizes the importance of compliance.

#### Extension for Extraordinary General Meetings (EGMs):

In addition to AGMs, the circular also extends the provision for conducting Extraordinary General Meetings (EGMs) through VC or OAVM. Companies can transact items through postal ballots as per the framework provided in the relevant Circulars. This extension applies up

to 30th September 2025, maintaining consistency with the AGM extension.

Link: [Clarification on holding of Annual General Meeting \(AGM\) and EGM through Video Conference \(VC\) or Other Audio Visual Means \(OAVM\) and passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013 read with Rues made thereunder -Extension of timeline-reg](#)

## MCA UPDATE: COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2024.

These rules may be called the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024.

They shall come into force from the 17th day of September, 2024.

The amendment provides that where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation, both the companies shall obtain the prior approval of the Reserve Bank of India and application shall be made by the transferee Indian company to the Central Government along with a declaration.

Link: [Companies \(Compromises, Arrangements and Amalgamations\) Amendment Rules, 2024](#)

## MCA UPDATE: COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2024.

These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024.

They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in sub-rule (2) of rule 9B, the following proviso shall be inserted, namely:

“Provided that a producer company covered under this sub-rule shall, within a period of five years of closure of such financial year, comply with the provision of this sub-rule.”

Link: [Companies \(Prospectus and Allotment of Securities\) Amendment Rules, 2024](#)

## MCA UPDATE: COMPANIES (ACCOUNTS) AMENDMENT RULES, 2024.

These rules may be called the Companies (Accounts) Amendment Rules, 2024.

They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Accounts) Rules, 2014, in rule 12, in sub-rule (1B), after the third proviso, the following proviso shall be inserted, namely:

—

“Provided also that for the financial year 2023-2024, Form CSR-2 shall be filed separately on or before 31st December, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in these rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be”

Link: [Companies \(Accounts\) Amendment Rules, 2024](#)

## SEBI UPDATE: MODIFICATION IN THE TIMELINE FOR SUBMISSION OF STATUS REGARDING PAYMENT OBLIGATIONS TO THE STOCK EXCHANGES BY ENTITIES THAT HAVE LISTED COMMERCIAL PAPER

SEBI has issued a circular on modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper.

The relevant extract of the said provision is given as under:

8.4 A certificate confirming fulfilment of its payment obligations, within 2 days of payment becoming due

To align the timeline of intimating Stock Exchanges regarding status of payment obligations for listed non-convertible securities and listed Commercial Paper, paragraph 8.4 of Chapter XVII of the NCS Master Circular, is hereby amended as under:

“8.4 A certificate confirming fulfilment of its payment obligations, within one working day of payment becoming due”.

Link: [Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper](#)

## SEBI UPDATE: ALLOWING SECURITIES FUNDED THROUGH CASH COLLATERAL AS MAINTENANCE MARGIN FOR MARGIN TRADING FACILITY (MTF).

Securities and Exchange Board of India (SEBI) issued guidelines regarding allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF).

SEBI noted that the stocks or units of Equity ETFs deposited as collateral with the stock broker for availing margin trading facility (Collaterals) and the stocks or units of Equity ETFs purchased under the margin trading facility (Funded stocks) shall be identifiable separately and no comingling shall be permitted for the purpose of computing funding amount.

Further, in case the broker has collected cash collateral from the client in form of margin for availing margin trading facility and the Trading Member has given the said cash collateral to the Clearing Corporation (CC) towards settlement obligation of the said client, then same can be considered as maintenance margin to the extent of securities received from CC against such cash collateral given to CC and such shares are pledged in favor of trading member in form of funded stock.

Link: [Allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility \(MTF\)](#).

SEBI UPDATE:  
MODIFICATIONS IN  
GUIDELINES FOR BUSINESS  
CONTINUITY PLAN (BCP)  
AND DISASTER RECOVERY  
(DR) OF MARKET  
INFRASTRUCTURE  
INSTITUTIONS (MIIS)

SEBI's modifications to guidelines concerning Business Continuity Plan (BCP) and Disaster Recovery (DR) systems for Market Infrastructure Institutions (MIIs), such as Stock Exchanges, Clearing Corporations, and Depositories

**Near Site (NS) Requirement:**

**Stock Exchanges:** Must have a Near Site (NS) in addition to a Disaster Recovery Site (DRS) to ensure near-zero data loss.

**Clearing Corporations & Depositories:** NS must ensure zero data loss.

**Manpower at DRS:**

Expertise at the DRS must be equivalent to that at the Primary Data Center (PDC), enabling independent operations at short notice.

**Recovery Point Objective (RPO):**

The RPO, which determines the maximum tolerable data loss, should be near zero. There should be a documented process for

data reconciliation when resuming operations from DRS or other sites.

**Solution Architecture**

**Stock Exchanges:** PDC, DRS, and NS must ensure high availability, fault tolerance, no single point of failure, near-zero data loss, and data integrity.

**Clearing Corporations & Depositories:** The same, but with a requirement for zero data loss.

**Replication:**

**Stock Exchanges:** Synchronous replication between PDC and NS for near-zero data loss; asynchronous replication between PDC and DRS.

**Clearing Corporations & Depositories:** Synchronous replication between PDC and NS for zero data loss; asynchronous between PDC and DRS.

Link: [Modifications in Guidelines for Business Continuity Plan \(BCP\) and Disaster Recovery \(DR\) of Market Infrastructure Institutions \(MIIs\)](#).

SEBI UPDATE: OPTIONAL  
MECHANISM FOR FEE  
COLLECTION BY SEBI  
REGISTERED INVESTMENT  
ADVISERS (IAS) AND  
RESEARCH ANALYSTS  
(RAS)

The implementation of the **Centralized Fee Collection**

**Mechanism for Investment Advisors (IAs) and Research Analysts (RAs)**, aimed at creating a more transparent fee payment process. Here's a summary of the key points:

The mechanism addresses the growing demand for a system that ensures fees are only paid to registered IAs and RAs, protecting investor interests.

After public consultation and stakeholder discussions, the "Centralized Fee Collection Mechanism (CeFCoM)" has been created to streamline the fee collection process.

Under this mechanism, clients will pay fees to IAs/RAs through a designated portal managed by a recognized **Administration and Supervisory Body (ASB)**.

BSE Limited has co-developed this system with various stakeholders and is responsible for specifying the operational framework by **September 23, 2024**, with the system becoming operational from **October 1, 2024**.

Though the mechanism is optional, both the ASB and registered IAs/RAs are encouraged to promote the use of this mechanism among clients to enhance transparency and security in fee transactions.

Link: [Optional mechanism for fee collection by SEBI registered Investment Advisers \(IAs\) and Research Analysts \(RAs\)](#).

**SEBI UPDATE: REPORTING BY FOREIGN VENTURE CAPITAL INVESTORS (FVCIS).**

Foreign Venture Capital Investors (FVCIs) are required to submit quarterly reports to SEBI in the format specified with respect to their venture capital activity as Foreign Venture Capital Investor. The report for the quarter ending September 30, 2024 and December 31, 2024 shall be submitted in excel file in the revised format by November 15, 2024 and January 15, 2025 respectively through email at [fvc-report@sebi.gov.in](mailto:fvc-report@sebi.gov.in).

From quarter ending March 31, 2025 onwards, FVCIs shall submit quarterly report in the revised format on the SEBI intermediary portal (SI Portal). The report shall be submitted within 15 calendar days from the end of each quarter.

Link: [Reporting by Foreign Venture Capital Investors](#)

**SEBI UPDATE: ENABLING T+2 TRADING OF BONUS SHARES WHERE T IS THE RECORD DATE**

To streamline the process of Bonus issue of equity shares, in consultation with the market participants, it has been decided to reduce the time taken for credit of bonus shares and



trading of such shares, from the record date of the Bonus Issue under SEBI (ICDR) Regulations, 2018.

The operational procedure to implement the above is as given below

The issuer must apply for in-principle approval for the bonus issue under Regulation 28(1) of SEBI (LODR) within 5 working days of the board approving the bonus.

The issuer must notify the stock exchange of the record date (T day) and the deemed date of allotment (T+1 day).

Once the stock exchange accepts the record date and requisite documents, it will notify the market, including the deemed date of allotment (T+1).

By 12 PM on the T+1 day, issuers must ensure the required documents are submitted to depositories for crediting the bonus shares.

The issuer must upload the DN ranges before the shares are credited.

The newly allotted bonus shares will be available for trading on the T+2 day.

Bonus shares will be directly credited to the existing ISIN without using a temporary ISIN.

This new process is mandatory for all bonus issues announced on or after October 1, 2024

Link: [Enabling T+2 trading of Bonus shares where T is the record date](#)

## SEBI UPDATE: MODIFICATION IN FRAMEWORK FOR VALUATION OF INVESTMENT PORTFOLIO OF AIFS

SEBI received representations from the AIF industry highlighting issues with regard to certain aspects of the valuation framework for AIFs. In this regard, based on the public comments on consultation paper on “review of certain aspects of the framework for valuation of investment portfolio of AIFs”, recommendations of AIPAC and internal deliberations, the following has been decided:

### **Clause 22.1.1 Modification:**

It focuses on the valuation of securities (excluding unlisted, non-traded, or thinly traded securities) as per norms under the SEBI (Mutual Funds) Regulations, 1996.

### **Clause 22.1.2 Clarification:**

Securities not covered under Clause 22.1.1 are to be valued as per guidelines endorsed by an AIF industry association that

represents at least 33% of SEBI-registered AIFs. These guidelines must take into account recommendations from SEBI's Alternative Investment Policy Advisory Committee.

The aim is to standardize valuation norms for thinly traded and non-traded securities across entities within SEBI's purview by March 31, 2025. This is intended to bring consistency in the valuation of AIF investment portfolios.

**Clause 22.2.2 Modification:**

Any change in the valuation methodology or approach in order to comply with Clause 22.1 (i.e., the valuation of different types of securities) will not be considered a "Material Change." This indicates that such changes do not require extensive disclosure or approval processes typically required for material changes.

**Clause 22.2.3 Addition:**

Any change in valuation methodology within the prescribed guidelines will also not be treated as a "Material Change." However, both the old and new valuation results must be disclosed to investors to maintain transparency. This ensures that investors are informed of the impact of any changes in the valuation process, even though the change is not considered material.

**Clause 22.3.4:**

A new sub-clause defines the

eligibility criteria for independent valuers who are involved in the valuation of AIF portfolios:

**Entity or Company:** Must be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India (IBBI).

**Deputed/Authorized Person(s):** Must hold membership in one of the following:

- ICAI (Institute of Chartered Accountants of India)
- ICSI (Institute of Company Secretaries of India)
- ICMAI (Institute of Cost Accountants of India)
- CFA Charter from the CFA Institute.

This ensures that only qualified individuals from authorized entities can perform valuations, enhancing the quality and credibility of valuations.

**Clause 22.4.1:**

The deadline for AIFs to report their valuations to performance benchmarking agencies based on audited data has been extended from six months to seven months.

**Modified Requirement:**

Managers of AIFs must ensure that investee companies provide their audited accounts in a timely manner (by March 31), allowing AIFs to submit their valuation reports by October 31 each year. This should be specified as a term in the subscription/investment agreement with investee companies.

This extra month allows AIFs more time to compile and report their audited valuation data accurately.

### **Compliance Test Report**

The trustee/sponsor of the AIF must ensure that the "Compliance Test Report," as specified in Chapter 15 of the master circular, also confirms compliance with these new provisions. This ensures that the new guidelines are incorporated into the overall compliance framework for AIFs.

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

Link: [Modification in framework for valuation of investment portfolio of AIFs](#)

## SEBI UPDATE: FLEXIBILITY IN PARTICIPATION OF MUTUAL FUNDS IN CREDIT DEFAULT SWAPS (CDS)

SEBI circular, issued on September 20, 2024, provides enhanced flexibility for Mutual Funds (MFs) in participating in Credit Default Swaps (CDS). It introduces the following key changes:

**Buying CDS:** Mutual Funds can now buy CDS for hedging their credit risk on debt securities in their portfolios. However, the exposure should not exceed the

debt security exposure. If the protected debt security is sold, the corresponding CDS position must be closed within 15 days. Only sellers with an investment-grade rating or above can offer CDS to MFs.

**Selling CDS:** MFs can now sell CDS as part of synthetic debt securities, covered with cash, government securities, or T-bills. Liquid schemes cannot sell CDS. The value of the cover used to secure CDS must be reviewed daily.

**Limits and Exposure:** The exposure from CDS (both bought and sold) must not exceed 10% of a scheme's Assets Under Management (AUM) and must comply with overall derivative limits set out in the Scheme Information Document (SID).

**Valuation and Accounting:** The Association of Mutual Funds in India (AMFI) will issue guidelines in consultation with SEBI for the valuation and accounting of CDS transactions.

**Disclosures:** Periodic scheme portfolio disclosures must include CDS transactions, particularly the credit rating of CDS sellers and details of transactions with associate or group companies of sponsors.

Link: [Flexibility in participation of Mutual Funds in Credit Default Swaps \(CDS\)](#)

## SEBI UPDATE: 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 circular, issued on September 20, 2024, modifies the "Standard Operating Procedure (SOP)" related to the payment of financial disincentives by Market Infrastructure Institutions (MIIs) for technical glitches. Here are the key changes:

**Para 9.3 (Stock Exchanges and Clearing Corporations) and Para 4.70 (Depositories):** The SOP still mandates financial disincentives for MIIs in case of system downtimes beyond a predefined threshold. The intent is to ensure MIIs monitor and upgrade systems regularly to minimize disruptions.

**Deletion of Financial Penalties on Individuals:** Clauses that imposed financial disincentives on MDs and CTOs for technical glitches have been removed. SEBI will now impose financial penalties solely on MIIs

**Compliance Reporting:** MIIs must submit compliance reports within 90 days of a technical glitch detailing the financial disincentives paid. They are also required to disclose this information on their websites and in annual reports. Listed MIIs must comply with SEBI's disclosure norms.

**Opportunity for MIIs to Respond:** Before imposing any financial disincentives, SEBI will allow the MII to submit its case regarding the glitch. Additionally, MIIs must carry out internal reviews of the glitch to assess individual accountability, which may impact the performance appraisals of responsible individuals.

**Effective Date:** The amendments are effective immediately from the date of the circular's issuance.

Link: [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: MASTER CIRCULAR ON SURVEILLANCE OF SECURITIES MARKET

Master Circular is categorized subject wise under various headings, viz., trading rules and shareholding in dematerialized

mode, monitoring of unauthenticated news circulated by SEBI registered market intermediaries through various modes of communication and disclosure reporting under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

Master Circular shall come into force from the date of its issue. This Master Circular covers various circulars issued by the Integrated Surveillance Department (ISD) of SEBI and operational as on the date of issuance of this Master Circular. This Master Circular rescinds the circulars listed in Annexure 7.

Link: [Master Circular on Surveillance of Securities Market](#)

## SEBI UPDATE: USAGE OF UPI BY INDIVIDUAL INVESTORS FOR MAKING AN APPLICATION IN PUBLIC ISSUE OF SECURITIES THROUGH INTERMEDIARIES

SEBI's Master Circular dated May 22, 2024, provides guidelines for the application process and timelines for listing in public issues of securities. This covers various securities under specific SEBI regulations related to non-convertible securities, municipal debt securities, and securitized debt instruments.

To streamline the process, SEBI mandates that individual investors applying for public issues of the following securities through intermediaries (syndicate members, registered stock brokers, registrar to an issue, and transfer agent, depository participants) and where the application amount is up to ₹5 Lakhs, must use UPI (Unified Payments Interface) to block funds. The investor must provide their UPI ID, linked to their bank account, in the bid-cum-application form.

Investors will still have the option to apply through other available methods such as Self Certified Syndicate Banks (SCSBs) and Stock Exchange Platforms.

The provisions of this circular shall be applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments opening on or after November 01, 2024.

Link: [Usage of UPI by individual investors for making an application in public issue of securities through intermediaries](#)

## SEBI UPDATE: PARAMETERS FOR PERFORMANCE EVALUATION OF MARKET INFRASTRUCTURE INSTITUTIONS

This circular outlines SEBI's framework for the performance evaluation of Market Infrastructure Institutions (MIIs), which include recognized stock exchanges, clearing corporations, and depositories. The key points are as follows:

**1. Regulatory Requirement for Performance Evaluation:**

According to the SEBI (Stock Exchanges and Clearing Corporations) Regulations, 2018, and SEBI (Depositories and Participant) Regulations, 2018, every recognized MII must appoint an independent external agency to evaluate its performance, including that of its statutory committees. The evaluation must follow the periodicity and manner specified by SEBI.

**2. Establishment of Basic Minimum Standards:**

To ensure uniformity in the evaluation process, SEBI and the Industry Standards Forum (ISF) of MIIs developed basic criteria with corresponding weightages. These criteria are designed to bring consistency across evaluations by the external agency. The criteria include both quantitative and qualitative Key Performance Indicators (KPIs).

**3. Approved Framework and Criteria:**

Based on discussions within the ISF and subsequent internal deliberations, SEBI has approved the following evaluation criteria and weightages:

**Resilience in Technology and Processes (40%)**

**Investor Education and Protection (17%)**

**Efficient Discharge of Regulatory Role (15%)**

**Compliance with Regulatory Norms (10%)**

**Evaluation of Governance Practices (8%)**

**Adequacy of Resources (5%)**

**Fair Access and Treatment to All Stakeholders and Information Disclosure (5%)**

These criteria may be revised depending on changes in the regulatory and operational environment.

**4. Rating Framework:**

A rating framework has been established to ensure consistency in assessments, allowing for comparison across MIIs and monitoring of trends over time. This rating reflects the independent external agency's judgment on the MII's performance in relation to expected outcomes.

**5. Appointment of Independent External Agency:**

MIIs must appoint an external agency with SEBI's prior approval. The agency must possess the necessary expertise in securities markets and the functioning of MIIs. The selection process must

avoid conflicts of interest, and the agency must not have been employed by the MII during the evaluation period or until the report's submission.

#### 6. Evaluation Timeline:

The independent external evaluation must occur once every three years.

First Evaluation: For FY 2024-2025, with the report due by September 30, 2025.

Subsequent Evaluations: Every three fiscal years, with the report due within six months of the end of the third fiscal year.

#### 7. Performance Evaluation of Key Management Personnel (KMPs):

The SEBI regulations require MIIs to define roles, responsibilities, and KPIs for each KMP, ensuring the inclusion of regulatory, risk management, and compliance outcomes. The performance evaluation of the Managing Director (MD) should allocate at least 50% weightage to outcomes related to critical operations and regulatory compliance.

#### 8. Applicability:

The provisions of this circular come into effect 30 days from its issuance.

Link: [Parameters for Performance Evaluation of Market Infrastructure Institutions](#)

**SEBI UPDATE: REDUCTION IN THE TIMELINE FOR LISTING OF DEBT SECURITIES AND NONCONVERTIBLE REDEEMABLE PREFERENCE SHARES TO T+3 WORKING DAYS FROM EXISTING T + 6 WORKING DAYS (AS AN OPTION TO ISSUERS FOR A PERIOD OF ONE YEAR AND ON A PERMANENT BASIS THEREAFTER SUCH THAT ALL LISTINGS OCCUR ON A T+3 BASIS)**

As per the Master Circular dated May 22, 2024, the listing of debt securities and NCRPS issued through public issues must be completed within T+6 working days.

Regulation 37(2) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, mandates issuers to refund application money if they fail to list within the specified timeline. If the refund is delayed, the issuer is liable to pay interest at 15% per annum.

SEBI has decided to reduce the listing timeline from T+6 working days to T+3 working days to facilitate faster access to funds for issuers and to provide investors with quicker liquidity.

The T+3 timeline will be introduced as an option for issuers starting November 1, 2024, for a period of one year.

From November 1, 2025, the T+3 timeline will become mandatory for all public issues of debt securities and NCRPS.

During the voluntary period (from November 1, 2024, to October 31, 2025), if an issuer opts for T+3 but fails to meet the timeline, Regulation 37(2) will only apply after T+6 working days.

The T+3 timeline must be clearly disclosed in the Offer Documents of the public issues.

Link: [Reduction in the timeline for listing of debt securities and Nonconvertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days \(as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis\)](#).

## SEBI UPDATE: OPERATIONAL GUIDELINES FOR FOREIGN VENTURE CAPITAL INVESTORS (FVCIS) AND DESIGNATED DEPOSITORY PARTICIPANTS (DDPS)

SEBI has released operational guidelines for Foreign Venture

Capital Investors (FVCIs) and Designated Depository Participants (DDPs) following amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000. These guidelines are intended to facilitate a smooth transition to the updated regulatory framework, which will come into effect on January 1, 2025. Here's a summary of the key points:

The SEBI (Foreign Venture Capital Investors) Regulations, 2000 were amended via a notification on September 5, 2024.

The amendments cover several aspects including the registration process for FVCIs through DDPs, eligibility criteria, and the renewal of registrations.

These amendments will be effective from January 1, 2025.

To ensure a smooth transition to the new FVCI framework and to operationalize the amended provisions, SEBI has issued detailed operational guidelines (provided in Annexure-1 of the circular).

These guidelines will help both FVCIs and DDPs navigate the new regulatory requirements.

The provisions of this circular, including the operational guidelines, will come into force starting January 1, 2025

Link: [Operational Guidelines for Foreign Venture Capital Investors \(FVCIs\) and Designated Depository Participants \(DDPs\)](#).



## RBI UPDATE: REVIEW OF EXTANT INSTRUCTIONS – WITHDRAWAL OF CIRCULARS

List of circulars withdrawn:

Sr. No.	Circular No.	Date	Subject	Rationale for withdrawal
1.	RPCD.No.SP. BC.14/PS.160-87/88	July 31, 1987	Credit facilities to Minority Communities	The reporting formats prescribed in these circulars had been modified and the periodicity has been changed. The updated instructions are reflected in the Master Circular on Credit Facilities to Minority Communities dated April 01, 2023.
2.	RPCD.No.SP. BC.45/PS.160-87/88	October 16, 1987	Credit facilities to Minority Communities	
3.	RPCD.No.SP. BC.46/PS.160/88-89	November 17, 1988	Credit facilities to Minority Communities	
4.	RPCD.CO.FID .BC.No.2433/1 2.01.012/2010-11	August 26, 2010	Opening of No-Frills accounts by students for availing various Government Scholarships	The nomenclature “No frills account” has been discontinued, and the extant provisions of Basic Savings Bank Deposit Account (BSBDA) as normal banking service for all customers is in vogue.
5.	RPCD.FID.BC .No.53/12.01.0 01/2010-11	February 14, 2011	Master Circular on Micro Credit	The guidelines contained in the circular have been subsumed under Master Circular on SHG- Bank linkage dated April 1, 2024, Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Directions – Priority Sector Lending (PSL) – Targets and Classification

Link: [Review of Extant Instructions – Withdrawal of Circulars](#)

## RBI UPDATE: LIBERALISED REMITTANCE SCHEME (LRS) FOR RESIDENT INDIVIDUALS- DISCONTINUATION OF REPORTING OF MONTHLY RETURN

It has now been decided to discontinue the requirement for submission of LRS monthly return by AD Category-I banks. Accordingly, from the reporting month of September 2024, AD Category-I banks shall not submit LRS monthly return (Return code : R089).

AD Category-I banks, henceforth, will be required to upload only transaction-wise information under LRS daily return (CIMS return code: R010) at the close of business of the next working day on CIMS (URL: <https://sankalan.rbi.org.in>). In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

Link: [Liberalised Remittance Scheme \(LRS\) for Resident Individuals- Discontinuation of Reporting of monthly return](#)

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

Government of India (GoI), vide Trade Notice dated August 31, 2024, read with Trade Notice dated September 17, 2024, has allowed for an extension of the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') from September 1, 2024, to September 30, 2024.

Further, the Government has advised the following modifications/clarifications to the Scheme:

- a) The aforesaid extension is applicable only for MSME Manufacturer exporters.
- b) The annual net subvention amount is capped at ₹10 Crore per Importer-Exporter Code (IEC) for a given financial year, accordingly a cap of ₹5 Crore per IEC for MSME Manufacturer exporters is imposed till September 30, 2024, for the financial year starting from April 1, 2024.
- c) It is further advised that for Manufacturer Exporters and Merchant Exporters under the non-MSME category, the cap shall be ₹2.5 Crore per IEC till June 30, 2024, as per the Government's Trade Notice No.17/2024-2025 dated September 17, 2024.

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

## **IBBI UPDATE: INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AMENDS THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016 (CIRP REGULATIONS)**

The Amendment Regulations provide for the appointment of an interim representative who will act as a representative for a class of creditors during the period when the application for appointment of the authorised representative is under consideration of the Adjudicating Authority for approval. This interim representative will have the same rights and duties as an authorised representative in meetings of the committee of creditors.

Link: [Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India \(Insolvency Resolution Process for Corporate Persons\) Regulations, 2016 \(CIRP Regulations\)](#)



## **IBC CASE LAW: CAN EVEN AFTER APPROVAL OF RESOLUTION PLAN UNDER INSOLVENCY CODE, PROCEEDINGS UNDER CONSUMER PROTECTION ACT BEFORE NCDRC BE CONTINUED? – JET AIRWAYS INDIA LTD. VS. NAVEEN RAI AND ANR. – DELHI HIGH COURT**

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

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

- A Consumer Complaint has been instituted against Jet Airways (India) Limited. The case of the complainant is that he suffered injury while travelling on a Jet Airways flight from Goa to Mumbai on 27.12.2016.
- A petition under Section 7 of the IBC has been admitted against the Jet Airways (India) Ltd. vide order dated 05.07.2019 passed by the NCLT, Mumbai and an IRP has been appointed besides declaring moratorium and the resolution plan was approved by the NCLT.
- On 22.11.2023, National Consumer Disputes Redressal Commission (NCDRC) passed an order stating that:
  - In the instant case, the complainants continue to elect and choose the present Forum only for the redressal of their grievances and therefore there are neither parallel proceedings opted by the complainants nor otherwise instituted by them so as to invoke the doctrine of election. The question is as to whether the IB Code legislation did intend to exclude all such claims and proceedings before all forums, including the Consumer Forum or not. By taking recourse to the provisions of IB Code and the orders passed therein, the question is can the present proceedings be closed on the ground of extinguishment of the claim.
  - It is also to be seen as to whether the jurisdiction of the Consumer Forum gets curtailed or extinguished by virtue of the pronouncement in the case of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.* (2021) *ibclaw.in* 54 SC where the provisions of Consumer Protection Act, 1986 or Consumer Protection Act, 2019 were not in consideration.
  - It has therefore to be examined as to whether the rights of a consumer and the jurisdiction of the Consumer Forum under the Consumer Protection Act can be saved and preserved through a harmonious interpretation of Section 3 of the Consumer Protection Act, 1986 and the provisions of the IB Code.

- Consequently, can the provisions of Section 238 of the IB Code 2016 prohibit the redressal of a claim as presently involved in the light of the fact that such a claim ought to have been or could have been staked by the claimant before the IRP during the moratorium period and the consequential approval of the resolution plan by the NCLT under the provisions of IB Code 2016. This question is being raised time and again and it is therefore necessary that learned counsel for the parties may assist the Bench on this issue for a resolution of this legal problem in the light of the provisions that can be invoked or compared with the provisions under reference and also with the aid of any judgments on that count.
- Vide Order dated 05.01.2024, NCDRC directed to file a copy of the resolution plan as well as the information memorandum and Vide Order dated 05.07.2024, it was directed that Authorised Representative of the Monitoring Committee to appear before this Commission.
- The present writ petition impugns order dated 05.07.2024, passed by the NCDRC.

### ***Decision of High Court***

- The National Consumer Disputes Redressal Commission (NCDRC) is currently seized with adjudicating the legal question of whether the provisions of Section 238 of the IBC prohibit the redressal of a claim under the Consumer Protection Act, 1986, in cases where such a claim was not staked by the complainant before the Insolvency Resolution Professional during the moratorium period and subsequently the proceedings under the IBC have attained finality with the consequential approval of the Resolution Plan by NCLT.
- The NCDRC has also observed that this question is being raised time and again and therefore it is necessary for the counsels to assist the commission on this legal issue.
- Keeping the aforementioned order of 22.11.2023 in mind, in the opinion of the Court, the Petitioner should at the first instance urge their contentions urged in the present writ petition before the NCDRC. To this effect, in the opinion of the Court, if the National Commission has called upon the Petitioner to furnish a copy of the Resolution Plan as well as the information memorandum, it is only for the purpose of taking a final view in the matter. Therefore, this Court finds no infirmity in such a direction.
- The Court also finds no infirmity in a direction to presence of the authorised representative of the monitoring committee.
- In light of the above, the Court finds no infirmity in the impugned order or a reason to entertain the present writ petition and accordingly, the same is dismissed along with pending application(s).

**CAN MONITORING COMMITTEE OF THE CORPORATE DEBTOR FILE AN APPLICATION UNDER SECTION 33(3) OF IBC FOR LIQUIDATION OF THE CORPORATE DEBTOR ON NON-IMPLEMENTATION OF THE RESOLUTION PLAN? - MR. T. SATHISAN, MONITORING COMMITTEE CHAIRMAN OF SPLENDID METAL PRODUCTS LTD. VS. INVENT ASSETS SECURITISATION AND RECONSTRUCTION PVT. LTD. - NCLT HYDERABAD BENCH**

**Brief about the decision:**

***Facts of the case***

- The Resolution Plan in this case was approved on 08.04.2021, which required payment of Rs. 60 crores by the SRAs within 60 days, this was done, however, thereafter, the SRAs have continued to default on making payments as per the Approved Resolution Plan.
- The Second tranche of Rs. 50 crores which was due on 18.06.2022 was not paid even after the cure period of 90 days, which expired on 18.09.2022.
- This application has been filed under Section 33(3) of IBC by the Chairman of the Monitoring Committee & Erstwhile Resolution Professional (RP) of M/s. Splendid Metal Products Limited, the Corporate Debtor, seeking Orders for Liquidation of the Corporate Debtor, as the Resolution Plan approved by this Tribunal has not been implemented by the Successful Resolution Applicants (SRAs).
- The present application for the liquidation of the Corporate Debtor due to the non-implementation of the Resolution Plan has been repeatedly postponed, to allow the submission of counter-reply by the SRAs, and also with the expectation that the Resolution Plan would be revived through payments by the SRAs.
- In the meantime, by 31.03.2024 the SRAs paid the Second tranche of Rs 50 crores in five instalments after more than 18 months from the due date of 18.09.2022. The Third instalment due on 18.09.2023 (after the cure period of 90 days) has not been paid.
- Be that as it may, another IA No.1159/2024 was filed by one of the SRAs, seeking to sell Manjakaranai Unit, to enable payment of the Third instalment towards ARP. This application was rejected by this Authority on 02.08.2024.
- Yet another IA No.540/2023 filed earlier, seeking extension of time to pay the remaining instalments, was also rejected by this Authority on 02.08.2024.

***Decision of Adjudicating Authority***

- It is under these circumstances that, the Hon'ble Tribunal has now taken up the present application seeking liquidation of the Corporate Debtor filed by the RP as Monitoring Agent of the Corporate Debtor, under Section 33(3) of IBC. However, under that Section, the application for liquidation order can be made by any person, other than the Corporate Debtor, whose interests are prejudicially affected by the contravention of the Approved Resolution Plan.(p26)
- In his application, the RP has not elaborated on whose interests, other than the Corporate Debtor, have been prejudicially affected by the contravention of the Approved Resolution Plan by the SRAs. The Hon'ble Tribunal also notes that in the 8th meeting of the Monitoring Committee, where the lenders to the Corporate Debtor were present either as members or invitees, the RP as the Monitoring Agent was only authorized to file "application for non-implementation" of Approved Resolution Plan in the background of SRAs inability to meet their commitment under the Plan.(p27)
- There is no clear indication in the application of the interests of any person, other than the Corporate Debtor, being prejudicially affected by the non-implementation of the Plan by SRAs. Such being the case, the Hon'ble Tribunal is unable to proceed with the present application seeking liquidation of the Corporate Debtor.(p28)
- This application is disposed of with the above remarks.(p28)



## **DEMAND OF PROPERTY TAX AFTER LIQUIDATION AUCTION COMPLETED – SRI SANJIV KUMAR GUPTA VS. COMMISSIONER, INDUSTRIAL AREA LOCAL AUTHORITY (IALA) – JEEDIMETLA – NCLT CHENNAI BENCH**

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

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

- Corporate Debtor M/s Victory Transformers & Switchgears Ltd. has been in the process of liquidation under the provisions of Insolvency and Bankruptcy Code, 2016 vide an Order dated 29.10.2019.
- Respondent No. 1- Commissioner, Industrial Area Local Authority (IALA) – Jeedimetla has submitted their claim dt. 02.11.2019, in response to the public announcement made on 31.10.2019 issued by the Liquidator, pertaining to the auctioned property amounting to Rs.6,10,00,000/-, which includes an amount of property tax dues of the Auctioned Property. The Liquidator has admitted the claim submitted by the Respondent No.1.
- The Applicant was declared as successful bidder of the Auctioned property for his bid of Rs.6,10,00,000/- and the Liquidator, accordingly, issued a letter of Intent dated 25.02.2020 notifying his intention to sell the auctioned property to the Applicant. Subsequently sale certificate was issued dated 02.09.2020.
- After payment of bid amount to the Liquidator and issue of sale certificate by the Liquidator, the Respondent No.1. has issued a demand notice dated 07.04.2022 demanding the property tax, including the arrears of previous years which to Rs.88,19,201/-.

#### ***Decision of Adjudicating Authority***

- Applicants has filed this application for the demand raised by the Telangana state Industrial Infrastructure Corporation Ltd Industrial area Local Authority for demand of property tax.
- Liquidation order dated 29.10.2019 records liquidation value as Rs 31,26,83,000 for total admitted claim of Rs.443,61,40,025, on distribution of sale proceeds in accordance with section 53 of the code to the stakeholders would not satisfy the Financial creditor in place as per section 53 which deals with the distribution of asset in liquidation prioritize the debts owned by the secured creditors As held by hon'ble supreme court in Swiss Ribbons Pvt Ltd vs Union of India (2019) [ibclaw.in 03 SC](#) and as seen in status report submitted to us by the liquidator and in the liquidation order the amount would not satisfy Financial creditors and the Respondent 1 would not be satisfied.



- Sale certificate of the said property has been given on 02.09.2020 In favour of Sanjiv Kumar Gupta, By Chinnam Poorna in capacity of Liquidator of M/s Victory Transformers and Switchgears Limited.
- Hon'ble Supreme court in matter of Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others ([2019](#)) [ibclaw.in](#) [07 SC](#) expounded the principle of "Doctrine of clean slate/Fresh Slate" stating that when a corporate debtor is taken over by the resolution applicant they are free from all past liabilities which arise from a period to the approval of resolution plan, the relevant portion is extracted hereinafter
- Hon'ble supreme court in the matter of Arun Kumar Jagatramka vs Jindal Steel and Power Ltd. ([2021](#)) [ibclaw.in](#) [46 SC](#) stated that the Doctrine of clean slate would apply to schemes in Liquidation as well.
- Hence, the Hon'ble Adjudicating Authority is of the considered opinion that the clean slate would apply to the applicant to the extent mentioned in the cases referred above, since Industrial Area Local Authority (IALA) has already submitted its claims to the liquidator and it has been admitted but not satisfied, the authority has right to levy taxes on this applicant from the date from which the sale certificate has been issued to Sanjiv Kumar Gupta.
- In view of the above discussions, Application IA(IBC)/2397(CHE)/2023 In CP(IB)1515/CHE/2018 is disposed off.

# INSOLVENCY AND BANKRUPTCY CODE

## **RECOVERY CERTIFICATE ISSUED BY DRT WOULD GIVE RISE TO A FRESH CAUSE OF ACTION TO INITIATE PROCEEDINGS UNDER SECTION 95 OF IBC AGAINST THE GUARANTOR – STATE BANK OF INDIA VS. MRS. J. GEETHA – NCLT CHENNAI BENCH**

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

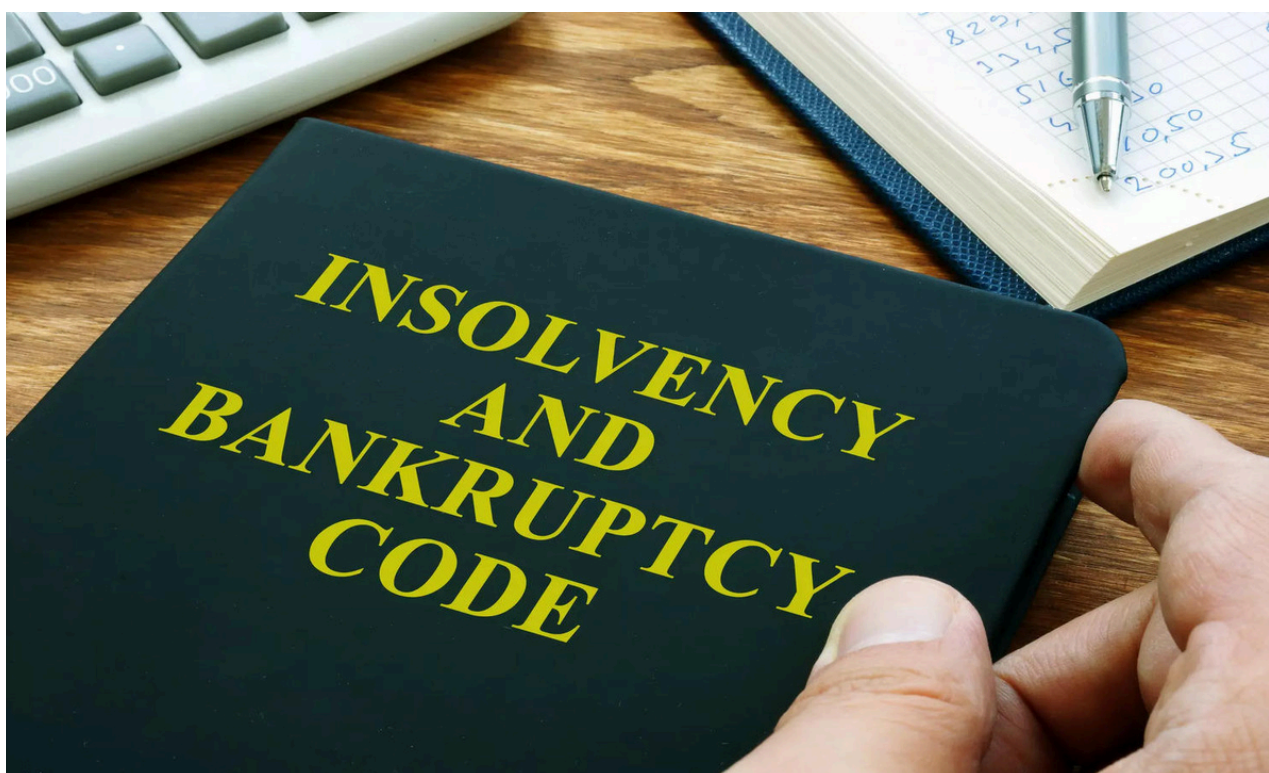
#### ***Facts of the case***

- The account of Corporate Debtor had become NPA on 29.01.2014. The Applicant had filed an OA No. 634 of 2014 before DRT, Madurai which was thereafter transferred to DRT, Coimbatore as T.A. No. 413 of 2020 against the Corporate Debtor and Guarantors. The Debt Recovery Certificate was issued by DRT Coimbatore vide DRC No.01 of 2022 dated 10.01.2022.
- This Application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 by State Bank of India (Financial Creditor) for initiating insolvency resolution process against Mrs. J. Geetha (Personal Guarantor) in respect of Principal Amount of INR 64,45,56,321/- as on 07.05.2022.
- The Date of Default, as specified in Part-III of the Application, is 10.01.2022. This Application has been filed on 28.05.2022.
- The Respondent has contended that the final order in OA No 634 of 2014 before DRT, Madurai was passed on 16.04.2015, however, the present application has been filed on 28.05.2022 and it is barred by limitation.

#### ***Decision of Adjudicating Authority***

- With regards to limitation, it is relevant to refer to the Judgment of Hon'ble Supreme Court in the case of Dena Bank vs. C. Shivakumar Reddy & Anr. (2021) [ibclaw.in 69 SC](#), where it was held that the Judgment and/or decree for money in favour of the Financial Creditor, passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the Code, if the dues of the Corporate Debtor under the Judgment/decree or any part thereof remained unpaid.

- In the present case, the final order in OA No 634 of 2014 before DRT, Madurai was passed on 16.04.2015. Thereafter, the case was transferred to DRT, Coimbatore as T.A. No. 413 of 2020. The Debt Recovery Certificate DRC No.1 of 2022 dated 10.01.2022 was issued by DRT Coimbatore against the Corporate Debtor and Guarantors. The present Application has been filed on 28.05.2022. Thus, in light of the Hon'ble Supreme Court Judgment in the case of Dena Bank (Now Bank of Baroda) versus C. Shivakumar Reddy & Anr. (Supra), the Recovery Certificate issued on 10.01.2022 would give rise to a fresh cause of action to initiate proceedings against the Guarantor. Thus, the present Application is well within the limitation period.
- The RP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.
- Section 128 of the Indian Contract Act, 1872, provides that, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and the Creditor has the right to recover its dues from either of them or from both of them simultaneously.
- In light of the afore-stated observations, the present Application i.e. CP(IB)/189(CHE)/2022 is admitted and the Insolvency Resolution Process stands initiated against Ms J Geetha viz. the Respondent herein.



**ADJUDICATING AUTHORITY IS FORUM ALONE WHICH SHALL FINALLY DECIDE WHETHER THE COC HAS PERFORMED ITS FIDUCIARY DUTY AS PER THE LEGISLATIVE MANDATE OF THE IBC – GATEWAY INVESTMENT MANAGEMENT SERVICES LTD. VS. RESERVE BANK OF INDIA AND ORS. – DELHI HIGH COURT**

**Brief about the decision:**

***Background of the case***

- The petitioner claims that it was the highest bidder in the CIRP in respect of the Corporate Debtor (CD)- Helios Photo Voltaic Pvt. Ltd., both in terms of monetary value and net present value and yet its bid has not been accepted by the CoC comprising of Respondent No. 2, 4 & 5 in the meeting held on 05.09.2024 throwing all commercial norms & financial prudence to the wind. It is pertinent to mention that respondent no. 3 Punjab National Bank is lead secured creditor.
- Per contra, learned Senior Advocate appearing for respondent No. 2 – National Asset Reconstruction Company Limited, submitted that in the realm of a ‘private contract’ between the parties and the bidding process, the petitioner/bidder is only entitled to be considered but there is no rule of thumb that the highest bidder should also be accorded priority or be preferred for the Resolution Plan. The Resolution Plan accepted by the CoC shall be placed for approval before the Adjudicating Authority/NCLT and the petitioner is at liberty to air his grievances by filing objections before the NLCT and cannot approach this Court in writ jurisdiction.

***Decision of High Court***

- This Court is not inclined to issue notice for the elementary reason that the petitioner has an alternative and efficacious remedy to assail the impugned action or inaction on the part of the CoC, if any, before the NCLT.
- First things first, it is well ordained in law that the Adjudicating Authority alone has the jurisdiction to regulate the conduct of the CoC and finally adjudicate upon the resolution plan through the powers of judicial review and thereby ensure that the CoC functions as per the role and responsibilities delineated under the IBC.

- In other words, the Adjudicating Authority maintains a supervisory role over the entire CIRP proceedings and is empowered under Section 60 of the IBC to take action on any issue relating to the insolvency proceedings. Thus, the resolution plan decided by the CoC shall be put up for consideration before the Adjudicating Authority, which forum alone shall finally decide whether the CoC has performed its fiduciary duty as per the legislative mandate of the IBC.
- In view of the Guidelines for Committee of Creditors (CoC) – IBBI dated 06.08.2024 coupled with the relevant provisions of the IBC, which have been referred to during the course of arguments, this Court is not enjoined upon to exercise its power of judicial review and thereby usurp upon the powers of the NCLT to inquire into the commercial wisdom of the CoC whereby the Resolution Plan of the petitioner was rejected vide impugned letter dated 18.09.2024.
- In the end, a last desperate attempt is made by the petitioner that it is willing to renew its offer and match the offer given by the SRA in every aspect, but the same cannot be entertained by this Court. Although there is no gainsaying that in matters of public funds auction the best methodology for discovering fair value and the principle criteria is to ensure maximizing the recovery, the bottom line is that the decision of the CoC shall definitely be considered by the NCLT in a just and expedient manner, and if it deems fit it, may even allow “Open Court Bidding” in accordance with law.
- In view of the foregoing discussion, the present writ petition is dismissed with liberty to the petitioner to take appropriate recourse before the NCLT, which forum alone shall decide the objections of the petitioner, if any preferred, on its own merits in accordance with law.
- The present writ petition, along with the pending application, accordingly stands disposed of.



## **OVERSTEPPING BOUNDARIES: ROC PENALIZES COMPANY AND ITS DIRECTORS FOR GRANTING LOAN WITHOUT MANDATORY BOARD APPROVAL**

### **Background of the case**

1. This is a case relating to a company named M/s. Martin Realty Private Limited of Coimbatore in Tamil Nadu. The company had advanced loan amounting to Rs.1,30,15,000 during the financial year 2020-21 without obtaining specific board approval for granting loans, which is a mandatory requirement under the provisions of section 179(3)(f) of the Companies Act 2013 and the company was also required to file the certified copy of the board resolution in form MGT 14 with the Registrar of Companies. Much later, upon realizing the non-compliance, i.e. failure to obtain the specific approval from the board and advancing the loan - the company filed a suo-moto adjudication application on 1st November 2023 with the Registrar of Companies of Coimbatore requesting the Registrar to adjudicate the matter for the violation committed. The Adjudication Officer, after granting the personal hearing by providing an opportunity to be heard in the interest of natural justice, adjudicated the matter. The company and its directors were penalized to the tune of Rs/ 1.75 lakh (being a small company). Let us go through the details of this case in order to understand the intricacies of the relevant provisions and the consequences of non-compliance of the same under the framework of the Companies Act 2013.

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

2. The relevant provisions pertaining to this case is that of section 179 of the Companies Act 2013, read with the relevant rules framed thereunder and the extracts of the relevant provisions are as given below.

**Companies Act 2013  
Chapter XII - Meetings of Board and its Powers  
Section 179 - Powers of Board**

<b>Section</b>	<b>Provision</b>
179 (1)	The Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do:
179 (3)	The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—
179(3)(f)	to grant loans or give guarantee or provide security in respect of loans.

After passing the board resolution for granting loans or give guarantee or provide security in respect of loans, the company is required to file the e-form MGT-14 with the Registrar of Companies for the resolutions passed by the board of directors pursuant to section 94(1), 117(1) of the Companies Act, 2013 which is the mandatory requirement.

**Companies Act 2013  
Chapter XXIX - Miscellaneous  
Section 450 - Punishment, where no specific penalty or punishment is provided.**

**Penal section for non-compliance / default if any**

450	If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues..
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### **Consequences of default/violation**

3. To understand the consequences of any default / non-compliance while complying with the provisions of section 179 of the Companies Act 2013 relating to Granting of loans or giving guarantee or providing security in respect of loans, let us go through the decided case law by the Registrar of Companies of Coimbatore, Tamil Nadu on this matter on 26th June 2024 relating to M/s Martin Realty Private Limited.

### **The relevant case law on this matter**

4. We shall go through the adjudication order passed by the Registrar of Companies of Coimbatore of Tamil Nadu vide order no. ROC/CBE/A.O/ 179/13718/2024 dated 28th March 2024 order for penalty under section 454 of the Companies Act 2013 for violation of section 179 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014, in the matter of M/s Martin Realty Private Limited

### **Details of the company**

5. M/s. Martin Realty Private Limited registered on 17th May 2007 under the provisions of the Companies Act 1956 having its registered office at 54, Mettupalayam Road, G.N.Mills Road, Coimbatore in the state of Tamil Nadu. The company falls under the jurisdiction of the Registrar of Companies, Tamil Nadu and the office of the Registrar of Companies is situated at Coimbatore. The company, as per the details shown on the MCA portal, has two directors on its board. The company is engaged in construction sector related business.

### **Facts of the case**

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

(a) During the financial year 2020-21, there was a transaction for Rs. 1,30,15,000 relating to payment by way of loan to be made to M/s Aadhi Builders of Trichy.

(b) This payment was wrongly made by the company to Mrs. Leema Rose instead of making the payment to the builder by way of loan

(c) The above fact was found out by the company only on 31st March 2021 - as at the end of the day of the financial year.

(d) On the very same day, the above amount, which was wrongly paid, was repaid back by Mrs Leema Rose to the company.



(e) The company was required to obtain specific board resolution before granting a loan as per the provisions section 179 (3) (f) of the Companies Act 2013. However, the company did not obtain the specific approval by way of the board resolution for making the above payment which was the mandatory requirement under the Companies Act 2013.

(f) Since the company had not passed any resolution at the board meeting before entering into the above transaction, the company did not file any form in this respect.

### **Action taken by the Company**

7. Upon realizing their default / non-compliance, the company decided to file a suo-moto application for adjudication with the Registrar of Companies on this matter. Accordingly, the company filed its application for adjudication of the penalty for violation of section 179 (3) (f) of the Companies Act 2013 on 1 November 2023.

### **Action taken by the Registrar of Companies - an issue of personal hearing notice**

8. The Registrar of Companies / Adjudication Officer, upon receipt of the adjudication application received, in exercise the powers conferred upon him under sub-section (4) of section 454 of the Companies Act 2013 with a view to give a reasonable opportunity of being heard before imposing the penalty, fixed the personal hearing date of hearing on 20th March 2024 for adjudicating the penalty for violation of provisions of section 179(3) (f) of the Companies Act 2013.

### **On the day of the personal hearing**

9. On the day of the personal hearing, an authorized representative of the company - a chartered accountant appeared before the Adjudication Officer and made the submissions on behalf of the company and its directors. The authorized representative stated that an amount by way of a loan of Rs. 1,30,15,000 was to be made to M/s Aadhi Builders of Trichy, which was wrongly paid by the company to Mrs. Leena Rose instead of the builder. When the fact was found by the company on 31st March 2021, the amount was repaid by Mrs. Leena Rose on the same day to the company. The authorized representative had also admitted the fact that the company did not obtain specific board resolution for the above loan transaction as the company ought not to have been made. The authorized representative accepted the violation on behalf of the company and its directors and carried out the formalities for adjudication of penalties under section 454 of the Companies Act 2013.

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

10. The Registrar of Companies / Adjudication Officer, based on the content of the application for adjudication filed by the company and also after hearing the submissions made by the authorized representative on behalf of the company and its directors, came to a conclusion that the company and its directors had committed the violation of section 179 (3) (f) of the Companies Act 2013 by granting loan without obtaining the specific approval from the board of directors of the company as required under the provisions of section 179(3)(f) of the Companies Act 2013. Therefore, the company and its directors who had violated the provisions of section 179(3)(f) of the Companies Act, 2013 were liable for penal action as provided under section 450 of the Companies Act 2013. Accordingly, the Adjudication officer decided to pass the adjudication order.

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

11. The Registrar of Companies / Adjudication Officer, after considering the circumstances of the case and the submissions made by the authorized representative on behalf of the company and its directors, the company being a small company, imposed the penalty under the provisions of section 446B of the Companies Act 2013 on the company and its director as per table below for violation of section 179 (3) (f) of the Companies Act 2013.

Sr. No.	Violation of the Companies Act 2013	Penalty imposed upon Company / Directors	Maximum penalty as per Act	Penalty imposed under section 446B of the Act
1	Violation of section 179 (3) (f) of the Companies Act 2013	Company	2,00,000	1,00,000
2		Director-1	50,000	25,000
3		Director-2	50,000	25,000
4		Director-3	50,000	25,000
<b>Total Penalty</b>				<b>1,75,000</b>

- a. The order directed that the penalty imposed to be paid by the company and its directors as per law and directed to submit the copies of challans once the payment was made. The order also instructed the company to file the form INC-28 with attachment of this order along with the copies of the challans.
- b. The company and its directors were directed to rectify the default immediately from the date of receipt of the copy of this order.
- c. The order spelled out that the penalty imposed shall have to be paid through the Ministry of Corporate Affairs portal only.
- d. The order further stated that an appeal against this order may be filed in writing with the Regional Director, Southern Region, Ministry of Corporate Affairs, 5th Floor, Shastri Bhavan, 26, Haddows Road, Chennai within a period of sixty days from the date of receipt of this order, in form ADJ setting forth the grounds of appeal and the appeal shall have to be accompanied by the certified copy of this order. (Section 454 of the Companies Act 2013 read with the Companies (Adjudicating of Penalties) Rules 2014)
- e. The order also drew the attention of section 454 (8) of the Companies Act 2013, regarding the consequences of non-payment.

### **Despatch of the order**

12. The order was sent by the Registrar of Companies of Coimbatore in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the company and its officer in default at their address at Coimbatore and also to the Regional Director, Southern Region, Chennai and a copy to Director, Legal section, Ministry of Corporate Affairs, 5th Floor, A Wing, Shastri Bhawan, Dr. R.P Prasad Road at New Delhi. Copy was also marked to E-Governance cell of Ministry of Corporate Affairs, secretary to the Government of India, Ministry of Corporate Affairs, 5th Floor, A Wing, Shastri Bhawan, Dr. R.P Prasad Road at New Delhi.

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

13. The readers may like to read the complete order passed by the Registrar of Companies of Coimbatore of Tamil Nadu vide order no. ROC/CBE/A.O/ 179/13718/2024 dated 28th March 2024 order for penalty under section 454 of the Companies Act 2013 for violation of section 179 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014, in the matter of M/s Martin Realty Private Limited and the relevant website is as provided below: - [https:// www. mca.gov .in/ content/ mca/ global/ en/data-and-reports/rd-roc-info/rocadjudication-orders.html](https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/rocadjudication-orders.html) (order uploaded on 9th April 2024 under ROC of Coimbatore titled as Adjudication order for violation of

section 134 (site shows section 134 though order is for violation of section 179) of the Companies Act 2013 in the matter of M/s. Price Waterhouse Chartered Accountants LLP statutory auditors of M/s Martin Realty Private Limited)

## **Conclusion**

14. The companies which are incorporated and registered under the Companies Act 2013 are required to adhere to the provisions of the Companies Act read with the relevant Rules and ensure absolute compliance. The directors of the company, along with the company secretary, are required to take all the necessary care by putting a compliance mechanism in place so that compliances are met all the time. In cases where the company secretary is not required to be appointed by companies - basically private and unlisted public companies falling below the threshold limit of paid-up capital for the appointment of a company secretary - they are required to take the help of the practising professional company secretary and ensure the required compliance. As seen in this case, any non-compliance would be viewed by the regulators seriously and they would proceed with the penal action and at the end the company and directors have to bear the penalty and also spent enormous time in sorting out the litigation matter. In order to avoid any penal actions from the Regulator of Companies, the company should ensure that adequate procedures are followed in all the matters relating to the board procedures and ensure that the company aim to achieve "nil" non-compliance status. Any non-compliance not only ends up in financial penalty upon the company and its directors but also takes a lot of time for the management to sort out the matter which otherwise they would have spent time on improving the company's business.

## **Reference:-**

- 1.The Companies Act 2013
- 2.Companies (Adjudication of Penalties) Rules 2014
- 3.Companies (Adjudication of Penalties) Amendments Rules 2019
- 4.Gazette Notification of Ministry of Corporate Affairs vide No. A-42011/112/2014-Ad.II, dated 24.03.2015 (see SO 831(E), dated 24.03.2015)
- 5.Adjudication order passed by the Registrar of Companies, of Coimbatore of Tamil Nadu vide order no. ROC/CBE/A.O/179/13718/2024 dated 28th March 2024 order for penalty under section 454 of the Companies Act 2013 for violation of section 179 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014, in the matter of M/s Martin Realty Private Limited

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