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 **December** 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.

SEBI UPDATE: SMS AND E-MAIL ALERTS TO INVESTORS BY STOCK EXCHANGES

SEBI, vide Circular dated August 02, 2011 (hereinafter mentioned as 'Circular') and Clause 33 of Master Circular for Stock Brokers dated August 09, 2024 (hereinafter mentioned as 'Master Circular'), issued guidelines regarding SMS and E-mail alerts to investors by stock exchanges.

It is clarified that, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/Email address for more than one client provided such client belong to one family (in case of individual clients) or such client is the authorised person of an HUF, Corporate, Partnership or Trust (in case of non-individual clients).

Family / Authorised person for this purpose shall include:

a. In case of individuals, self, spouse, dependent children and dependent parents.
b. In case of HUF, Karta or any of the Co-parceners as per prior approval of Karta.
c. In case of Partnership firm, any of the partners as per prior approval of all / authorised partners.
d. In case of a Trust, any of the trustees or beneficiaries as per resolution passed by the Trust.
e. In case of Corporates, the Authorised person operating the trading account as per the Board Resolution passed by the Corporate.

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

Link: SMS and E-mail alerts to investors by stock exchanges

SEBI UPDATE: REPOSITORY OF DOCUMENTS RELIED UPON BY MERCHANT BANKERS DURING DUE DILIGENCE PROCESS IN PUBLIC ISSUES

Merchant bankers shall upload the documents in the Document Repository platform of any of the stock exchanges and intimate the same to the other stock exchange(s) where the securities of the issuer company are proposed to be listed, as applicable.

Stock Exchanges have been advised to inform Merchant bankers on the indicative list of documents to be uploaded which has been prepared in consultation with Association of Investment Bankers of India (AIBI) and the process of uploading the documents in the Document Repository platform.

Merchant bankers shall adhere to the following timelines for uploading documents in the

Document Repository platform of the Stock Exchanges:
From January 01, 2025: -
Within 20 days of filing draft offer document with SEBI/ Stock Exchanges.
Within 20 days from the date of listing on Stock Exchanges.

From April 01, 2025 onwards:
Within 10 days of filing draft offer document with SEBI/ Stock Exchanges.
Within 10 days from the date of listing on Stock Exchanges.

The documents shall be uploaded and maintained by Merchant Bankers in the Document Repository platform through their individual login credentials which shall be accessible to the respective Merchant bankers only. However, Merchant bankers shall make such documents available for the purpose of supervisory functions of SEBI.

Further, Merchant bankers shall ensure that the documents uploaded in the Document Repository platform are relevant, complete and legible.

The provisions of this circular shall be applicable for the draft offer documents filed on or after January 01, 2025 with SEBI/Stock exchanges for listing on Mainboard/ SME exchanges.

Link: Repository of documents relied upon by Merchant Bankers during due diligence process in Public issues

SEBI UPDATE: REVISED GUIDELINES FOR CAPACITY PLANNING AND REAL TIME PERFORMANCE MONITORING FRAMEWORK OF MARKET INFRASTRUCTURE INSTITUTIONS(MIIS)

SEBI has issued a circular regarding the Revised Guidelines for Capacity Planning and Real Time Performance Monitoring framework of Market Infrastructure Institutions(MIIs).

The following has been stated

MIIs should ensure adequate system capacity in place to handle high volumes to ensure high level of service availability. The installed capacity shall be at least 1.5 times (1.5x) of the projected peak load.

All MIIs shall implement automated performance monitoring and alert systems covering all their critical applications/activities/IT components to continuously monitor the real time performance of processes/applications and utilization of its system resources at each IT component level against a set of pre-defined thresholds.

MIIs shall be submitted to SEBI within 3 months from the date of

the issue of this Circular after taking approval of their Standing Committee on Technology (SCOT) and Governing Board.

Link: Revised Guidelines for Capacity Planning and Real Time Performance Monitoring framework of Market Infrastructure Institutions(MIIs)

SEBI UPDATE: ENHANCEMENT IN THE SCOPE OF OPTIONAL T+0 ROLLING SETTLEMENT CYCLE IN ADDITION TO THE EXISTING T+1 SETTLEMENT CYCLE IN EQUITY CASH MARKETS

SEBI issued a circular to widen the scope of the optional T+0 rolling settlement cycle in the equity cash market.

Optional T+0 settlement cycle will be made available to top 500 scrips in terms of market cap as on December 31. The scrips shall be made available for trading and settlement starting with scrips at bottom 100 companies and include the next bottom 100 companies every month till top 500 companies are available for trading. This is in addition to the 25 scrips already available for trading.

Qualified stock brokers and market Infrastructure Institutions will put in place systems and processes for enabling seamless participation of investors in optional T+0 settlement cycle.
The above measures will become applicable from January 31, 2025.

Block deal mechanism

A mechanism for Block Deal window will be put in place by the Stock Exchanges under the optional T+0 settlement cycle. The Block Deal window under the optional T+0 settlement cycle shall be available only for the morning session during 8:45 am to 9:00 am in addition to the existing Block Deal windows of 8:45 am to 9:00 am and 2:05 pm to 2:20 pm for T+1 settlement cycle. The trades in the optional T+0 block window session will be settled on T+0 settlement cycle.
Participation under this window shall be optional for the investors.

Link: Enhancement in the scope of optional T+0 rolling settlement cycle in addition to the existing T+1 settlement cycle in Equity Cash Markets

SEBI UPDATE: RELAXATION FROM THE ISIN RESTRICTION LIMIT FOR ISSUERS DESIROUS OF LISTING ORIGINALLY UNLISTED ISINS (OUTSTANDING AS ON DECEMBER 31, 2023)

SEBI provided relaxation to issuers aiming to list their unlisted International Securities

Identification Numbers (ISINs) outstanding as of December 31, 2023 to encourage bringing these into the listed space.

Clause 1 of Chapter VIII of NCS Master Circular reads as under:

"In respect of private placement of debt securities, the following shall be complied with regard to ISINs, utilised to issue debt securities from April 1, 2023:

1.1A maximum number of fourteen ISINs maturing in any financial year shall be allowed for an issuer of debt securities. In addition, a further six ISINs shall also be available for the issuance of the capital gains tax debt securities by the authorized issuers under section 54EC of the Income Tax Act, 1961 on private placement basis.

1.2 Out of the fourteen ISINs maturing in a financial year, the bifurcation of ISINs shall be as under:

a. A maximum of nine ISINs maturing per financial year shall be allowed for plain vanilla debt securities. Within this limit of nine ISINs, the issuer can issue both secured and unsecured debt securities. Provided where the total outstanding amount across the nine ISINs, maturing in a given financial year, reaches Rs.15,000 crore, then three additional ISINs would be permitted to mature in the same financial year. The same should be intimated by the issuer to the stock exchanges and depositories.

b. A maximum of five ISINs maturing per financial year shall be allowed for structured debt securities and market linked debt securities.

1.3Where an issuer issues only structured/ market linked debt securities, the maximum number of ISINs allowed to mature in a financial year shall be nine.

1.4Further, with respect to the debt securities issued on or after April 01, 2023, all the ISINs corresponding to these issues (including ISINs issued prior to April 01, 2023), maturing in any financial year, shall adhere to the limits as specified above.

1.5 The above threshold may be reviewed periodically to further reduce fragmentation in the corporate bond market.

Accordingly, clause 4A is hereby inserted in Chapter VIII of the NCS Master Circular:

"4A. Unlisted ISINs outstanding as on December 31, 2023 which are converted to listed ISINs, pursuant to the provision of Regulation 62A(2) of LODR Regulations shall be excluded from the maximum limit of ISINs to mature in a financial year."

Link: Relaxation from the ISIN restriction limit for issuers desirous of listing originally unlisted ISINs (outstanding as on December 31, 2023)

SEBI UPDATE: CLASSIFICATION OF CORPORATE DEBT MARKET DEVELOPMENT FUND (CDMDF) AS CATEGORY I ALTERNATIVE INVESTMENT FUND

Corporate Debt Market Development Fund (hereinafter referred to as 'CDMDF' or 'the fund') has been set-up under Chapter III-C of SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) to act as a Backstop Facility for purchase of investment grade corporate debt securities, to instill confidence amongst the participants in the Corporate Debt Market during times of stress and to generally enhance secondary market liquidity by creating a permanent institutional framework for activation in times of market stress.

A separate framework has been laid down for CDMDF under chapter III-C of Regulation 19 of AIF Regulations, the fund has been set-up with the broader economic objective of development of the corporate bond market, inter-alia, to act as a Backstop facility during times of market stress. It is clarified that CDMDF falls under Category I AIF in terms of Regulation 3(4)(a) of AIF Regulations.

Link: Classification of Corporate Debt Market Development Fund (CDMDF) as Category I Alternative Investment Fund

SEBI UPDATE: PRO-RATA AND PARI-PASSU RIGHTS OF INVESTORS OF AIFS

SEBI issued circular on Pro-rata and pari-passu rights of investors of AIFs

The following has been stated

Under Pro-rata rights of investors of AIFs Regulation 20(21) of AIF Regulations states as under –

The investors of a scheme of an Alternative Investment Fund shall have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment, except as may be specified by the Board from time to time.

The requirement of maintaining pro-rata rights of investors in distribution of proceeds of investments of a scheme, shall not be applicable to the extent returns or profit on the investments is shared by an investor with the manager or sponsor of the AIF (by whatever name it is called, such as carried interest/additional return), in terms of contribution agreement executed between them.

To provide flexibility in fund raising from investors with varied risk appetite, the following entities may accept returns lesser or share losses more than their pro-rata rights in investments of an AIF/scheme of an AIF, i.e., may

subscribe to classes of units which are junior/subordinate to other class(es) of units of the AIF/scheme of AIF -

a. Manager or sponsor of the AIF;
b. Multilateral or Bilateral Development Financial Institutions;
c. State Industrial Development Corporations;
d. Entities established or owned or controlled by the Central Government or a State Government or the Government of a foreign country, including Central Banks and Sovereign Wealth Funds.

Standard Setting Forum for AIFs ('SFA') will formulate standards for offering differential rights which will be published by on or before January 15, 2025 and AIF must comply with these standards when issuing such rights.

AIFs/schemes of AIFs whose PPMs were filed with SEBI post applicability of the aforesaid circular on or after March 01, 2020, shall comply with the following –

The manager shall report the details of differential right(s) which do not fall under the implementation standards formulated by SFA, to SEBI in the format , by emailing to aifreporting@sebi.gov.in, on or before February 28, 2025.

Link: Pro-rata and pari-passu rights of investors of AIFs

SEBI UPDATE: MEASURES TO ADDRESS REGULATORY ARBITRAGE WITH RESPECT TO OFFSHORE DERIVATIVE INSTRUMENTS (ODIS) AND FPIS WITH SEGREGATED PORTFOLIOS VIS-À-VIS FPIS

SEBI vide circular has issued measures to address regulatory arbitrage with respect to Offshore Derivative Instruments(ODIs)and FPIs with segregated portfolios. It has been decided to modify certain requirements related to ODIs and FPIs with segregated portfolios. In view of the same, the FPI Master Circular stands modified as follows:

Conditions for issuance of ODIs:

1. A Foreign Portfolio Investor shall issue ODIs only through a separate dedicated FPI registration with no proprietary investments. Such FPI registration shall be in the name of the FPI with "ODI" as suffix under the same PAN. Where such addition is being requested for an existing FPI, this addition of suffix will not be considered a change in name of FPI.
2. A Foreign Portfolio Investor shall not issue ODIs with derivatives as reference/underlying.

3. A Foreign Portfolio Investor shall not hedge their ODIs with derivative positions on Stock Exchanges in India. Accordingly, ODIs shall only have securities (other than derivatives) as underlying and shall be fully hedged with the same securities on a one-to-one basis, throughout the tenure of the ODI.

Link: Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs

SEBI UPDATE: SEBI BOARD MEETING ANALYSIS

Please find the attached:

Link - SEBI Board Meeting

SEBI UPDATE: POLICY FOR SHARING DATA FOR THE PURPOSE OF RESEARCH / ANALYSIS

It has now been decided to have a uniform policy for Stock Exchanges, Clearing Corporations and Depositories respectively, for sharing data separately for only research/ research publications undertaken by accredited academic institutions. Data shared with vendors for commercial purposes shall not fall under this policy. Accordingly, Stock Exchanges, Depositories and Clearing Corporations are advised to segregate data available, for each market segment, with them into two baskets as follows.

The first basket contains publicly shareable aggregate and analyzed data, including regulatory reporting and disclosure data. This excludes personal, sensitive, or confidential information. It includes:

Public Data: Available on the websites of Stock Exchanges, Depositories, and Clearing Corporations.

Voluminous Data: Anonymized and non-identifiable data too large for online publication. Researchers can access up to 2 GB of such data annually for free if no extra computation is required. For larger or processed datasets, MIIs may charge a cost-based fee.

Data in the second basket will contain information that cannot be shared with the public. These data would include, for instance, KYC information / trade logs / holding details of an entity/ individual, etc. with the identity of the entity/ individual.

MIIs are required to share the data list under each basket with SEBI for approval, within 60 days of the issuance of this Circular and the same shall be reviewed annually or on need basis, whichever is earlier. The data made available through first basket should be in a stakeholder friendly format.

Link: Policy for Sharing Data for the Purpose of Research / Analysis

SEBI UPDATE: INDUSTRY STANDARDS ON REPORTING OF BRSR CORE

In order to facilitate ease of doing business and to bring about standardization in implementation, the Industry Standards Forum ("ISF") comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, under the aegis of the Stock Exchanges, has formulated industry standards, in consultation with SEBI, for effective implementation of the requirement to disclose Business Responsibility and Sustainability Report (BRSR) Core under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") read with Chapter IV-B of SEBI master circular for compliance with the provisions of the LODR regulations by listed entities, issued and dated November 11, 2024.

The industry associations which are part of ISF (ASSOCHAM, FICCI, and CII) and the stock exchanges shall publish the aforesaid industry standards on their websites.
The listed entities shall follow the above industry standards to ensure compliance with SEBI requirements on disclosure of BRSR Core.

This circular shall be applicable for FY 2024-25 and onwards.

Link: Industry Standards on Reporting of BRSR Core

SEBI UPDATE: SIMPLIFICATION OF OFFER DOCUMENT

Scheme Information Document (SID) on which observations are issued by SEBI shall be uploaded on the SEBI website for at least 8 working days for receiving public comments on the adequacy of disclosures made in the document. Thereafter, AMC may file final offer documents (SID and KIM) in line with the provisions of clause 1.1.3.3 of SEBI Master Circular on Mutual Funds dated June 27, 2024.

Accordingly, the following has been decided:

Clause 1.1.3.1.a. of the Master Circular on Mutual Funds dated June 27,2024, stands modified as under:

"Draft SID on which SEBI observation letter has been issued shall be made available on SEBI's website – http:// for at least 8 working days for receiving public comments on the adequacy of disclosures made in the document after which AMC may launch the scheme and file final offer documents (SID and KIM) in line with the provisions of clause 1.1.3.3 of SEBI Master Circular on Mutual Funds dated June 27, 2024.

Validity of SEBI observation on SID will be in accordance with clause 1.3 of Master Circular on Mutual Funds dated June 27, 2024.

Clause 1.1.3.1. (c) and 1.1.3.1.(d) of the Master Circular on Mutual Funds dated June 27, 2024 stand deleted.

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

Link: Simplification of Offer Document

SEBI UPDATE: LODR AMENDMENT ANALYSIS

Link: LODR Amendment Analysis

SEBI UPDATE: ALLOWING SUBSCRIPTION TO THE ISSUE OF NON-CONVERTIBLE SECURITIES DURING TRADING WINDOW CLOSURE PERIOD.

The Securities and Exchange Board of India (SEBI) issued an important circular that addresses the issue of subscription to the issuance of Non-Convertible Securities (NCS) during the trading window closure period. This circular has implications for listed companies, stock exchanges, depositories, and investors involved in transactions during such a period of time.

It has been decided that in addition to the transactions mentioned in Clause 4(3)(b) of Schedule B read with sub-regulation (1) of Regulation 9 of PIT Regulations and SEBI Circular no. SEBI/HO/ISD/ISD/CIR/P/2020/133 dated July 23, 2020, the trading window restrictions shall also not apply to subscription to the issue of non- convertible securities, carried out in accordance with the framework specified by the Board from time to time.

Link: Allowing subscription to the issue of Non- Convertible Securities during trading window closure period

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS (THIRD AMENDMENT) REGULATIONS, 2024.

DEFINITIONS

- Half Year - Definition is omitted
- Securities Law - "Securities laws" means the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder, and the general or special orders, guidelines or circulars made or issued by the Board thereunder and the provisions of the Companies Act, 2013 or any previous company law and any subordinate legislation framed thereunder, which are administered by the Board.
- SR Equity Shares - "SR equity shares" means the equity shares of a listed entity having superior voting rights compared to all other equity shares issued by that listed entity.

DIRECTORS RELATED

- Time limit of fill vacancies in board committees:
  - A vacancy in any board committee (viz. AC, NRC, RMC, SRC) due to vacation of office of board of directors and it is resulting in non-compliance of LODR , it can be filled within three months from the date of such vacancy. Further if such vacancy in the board committee arises due to expiration of term of office of director, then such vacancy shall be filed before expiration of term of office of board of director. This provision will not apply where vacancy in office of director does not lead to non-compliance at board committees.
- A person nominated by a financial sector regulator, Court or Tribunal to the board of listed companies are no longer required to seek the shareholders' approval.
- The appointment or re-appointment of such person as managing director, whole time director or manager whose resolutions were rejected by the shareholders earlier shall only be appointed with prior approval of the shareholders.
- Appointment of Woman Independent Director for Top 1001 to 2000 (recommendatory)
- SEBI has made it compulsory for the listed companies to obtain a special resolution prior to appointment/ re- appointment of non-executive directors on attaining the age of seventy-five years.
- Amendment in the said regulation is clarificatory in nature to ensure that the special resolution is moved before the shareholders prior to the directors attaining the age of seventy-five years and not after the directors had attained the said age

COMPLIANCE OFFICER OF LISTED COMPANIES

- Compliance Officer of a listed company should now be a whole-time employee, one level below the board and someone who is designated as key managerial personnel.

- Earlier Compliance Officer was required to be only a qualified company secretary and therefore, there was option available for the listed company to designated company secretary from its group company(ies) as compliance officer of its company

DISCLOSURE OF MATERIAL EVENT

- Disclosure of board decisions based on meeting conclusion time

Time of conclusion	Timeline for disclosure
after normal trading hours* but more than 3 hours before the next session	within 3 hrs
any other case	within 30 mins

*Normal trading hours mean time period for which the RSEs are open for trading for all investors (9.15 a.m. - 3.30 p.m.)

DISCLOSURE OF ACQUISITION

- Disclosure of acquisition in case of any company:
  - This disclosure is required if listed entity would hold shares/voting rights aggregating to 20% (up from 5%) and for subsequent changes exceeding 5% (up from 2%).

- Disclosure of acquisition in case of unlisted entity:
  - Acquisition of shares or voting rights aggregating to 5% or changes exceeding 2% disclosed quarterly in Integrated Filing (Governance).

ANALYST OR INSTITUTIONAL / INVESTOR MEETS

- A new concept of disclosure of names of analysts or institutional investors is introduced. Such disclosure is currently optional for listed entities.

- Presentations prepared by a listed entity for analyst or institutional investors meet or post-earnings / quarterly calls to be disclosed to stock exchanges before the beginning of such events.

- Audio recordings of post-earning / quarterly calls shall be made available promptly on the company's website before the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier.

- Video recordings of post-earnings / quarterly calls shall be on company's website within 48 hours from the conclusion of such calls.

- Transcripts of post-earning / quarterly calls to be available on website for 5 years and thereafter it needs to be preserved by the company for 8 years.

- Audio/video recordings to be available on website for 2 years (instead of 5 years till now.) This audio / video recordings needs to be preserved by company for 8 years as per the preservation policy.

- Transcripts of post-earning / quarterly calls to be available on website for 5 years and thereafter it needs to be preserved by the company for 8 years as per the preservation policy

SECRETARIAL AUDITOR

- The Secretarial Auditor shall be appointed or removed by the Shareholders in the Annual General Meeting. Amendment effective April 1, 2025

- Term for individual and firm of company secretaries defined aligning the same with appointment of statutory auditors provisions

- The Secretarial auditor shall be a peer-reviewed Practicing Company Secretary.

- The Casual vacancy arising out of death, resignation, or disqualification of secretarial auditor shall be filled by Board of Directors within 3 months and secretarial auditor so appointed shall hold office till the conclusion of next annual general meeting.

WEBSITE DISCLOSURES

- Following additional documents / information shall now be disclosed on the website of a listed entity:

- Articles of Association
- Memorandum of Association
- Brief profile of the Board of directors (incl. directorships and full-time positions in body corporates)
- Employees benefit scheme documents;
- Presentations prepared by the listed entity for analysts or institutional investors meet, post earnings or quarterly calls prior to beginning of such events.

CHANGES WITH RESPECT TO RELATED PARTY TRANSACTIONS

- Ratification of transactions is now allowed subject to certain conditions.
- Prior approval of audit committee not required for payment of sitting fees and remuneration to directors and KMPs.
- Omnibus approval extended to subsidiary companies
- Exempted related party transactions

REG- 23(2) RATIFICATION OF RPT

Independent directors in the audit committee may ratify related party transactions within 3 months from entering the transaction or in the immediate next meeting, whichever is earlier subject to:

- Value of the ratified transaction(s) with a related party, whether entered into individually or taken together, during a financial year is less than Rs. 1 crore in a financial year.
- Transaction is non-material under Regulation 23(1) of LODR.
- Rationale for not being able to seek prior approval shall be placed before the audit committee during ratification.
- Ratification details to be disclosed in half-yearly RPT disclosures under regulation 23(9) of LODR.
- Additional conditions may be specified by the audit committee for the ratification.

***failure to seek ratification of the audit committee shall render the transaction voidable at the option of the audit committee**

REG 23 SUB REG –(2)

- Remuneration and sitting fees paid to its directors, key managerial personnel, or senior management (excluding promoters/promoter group) is now exempt from prior approval of Audit Committee only if the transaction is not a material transaction under Regulation 23(1) of LODR.

- Remuneration and sitting fees paid by the subsidiary of the listed company to its directors, key managerial personnel, or senior management (excluding promoters/promoter group) is now exempt from prior approval of Audit Committee only if the transaction is not a material transaction under Regulation 23(1) of LODR.

REG 23 SUB REG –(5)

Transactions given below do not require shareholders' approval:

- Transactions which are in the nature of payment of statutory dues, statutory fees or statutory charges and entered into between an entity on one hand and the Central Government or any State Government or any combination.

- Transactions entered into between a public sector company on one hand and the Central Government or any State Government or any combination.

OMNIBUS APPROVAL FOR RELATED PARTY TRANSACTIONS ENTERED BY SUBSIDIARY:

- For transactions at subsidiaries level - omnibus approval can also be taken in line with omnibus approval undertaken by listed entity.
- The Audit Committee of the listed entity will have to set out criteria for granting the omnibus approval for its subsidiary.
- The Audit Committee of the listed entity shall monitor those related party transactions on quarterly basis.

EXEMPTED RELATED PARTY TRANSACTION:

Following will not be considered as related party transaction thereby exempting it from approvals and disclosures under LODR:

- Corporate actions by subsidiaries of a listed entity and corporate actions received by the listed entity or its subsidiaries which are uniformly applicable / offered to all shareholders in proportion to their shareholding.

- Acceptance of current account deposits or saving account deposits by banks and payment of interest thereon in compliance with the directions issued by RBI from time to time.

- Retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable / offered to all employees and directors.

***However, one would still have to evaluate such requirement from the perspective of Section 177 of Companies Act, 2013**

RECLASSIFICATION OF PROMOTERS(with immediate effect)

- SEBI has revamped process of reclassification of promoter and/ or promoter group to public:

- Companies to seek NOC from stock exchange (prior to seeking shareholder approval, if applicable) in place of prior approval as per current framework.

- Board of directors of the company to provide their views on proposed reclassification of promoters within 60 days instead of 90 days till now.

- Stock Exchanges must provide the No-Objection Certificate (NOC) within 30 days, the listed entity must seek shareholder approval within 60 days, and the entity must notify the stock exchanges within 5 days after receiving shareholder approval.

- Under regulation 31A(8)(b) of LODR the outcome of the board meeting, including their views on the reclassification request, must be disclosed

ANNUAL REPORT AND FINANCIAL STATEMENTS RELATED

- The listed companies shall send a letter with web link (including exact path) to access the annual reports, instead of dispatching the hard copy of annual report, to the shareholders whose email addresses are not registered with the listed company or depository.

- The listed companies shall give a public advertisement of financial results via QR code and details of the webpage.

RECORD DATE

- Time gap between intimation and actual record date has been reduced to 3 working days (from 7 working days) except for corporate action through a scheme of arrangement.
- Minimum gap between two record dates has been reduced to 5 working days (from 30 days).
- Minimum gap between two book closures is now omitted.

RELAXATIONS FROM CERTAIN COMPLIANCE FOR COMPANIES COMING OUT OF IBC FRAMEWORK

- Companies coming out of Corporate Insolvency Resolution Process (CIRP) would now have additional time to compliance with LODR:
- Three-month time for filling up the vacancy of KMP subject to having at least one full-time KMP.
- Three months to have required board / committee composition.
- Additional time of 45 days (or 60 days for annual results) to be provided for disclosure of financial results for the quarter in which the resolution plan is approved.

DISCRETIONARY REQUIREMENTS

- Independent directors of the *top 2000 listed* entities are encouraged to hold at *least two* meetings annually without non-independent directors or management.
- Entities ranked *1001 to 2000* are allowed to form a *risk management committee*.
- Disclosures in XBRL format by the debt-listed entities as per the guidelines specified by the stock exchanges.

RBI UPDATE: INOPERATIVE ACCOUNTS / UNCLAIMED DEPOSITS IN BANKS

The banks are, advised to take necessary steps urgently to bring down the number of inoperative/ frozen accounts and make the process of activation of such accounts smoother and hassle free, including by enabling seamless updation of KYC through mobile/internet banking, non-home branches, Video Customer Identification Process, etc. While the accounts of beneficiaries of various Central/ State government schemes like DBT/EBT etc., are required to be segregated to facilitate uninterrupted credit of such DBT/EBT amounts in their accounts, instances have been observed where the accounts of such beneficiaries have been frozen due to other factors such as pending updation/ periodic updation of KYC. Since these accounts mostly pertain to the people from the underprivileged sections of the society, the banks may facilitate the process of activation of accounts by taking an empathetic view in such cases. The banks may also organise special campaigns for facilitating activation of inoperative/ frozen accounts. Besides, the banks may also facilitate Aadhaar updation for customers through the branches providing Aadhaar related services. Instructions have been issued separately to SLBCs to proactively monitor the situation in their respective jurisdictions with a view to minimise customer inconvenience.

Link: Inoperative Accounts / Unclaimed Deposits in banks

RBI UPDATE: AMENDMENT TO FRAMEWORK FOR FACILITATING SMALL VALUE DIGITAL PAYMENTS IN OFFLINE MODE

RBI circular dated January 03, 2022 (updated as on August 24, 2023) which enabled small value digital payments in offline mode (Offline Framework). The framework, inter-alia, prescribes an upper limit of ₹500 for offline digital payment transactions, and a total limit of ₹2,000 for a payment instrument at any point in time.

The Statement on Developmental and Regulatory Policies dated October 09, 2024, wherein it was announced that the stated limits shall be enhanced for UPI Lite.

Accordingly, the Offline framework has been updated and the enhanced limits for UPI Lite shall be ₹1,000 per transaction, with ₹5,000 being the total limit at any point in time.

Link: Amendment to Framework for Facilitating Small Value Digital Payments in Offline Mode

RBI UPDATE: MAINTENANCE OF CASH RESERVE RATIO (CRR)

Banks are required to maintain the CRR at 4.25 per cent of their NDTL effective from the reporting fortnight beginning December 14, 2024 and 4.00 per cent of their NDTL effective from fortnight beginning December 28, 2024.

Link: Maintenance of Cash Reserve Ratio (CRR)

RBI UPDATE: CREDIT FLOW TO AGRICULTURE – COLLATERAL FREE AGRICULTURAL LOANS

It has been decided to raise the limit for collateral free agricultural loans including loans for allied activities from the existing level of ₹1.6 lakh to ₹2 lakh per borrower. Accordingly, banks are advised to waive collateral security and margin requirements for agricultural loans including loans for allied activities upto ₹2 lakh per borrower.

The banks are advised to give effect to the revised instructions expeditiously and in any case not later than January 1, 2025.

Link: Credit Flow to Agriculture – Collateral free agricultural loans

RBI UPDATE: INTRODUCTION OF BENEFICIARY BANK ACCOUNT NAME LOOK-UP FACILITY FOR REAL TIME GROSS SETTLEMENT (RTGS) AND NATIONAL ELECTRONIC FUNDS TRANSFER (NEFT) SYSTEMS

Banks which are participants of RTGS and NEFT Systems, shall make this facility available to their customers through Internet banking and Mobile banking. The facility shall also be available to remitters visiting branches for making transactions.

To ensure that remitters using RTGS and NEFT systems can verify the name of the bank account to which money is being transferred before initiating the transfer and thereby avoid mistakes and prevent frauds, a solution for fetching the beneficiary's name is being implemented. Based on the account number and IFSC of the beneficiary entered by the remitter, the facility will fetch the beneficiary's account name from the bank's Core Banking Solution (CBS).
This facility shall be made available to remitters through Internet banking and Mobile banking. The facility shall also be available to remitters visiting

branches for making transactions.
To ensure uniform experience for customers, the banks shall adhere to the instructions given below:

1. Provision to verify beneficiary bank account name shall be provided in Internet banking and Mobile banking facilities at the time of registering a beneficiary and at the time of one-time fund transfer where the beneficiary may not be registered.
2. Provision to re-verify a registered beneficiary at any time shall also be provided.
3. Beneficiary account name provided by the beneficiary bank shall be displayed to the remitter.
4. In case the beneficiary name cannot be displayed for any reason, the remitter can proceed with the fund transfer, at her discretion.
5. Specific alert messages as provided in the technical document, issued earlier by NPCI, shall be displayed to the remitter.

Link: Introduction of beneficiary bank account name look-up facility for Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT) Systems

RBI UPDATE: INTEREST RATES ON FOREIGN CURRENCY (NON-RESIDENT) ACCOUNTS (BANKS) [FCNR(B)] DEPOSITS

It has been decided to increase the interest rates ceiling on fresh FCNR(B) deposits raised by the banks with effect from December 06, 2024 as under:

Period of Deposit	Ceiling Rate
1 year to less than 3 years	Overnight Alternative Reference Rate for the respective currency/ Swap plus 400 basis points
3 years and above upto and including 5 years	Overnight Alternative Reference Rate for the respective currency/ Swap plus 500 basis points

Link: Interest Rates on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] Deposits

IBC CASE LAW: INITIATION OF REASSESSMENT PROCEEDINGS UNDER SECTIONS 148A(B) AND 148A(D) OF THE INCOME TAX ACT, 1961 AND ISSUANCE OF THE NOTICE UNDER SECTION 148 ARE IN VIOLATION OF THE SECTION 14 OF THE IBC – MCNALLY BHARAT ENGINEERING CO. LTD. VS. UNION OF INDIA AND ORS. – CALCUTTA HIGH COURT

Brief about the decision:

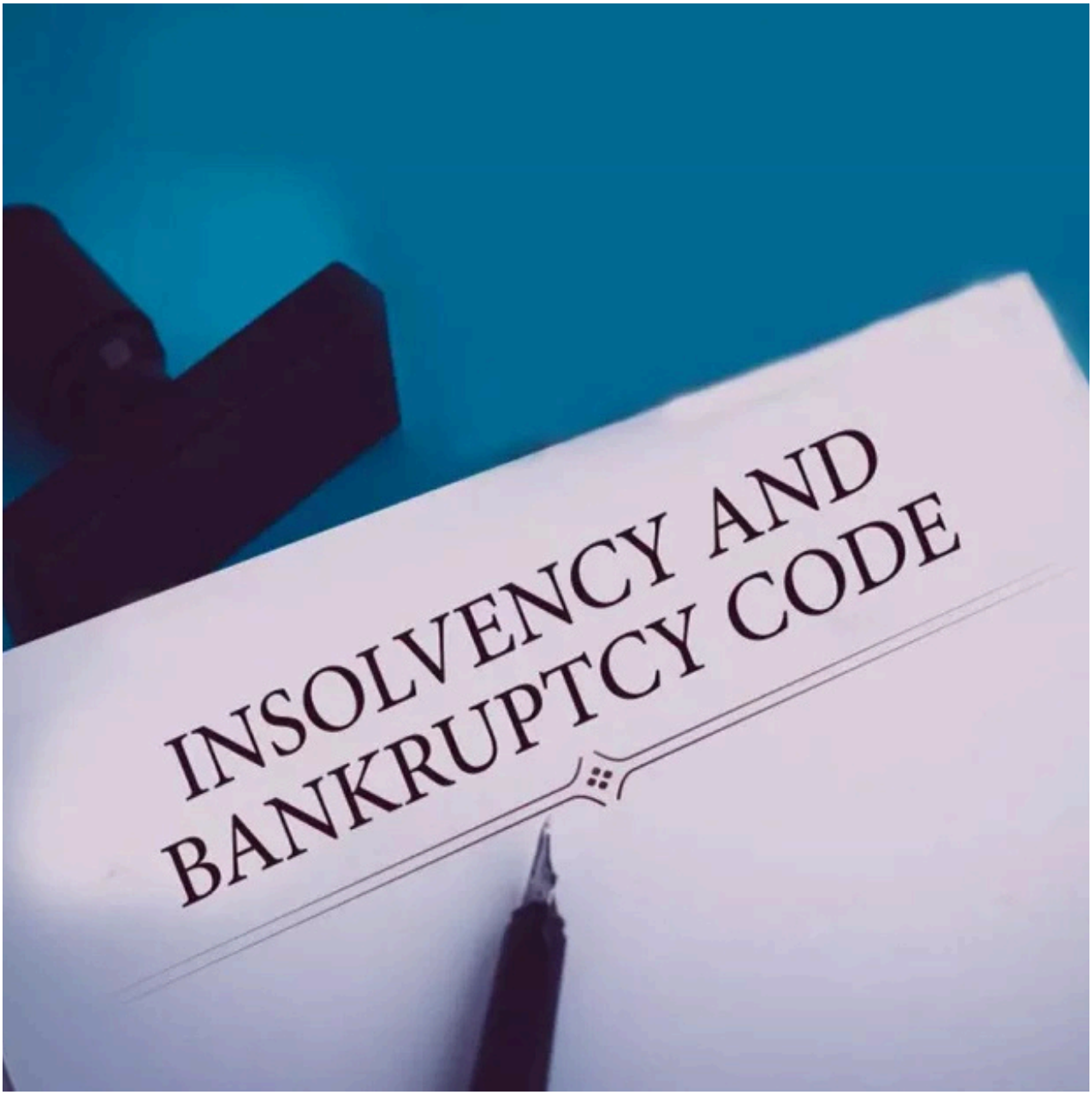
Facts of the case

- For the assessment year 2016-17, the petitioner filed its return of income on 29.11.2016, declaring a loss of Rs. 2,09,79,33,681/-. This return was processed under Section 143(1) of the Income Tax Act, 1961 on 27.03.2018, leading to a refund of Rs. 24,75,45,997/- sanctioned in favour of the petitioner.
- The NCLT, Kolkata Bench admitted a petition filed by Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 for CIRP against the petitioner on 29.04.2022.
- The respondent authorities issued a notice under Section 148A(b) of the Income Tax Act, 1961 on 30.03.2023. This notice alleged suspicious transactions involving the petitioner, M/s. Ranisati Metal Industries and certain shell entities, seeking explanations.
- The petitioner, in response, submitted a detailed reply on 21.04.2023, supported by documentary evidence.
- The respondent authorities issued an order under Section 148A(d) of the Income Tax Act, 1961 and a consequential notice under Section 148 of the Act, both dated 06.05.2023, initiating reassessment proceedings against the petitioner.
- The petitioner invoked the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, alleging arbitrary, high-handed and unlawful actions in the reassessment proceedings initiated by the respondent authorities.
- On 19.12.2023, the NCLT approved a resolution plan submitted by BTL EPC Limited.

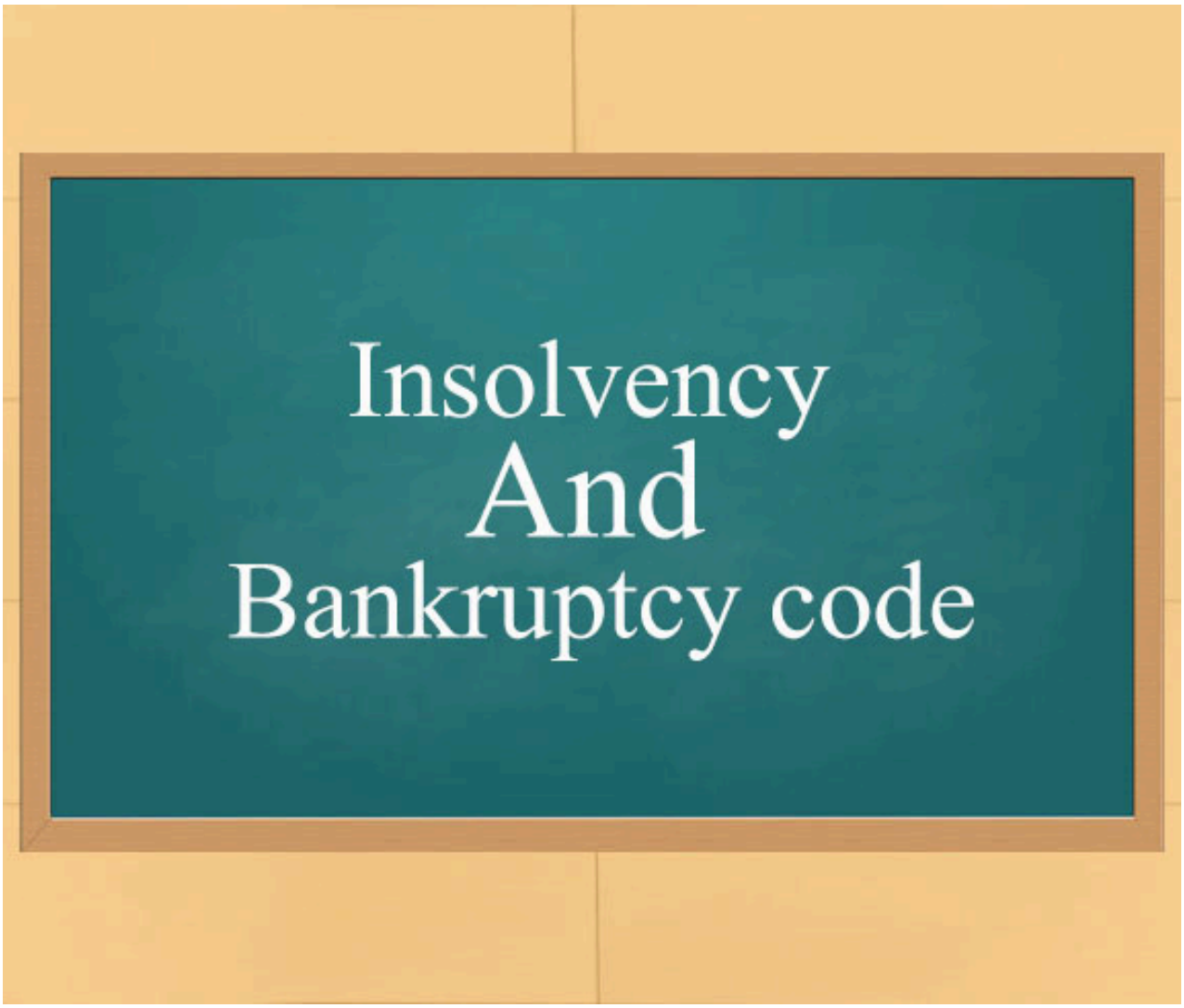
Decision of the High Court

- The Hon'ble High Court is of the view that the initiation of reassessment proceedings under Sections 148A(b) and 148A(d) of the Income Tax Act, 1961 and the subsequent issuance of the notice under Section 148, were in violation of the statutory preconditions under the Act. Section 14 of the IBC imposes a moratorium that prohibits proceedings against a company undergoing CIRP.

- Furthermore, the resolution plan approved by the NCLT has overriding authority, as per Section 238 of the IBC and expressly precludes reassessment or revision proceedings for the period prior to the effective date stipulated in the plan. The respondents' actions are in direct contravention of these provisions.
- The Hon'ble Court refers Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. reported in (2021) ibclaw.in 54 SC and holds that the reassessment proceedings initiated against the petitioner are without jurisdiction, arbitrary, and unsustainable in law. (pp23-24)
- Consequently, the writ petition is allowed, and the impugned notices and orders issued under Sections 148A(b), 148A(d), and 148 of the Income Tax Act, along with all consequential proceedings, are quashed.



- 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: IS RESOLUTION PROFESSIONAL TO BE CONSIDERED A 'PROMOTER' FOR THE PURPOSES OF THE PROVISIONS OF SECTION 43(5) OF RERA? | CAN AN EXEMPTION BE GRANTED FROM MAKING A PRE-DEPOSIT U/S 43(5) OF RERA IN THE CASE OF A CORPORATE DEBTOR UNDER INSOLVENCY? – UMANG REALTECH PVT. LTD. VS. MRS DAPHNE REITA RAJAN SHARMA AND ANR. – DELHI HIGH COURT

Brief about the decision:

Facts of the case

- Vide order dated 20.08.2019, the NCLT, Principal Bench, New Delhi admitted the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).
- In the appeal before Real Estate Appellate Tribunal (REAT), the Appellant filed application seeking leave to attach flat in lieu of requisite deposit mandated under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.
- The Hon'ble Real Estate Appellate Tribunal (REAT), vide order dated 04.03.2024, dismissed the application in view of Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Ors., (2021) ibclaw.in 188 SC as well as the mandate of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 to deposit the amount.
- The Hon'ble REAT, vide order dated 01.07.2024 clarified that the project in question is not under CRIP.
- The Appellant has filed this appeal under Section 58 of the RERA, 2016.

Decision of the High Court

A. Is it required to make a pre-deposit under Section 43(5) of RERA even if the Promoter/Corporate Debtor is undergoing corporate insolvency?

- In the present case, the learned Senior Counsel for the appellant has submitted that, in view of the moratorium issued by the learned NCLT vide its Order dated 20.08.2019, a special exemption should be granted to the appellant from making the mandatory pre-deposit for the appeal filed before the Real Estate Appellate Tribunal (REAT).
- The Hon'ble High Court is unable to agree with the said submission.
- The learned NCLAT in Mr. Vijay Kumar Pasricha v. Mr. Manish Kumar Gupta Interim RP (2023) ibclaw.in 581 NCLAT, has, therefore, clarified that the Insolvency Resolution Process is only with respect to one of

the projects being undertaken by the appellant company, which is not the same as the one which is the subject matter of the proceedings before the Real Estate Appellate Tribunal. The appellant, therefore, cannot seek any benefit of the moratorium that has been issued by the learned NCLT for seeking an exemption from making the pre-deposit in terms of Section 43(5) of the RERA.

B. Resolution Professional is to be considered as a 'Promoter' for the purposes of the appeal and the application of provisions of Section 43(5) of the RERA

- The Appellant submits that the appeal, having been filed by the Interim Resolution Professional (IRP), in fact, cannot be considered as an appeal filed by a 'Promoter' and, therefore, the rigours of Section 43(5) of the RERA would not be applicable.
- The Hon'ble High Court clarifies that the plea of learned Senior Counsel for the appellant that the appeal, having been filed by the IRP, cannot be considered to have been filed by the 'Promoter' is concerned, again does not find any merit. The IRP is representing the company itself, that is, the 'Promoter' and therefore, is to be considered as a 'Promoter' for the purposes of the appeal and the application of provisions of Section 43(5) of the RERA.

C. Security of a flat against the pre-deposit requirement under Section 43(5) of RERA

- The learned Senior Counsel for the appellant submits that, in any case, the spirit of Section 43(5) of the RERA is fulfilled by the appellant offering a security against the pre-deposit requirement.
- The Hon'ble High Court also does not find any merit in the submission of the learned senior counsel for the appellant that as the appellant is offering security of a flat, it should be granted an exemption from making the pre-deposit in terms of Section 43(5) of RERA. As noted hereinabove, the condition of making a pre-deposit as a pre-condition for the hearing of the appeal has been upheld by the Supreme Court. The said provision does not leave any scope for granting an exemption from making the pre-deposit and instead accepting a security.

D. Disposed of

- The Hon'ble Court, therefore, finds no merit in the present appeal. The same is, accordingly, dismissed.
- The learned Senior Counsel for the appellant, at this stage, prays that at least an exemption be granted from making a deposit of the entire penalty amount as a pre-condition for the appeal. This aspect has not been considered by the learned Real Estate Appellate Tribunal, and therefore, this Court needs not comment at this stage. It shall be open to the appellant to seek appropriate relief in this regard before the learned Real Estate Appellate Tribunal.

IBC CASE LAW: CAN SETTLEMENT BE ALLOWED AFTER THE NON-IMPLEMENTATION OF THE APPROVED RESOLUTION PLAN? – DR. YARTAGADDA KRISHNA MOHAN VS. COMMITTEE OF CREDITORS AND ANR. – NCLAT CHENNAI

Brief about the decision:

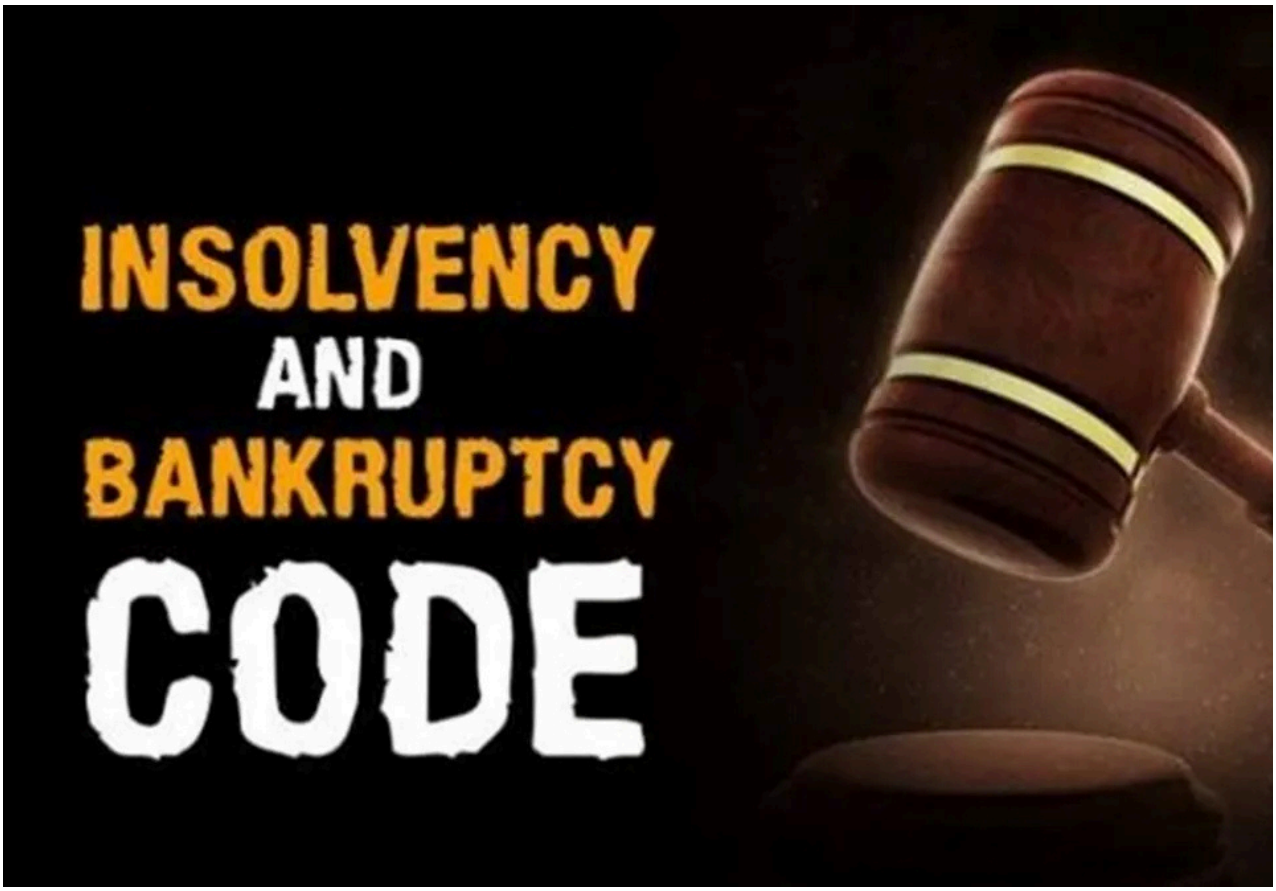
Facts of the case

- The Corporate Debtor was admitted into the CIRP proceedings by the NCLT, Hyderabad, on the basis of an application filed under Section 7 of I & B Code, 2016.
- The Appellant, in the capacity of a Personal Guarantor submitted a One-Time-Settlement (OTS) proposal of Rs. 80 Crores to the Financial Creditor (FC) on 09.12.2022, which was rejected.
- As against the rejection of the aforesaid OTS proposal on 09.12.2022, he submitted a revised OTS proposal of Rs. 89 Crores to the Financial Creditor on 30.01.2023, which once again stood rejected by the Financial Creditor on 07.02.2023.
- The Applicant once again submitted another OTS proposal being the 3rd OTS proposal with an offer of Rupees 81.10 Crores to the Financial Creditor on 27.07.2023. This was also rejected by the Financial Creditor on 03.08.2023.
- Meanwhile, the NCLT, Hyderabad on 07.12.2023, approved the Resolution Plan which was submitted by one M/s. Square Housing & Development Pvt. Ltd.
- After the approval of the Resolution Plan, the SRA failed to implement the approved Resolution Plan and the Financial Creditor filed an application to re-start CIRP proceedings again.
- Against this backdrop, the Applicant submitted a fresh OTS proposal of Rs. 90 Crores on 03.09.2024, by filing an application in IA No. 1862/2024.
- The NCLT, Hyderabad dismissed the said application preferred by the Appellant containing the offer of OTS of Rs. 90 Crores, by an order of 12.09.2024, observing thereof that since the Resolution Plan has already been approved, the application is not maintainable and accordingly, the said application is dismissed.

Decision of the Appellate Tribunal

- The submission of the one-time settlement proposal as prayed for in the IA (IA (IBC) No. 1862/2024), could not be considered by the Adjudicating Authority for the reason being that, on earlier three occasions, the OTS proposals had already stood rejected and also because of the fact that Resolution Plan as of now has already been approved on 07.12.2023.

- Therefore, with regard to the instant OTS proposal submitted on 03.09.2024, by virtue of IA No. 1862/2024, there was no scope open for the said proposal to be considered to be accepted and consequentially the Impugned Order that was passed thereon, holding that the OTS proposal as prayed for in IA (IBC) No. 1862/2024, could not be considered and is not maintainable as the Resolution Plan has already been approved, cannot be faulted.(p7)
- The view expressed by the Adjudicating Authority in the Impugned Order of 12.09.2024, holding OTS proposal to be not maintainable due to the fact of the Resolution Plan already having been approved cannot be faulted of in any manner whatsoever, as new chapter cannot be permitted to be opened, when the Appellant himself has failed on three earlier occasions to get his OTS proposals approved and because of the fact that the Resolution Plan as of now has already been approved.(p8)
- In these circumstances, the application being IA (IBC) No. 1862/2024, could not have been considered by the Adjudicating Authority and the same has been rightly rejected by the Impugned Order, which does not call for any interference in the exercise of the Appellate jurisdiction by this Appellate Tribunal under Section 61 of I & B Code, 2016.(p8)
- The Company Appeal (AT) (CH) (Ins) No. 454/2024, lacks merits and the same is accordingly dismissed.(p8)



IBC CASE LAW: THE DEFAULT WHICH HAS OCCURRED WHEN THE NOTICES WERE ISSUED FOR DRAWING THE PROCEEDINGS UNDER THE SARFAESI ACT, RECKONING OF THE PERIOD OF LIMITATION PRESCRIBED UNDER ARTICLE 137 THE LIMITATION ACT, SINCE HAS BEEN GIVEN A RETROSPECTIVE EFFECT FOR THE PURPOSES OF THE PROCEEDING UNDER SECTION 7 OR 9 OF THE IBC – CANARA BANK VS. DAAJ HOTELS & RESORTS PVT. LTD. – NCLAT CHENNAI

Brief about the decision:

Facts of the case

- The account of the Corporate Debtor was declared to be an NPA, by a declaration made to the said effect on 01.10.2012.
- The members of the consortium, including the appellant herein initiated a proceeding under Section 19 of Recovery of Debts and Bankruptcy Act 1993 before the Debt Recovery Tribunal (DRT), Hyderabad on 18.08.2017.
- An offer extended under the OTS scheme, the Appellant bank summits that vide its order dated 03.01.2020, Debt Recovery Tribunal (DRT) Hyderabad, passed a compromise decree, in favour of the SBI and M/s. Phoenix ARC Private limited, (the assignee of the loan).
- The effect of the compromise, of the OTS as it finds reference in the Debt Recovery Tribunal (DRT) order of 03.01.2020, the claim amount as raised by the Appellant was said to have been defaulted and as a result thereto the Appellant is said to have initiated the proceedings under Section 7 of I & B Code.
- However, the proceedings, which stood decided on the basis of the compromise decree dated 03.01.2020, was put to challenge in proceedings under Section 20 of Recovery of Debts and Bankruptcy Act 1993, by way of preferring of an appeal before Debt Recovery Appellate Tribunal (DRAT), which was dismissed on 09.04.2021.
- The Appellant had preferred Writ Petition before the High Court of Telangana against the decision of DRAT and the same is still pending consideration.
- The Hon'ble NCLT Bench at Hyderabad rejected the Section 7 application under IBC by the Impugned Order of 28.02.2022 and held that at the stage of consideration of the application under Section 7 of I & B Code was found to be not maintainable, on the ground of limitation. The Hon'ble Tribunal held that default in the case of the proceeding has to be reckoned from the date when the financial creditor had actually got the knowledge of the default having been committed, which in the instant case will be falling to be 01.10.2012 when the notices under Section 13 (2) of the SARFAESI Act was issued.

Decision of Appellate Tribunal

- There had been a proceeding under the Recovery of Debts and Bankruptcy Act 1993, which ultimately resulted in a compromise decree by an order of 03.01.2020, but then the question emerges for consideration, is that what would be the criteria to determine, as to what would be the date of default has to be, either 01.10.2012 or 03.01.2020, where the OTS/Compromise was in favour of the Financial Creditors was ultimately withdrawn in the meeting of the members of consortium on 04.02.2019.(p13)
- When these issues were taken up, the Hon'ble NCLT, by the Impugned Judgment dated 28.02.2022 had rejected the application preferred under Section 7 of I & B Code, by observing thereof, that when the proceedings under the Recovery of Debts and Bankruptcy Act 1993/ SARFAESI Act were being taken, the proceedings before the DRT as well as the DRAT, were already a subject matter of consideration before the Hon'ble Telangana High Court. (p13)
- Commission of a default consciously means, that it is an expression of default when it is realized and accepted by the Financial Creditor and accepted by the Corporate Debtor when the notices under Section 13 (2) of the SARFAESI Act was issued and accepted by the Corporate Debtor. The aspect of default as defined under Section 13 (2) of the SARFAESI Act was to be reckoned from the date notice is issued. It does not mean a debt when held or any part or instalment of the amount becomes due to be payable, but not paid. It would be actually be the default which has occurred when the notices were issued on 01.10.2012, for drawing the proceedings under the SARFAESI Act, reckoning of the period of limitation prescribed under Article 137 the Limitation Act, since has been given a retrospective effect for the purposes of the proceeding under Section 7 or 9 of the I & B Code. The drawing of the proceedings by issuing a notice or demand on 29.08.2018, after the reckoning of the default committed on 01.10.2012, we render the procedure under Section 7 to be initiated and barred by limitation.(p16)
- For the aforesaid reason, as the entire proceeding under Section 7 of I & B Code, was barred by limitation, the same does not hold merit and would accordingly stand dismissed. The Judgment rendered by the Ld. Adjudicating Authority on 28.02.2022, is hereby upheld.(p16)

IBC CASE LAW: THE RIGHT TO MAINTENANCE WILL BE SUPERIOR TO AND HAVE OVERRIDING EFFECT THAN THE STATUTORY RIGHTS AFFORDED TO FINANCIAL CREDITORS, SECURED CREDITORS, OPERATIONAL CREDITORS OR ANY OTHER SUCH CLAIMANTS ENCOMPASSED WITHIN THE SARFAESI ACT, 2002, THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) OR SIMILAR SUCH LAWS – APURVA @ APURVO BHUVANBABU MANDAL VS. DOLLY AND ORS. – SUPREME COURT

Brief about the decision:

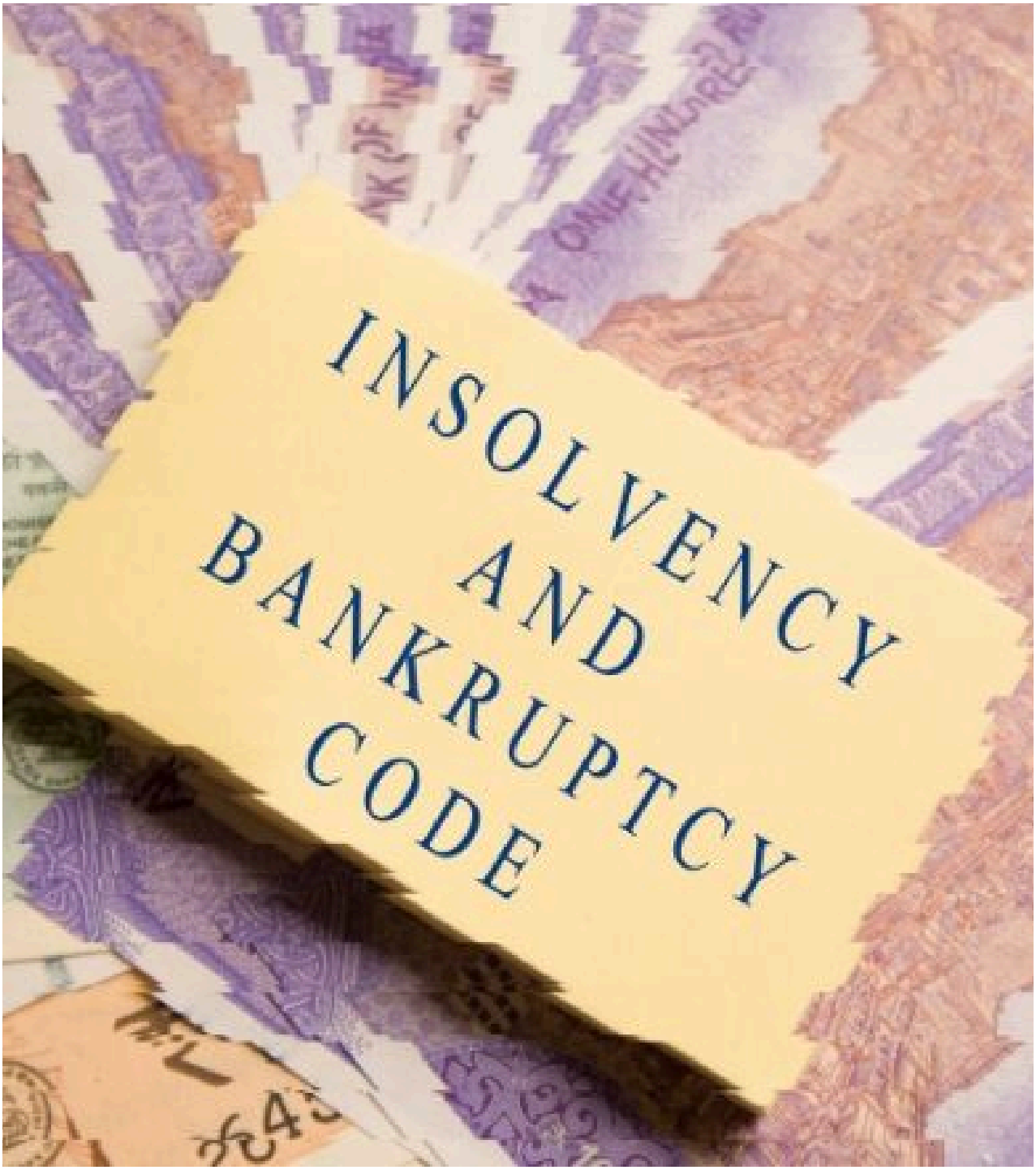
Facts of the case

- The respondent-wife has been granted maintenance at the rate of Rs.1,00,000/- per month whereas both the children have been granted maintenance of Rs.50,000/- each per month, by the High Court of Gujarat at Ahmedabad in the proceedings under Section 125 of the Code of Criminal Procedure, 1973.
- The appellant claims that he is not in a financial position to pay the maintenance at the rate awarded by the High Court. On account of losses in business, his income has substantially reduced or that the recovery proceedings have been initiated.

Decision of the Supreme Court

- The charge of arrears of maintenance, payable to the respondents (wife and children), shall have preferential right over the assets of the appellant (husband), over and above, the rights of a secured creditor or similar right holders, under any recovery proceedings. (p11)
- Wherever such proceedings are pending, that forum is directed to ensure that the arrears of maintenance are released to the respondents (wife and children) forthwith. No objection of any secured creditor, operational creditor or any other claim shall be entertained opposing the entitlement of the respondents (wife and children) for maintenance.(p11)
- The reason that the right to maintenance is commensurate to the right to sustenance. This right is a subset of the right to dignity and a dignified life, which in turn flows from Article 21 of the Constitution of India. In a way, the right to maintenance being equivalent to a fundamental right will be superior to and have overriding effect than the statutory rights afforded to Financial Creditors, Secured Creditors, Operational Creditors or any other such claimants encompassed within the SARFAESI Act, 2002, the Insolvency and Bankruptcy Code, 2016 or similar such laws.(p12)

- The Hon'ble Supreme Court allows these appeals in part and modify the impugned judgment of the High Court to the extent that the respondent-wife is held entitled to maintenance at the rate of Rs. 50,000/- per month from the date of the order passed by the High Court. Similarly, both the children are also held entitled to maintenance at the rate of Rs. 25,000/- per month, each with effect from the date of the High Court order. They shall, however, be entitled to arrears of maintenance at the higher rate, awarded by the High Court upto the date the said order was passed by the High Court.(p10)



RD GRANTS RELIEF BY REDUCING ROC PENALTY FOR DIN RULE VIOLATION CONSIDERING THE COMPANY'S SMALL COMPANY STATUS

Background of the case

This is a case pertaining to an appeal filed by the company against the order of the Registrar of Companies / Adjudication Officer of Kolkata – who passed an order on 13th June 2024, order bearing ROC/ Adj/307/091147/2023/1922 - adjudication order for penalty under section 454(3) of the Companies Act 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Rules 2019 in the matter of non-compliance of section 158 of the Companies Act 2013 in respect of M/s MPS Distributors Private Limited.

The violation committed by the company and its directors was, that the company's financial statements for the period 2015-16 to 2019-20 – for a period of five financial years did not contain the director identification number (DIN), which was a mandatory requirement to be included in any document filed by the company under the provisions of the Companies Act 2013. The Companies Act 2013, mandated that the inclusion of the director identification number (DIN) was a mut in every company documents / record filed by the company with the Ministry of Corporate Affairs. The company and its directors all put-together were penalized by the Adjudication Officer for the violation to a tune of Rs. 4.5 lakh. Against the order of the Registrar of Companies of Kolkata, the company i.e. M/s MPS Distributors Private Limited and its directors preferred an appeal challenging the penalty of Rs. 4.5 lakhs levied, before the Regional Director (Eastern Region) Ministry of Corporate Affairs, Hyderabad.

Upon hearing the appeal, the Regional Director reduced the penalty amount from Rs 4.5 lakhs to Rs. 2.25 lakh on the ground that the company in question was falling under the definition of small company, and this was not taken into consideration by the Registrar of Companies while adjudicating the matter due to non-representation and non-production of documents that the company was falling under the definition of small company. We shall go through this case in details in order to understand the rationale behind the reduction in penalty granted by the Regional Director.

Details of the company

2. M/s MPS Distributors Private Limited is a private company incorporated on 17th February 2000 under the provisions of the Companies

Companies Act 1956 and the company falls under the jurisdiction of Registrar of Companies, West Bengal and the office of the Registrar is situated at Kolkata. This company is having its registered office situated at 17/6/H/3 Canal West Road, P.O Amherst Street, Kolkata in the state of West Bengal. The company, as per the details shown at the MCA portal is having two directors on its board. The company provides power solutions for a variety of industries, such as industrial applications, telecom infrastructures, cloud computing, automotive, and consumer applications.

Default committed by the company

3. The Registrar of Companies, upon conducting the examination of the financial statements filed by the company at the Ministry of Corporate Affairs portal, for the period 2015-16 to 2019-20 (for a period of five years) had observed that the financial statements did not contain the director identification number (DIN) thereby leading to the violation of section 158 of the Companies Act 2013. After following the due procedure of law, the Adjudicating Authority levied the penalty as provided under section 172 of the Companies Act 2013 upon the company and its directors for violating the provisions of section 158 of the Companies Act 2013 read with Rule 3 (12) of the Companies (Adjudication of Penalties) Rules 2014 to a tune of Rs. 4.50 lakh.

Order passed by the Registrar of Companies

4. The Registrar of Companies / Adjudicating Officer of Kolkata passed an adjudication order dated 13th June 2024 order bearing no. ROC/ Adj/307/091147/2023/1922 - adjudication order for penalty under section 454(3) of the Companies Act 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Rules 2019 in the matter of non-compliance of section 158 of the Companies Act 2013 in respect of M/s MPS Distributors Private Limited as per the details given below in the table.

Violation under the Companies Act 2013	**Penalty imposed upon Company / directors**	**Calculation of default amount**	**Max. penalty as per Act**	**Amount of Penalty imposed**
		Rupees	**Rupees**	**Rupees**
Sec. 158 - Failure to mention DIN in fin. statements for 5 years	Company	50,000*5 = 2,50,000	3,00,000	2,50,000
	Director - 1	50,000*5 = 2,50,000	1,00,000	1,00,000
	Director - 2	50,000*5 = 2,50,000	1,00,000	1,50,000
Total Penalty				**4,50,000**

Appeal filed by the company

5. Against the order of the Registrar of Companies, the concerned company i.e., M/s MPS Distributors Private Limited filed an appeal under Section 454 (5) of the Companies Act 2013 in Form ADJ against the Adjudication order passed by the Registrar of Companies – order bearing no. ROC/ Adj/307/091147/2023/1922 - adjudication order for penalty for violation of section 158 of the Companies Act 2013

Personal hearing notice issued by the Regional Director

6. Upon receipt of the appeal petition filed by the company, the Regional Director granted an opportunity of being heard to the company and its directors and the personal hearing was fixed as on 28th October 2024 and accordingly the company and its directors were directed to be present for the personal hearing before the appeal was being heard.

On the day of the personal hearing

7. M/s MPS Distributors Private Limited and its directors had appointed an authorized representative who had appeared on behalf of the company and its directors on the day of personal hearing on 28th October 2024. When the authorized Representative was asked to make the submissions regarding infirmity if any in the order passed by the Registrar of Companies of Kolkata, the authorised representative had no valid submission in this regard at the time of the personal hearing.

Subsequent submission made by the company and its directors

8. The company and its directors made further submissions on this matter vide their letter dated 14th November 2024 through the authorised representative appointed by them to represent the matter. The letter submitted by the authorized representative stated that at the time of personal hearing which took place on 28th October 2024, the authorised representative mistakenly not represented at the time of the personal hearing about the company being a small company and submitted further documents in support for the consideration of the Regional Director. As per the further submission, the company was a small company under the definition of section 2(85) of the Companies Act 2013 and in this regard copies of MGT 7A for the financial year 2023-24 and financial statement for the financial year 2023-24 were submitted before the Regional Director. The authorized representative concluded his submissions in the latter stating that under the provisions of section 446B of the Companies Act 2013, penalties for small companies were capped at reduced amounts, a factor the

company and the directors sought to invoke and prayed for the appropriate reduction in the penalties imposed by the Registrar of Companies.

Conclusion reached by the Regional Director

9. Based on the further submissions made by the authorised representative and after verifying the financial statements of the company from the portal, the Regional Director was of the view that the company did fall under the definition of a small company under section 2(85) of the Companies Act 2013 and thus the company and its directors were liable for penalty under section 446B of the Companies Act 2013 for violation of section 158 of the Companies Act 2013. Therefore, the Regional Director decided to modify the order passed by the Registrar of Companies as the cogent ground was made out by the authorised representative of the company. 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.

Issue of modified order by the Regional Director

10. The Regional Director by virtue of the power vested upon him under section 454(7) of the Companies Act 2013 read with the Companies (Adjudication of Penalties) Rules 2014 modified the order of the Registrar of Companies, West Bengal dated 15th February 2024 as under by levying the reduced penalty, by granting the benefit of section 446B of the Companies Act 2013 relating to small companies.

Sr. No	Violation under the Companies Act 2013	Penalty imposed on	Penalty imposed by	
			Registrar of Companies	Regional Director
			Rupees	Rupees
1	Sec. 158 - Failure to mention DIN in fin. statements for 5 years	Company	2,50,000	1.25,000
2		Director - 1	1,00,000	50,000
3		Director - 2	1,00,000	50,000
Total Penalty			**4,50,000**	**2,25,000**

(a) The order directed that the company and its directors to make the reduced amount of penalty from out of their own pockets. The order also directed that the amount of penalty shall have to be paid within a period of 90 days from the date of receipt of the copy of the order.

(b) The order further stated that, if the Company and its directors failed to deposit the penalty amount within the prescribed time limit, action under section 454(8)(i) and (ii) of the Companies Act 2013 shall have to be initiated against the company and its directors.
(c) The order ended up stating that the instant Appeal stood disposed of accordingly.

Despatch of the order

19. The order in appeal was sent by the Regional Director to the company and its directors, y with a copy marked to the Registrar of Companies at Kolkata for his information. The order copy was also sent to the Officer in Charge, e-Gov. Cell, Ministry of Corporate Affairs, A-Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi with a request to upload this order on the website of the Ministry.

Complete order for reading

20. The readers may like to read the complete details of the order in appeal passed by the Regional Director (Eastern Region) Kolkata on 25th November 2024 bearing application RD/ER/454/50/2024/appeal/7285-7289 dated 25th November 2024 in the matter of the Companies Act 2013 and in the matter of M/s MPS Distributors Private Limited and the relevant website is https://www.mca.gov.in/content /mca/global/en/data-and-reports/ rd-roc-info/rd-adjudication-orders.html (the order uploaded on 5th December 2024 under RD(ER) titled as in the matter of M/s MPS Distributors Private Limited)

The readers may also like to read the complete details of the adjudication order passed by the Registrar of Companies of Kolkata order bearing no ROC/ Adj/307/091147/2023/1922 dated 13th June 2024 adjudication order for penalty under section 454(3) of the Companies Act 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Rules 2019 in the matter of non-compliance of section 158 of the Companies Act 2013 in respect of M/s MPS Distributors Private Limited (the order uploaded under ROC-Kolkata on 13th June 2024 titled as adjudication order for penalty for violation of section 158 of the Companies Act 2013 in the matter of M/s MPS Distributors Private Limited)

Conclusion

21. As seen in this case, during the appeal proceedings, the authorized representative for MPS Distributors Private Limited initially presented no substantial argument against the order of the Registrar of

Companies. However, subsequent submissions highlighted that the company qualified as a "small company" under section 2(85) of the Companies Act 2013. The financial statements and the form MGT-7A for the financial year 2023-24, were submitted to substantiate this claim. Under Section 446B of the Act, penalties for small companies were capped at reduced amounts, a factor the company and its directors sought to invoke and made a request to grant relief as applicable to the small companies by modifying the order of the Registrar of Companies.

After reviewing the submissions and verifying the financial status of M/s MPS Distributors Private Limited the Regional Director modified the penalties to the extent of 50% of the original order. From the above case, we could conclude that the timely and complete submissions during the time of hearing is very crucial for getting a favourable outcome and also this order serves as a reminder for companies to ensure compliance with DIN requirements under section 158 of the Companies Act 2013.

Reference: -

- Companies Act 2013
- Companies (Adjudication of Penalties) Rules 2014
- Companies (Adjudication of Penalties) Amendment Rules 2019
- Adjudication order passed by the Registrar of Companies of Kolkata order bearing no ROC/Adj/307/091147/2023/1922 dated 13th June 2024 adjudication order for penalty under section 454(3) of the Companies Act 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Rules 2019 in the matter of non-compliance of section 158 of the Companies Act 2013 in respect of M/s MPS Distributors Private Limited
- Appeal order decided by the Regional Director (Eastern Region) Kolkata on 25th December 2024 bearing application RD/ER/454/50/2024/appeal/7285-7289 dated 25th November 2024 in the matter of the Companies Act 2013 and in the matter of M/s MPS Distributors Private Limited

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