MEHTA & MEHTA
Corporate Legal Firm

VEDANAM वेदनम्

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Why Vedanam?

Mehta & Mehta proudly presents VEDANAM, our monthly newsletter designed to equip legal professionals, Company Secretaries, Chartered Accountants, and all Stakeholders navigating complex regulatory and legal environments. VEDANAM delivers meticulously curated:

- Timely Regulatory Updates
- Comprehensive Case Law Analysis
- Strategic Knowledge Article

With the release of our May 2025 issue, we reaffirm our commitment to providing you with the actionable knowledge needed to proactively navigate and thrive in today's dynamic business and legal landscapes.

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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 site.

SEBI UPDATE – PUBLISHING INVESTOR CHARTER FOR KYC (KNOW YOUR CLIENT) REGISTRATION AGENCIES (KRAS) ON THEIR WEBSITES.(APPLICABLE – ALL KYC (KNOW YOUR CLIENT) REGISTRATION AGENCIES (KRAS))

Securities and Exchange Board of India (SEBI) has issued a circular dated May 6, 2025, mandating all Know Your Client (KYC) Registration Agencies (KRAs) to prominently publish an Investor Charter on their websites and at their offices. This step is intended to ensure that investors are well-informed about their rights, the role of KRAs, and the processes involved in availing KYC-related services in the securities market.

SEBI Update – Publishing Investor Charter for KYC (Know Your Client) Registration Agencies (KRAs) on their Websites.(Applicable – All KYC (Know Your Client) Registration Agencies (KRAs))

SEBI UPDATE – EXTENSION OF TIMELINE FOR COMPLYING WITH THE CERTIFICATION REQUIREMENT FOR THE KEY INVESTMENT TEAM OF THE MANAGER OF AIF (APPLICABLE – ALL ALTERNATIVE INVESTMENT FUNDS)

SEBI has extended the timeline for compliance with NISM certification requirements of the key investment team of AIF managers from May 9 to July 31.
According to AIF regulations, at least one member of the key investment team of an AIF is required to pass the NISM Series-XIX-C: Alternative Investment Fund Managers Certification Examination.
Earlier, the regulator had asked AIFs with pending applications as on May 10,2024 to comply with this certification requirement by May 9, 2025. The extension has been made based on representation from the AIF industry and with an objective to provide ease of compliance to the industry.
This circular will come into effect immediately.

SEBI Update – Extension of timeline for complying with the certification requirement for the key investment team of the Manager of AIF (Applicable – All Alternative Investment Funds)

SEBI UPDATE – COMPOSITION OF THE INTERNAL AUDIT TEAM FOR CRAS (APPLICABLE – ALL REGISTERED CREDIT RATING AGENCIES)

SEBI issued a circular regarding the Composition of the Internal Audit team for CRAs

In order to provide CRAs with a larger pool of eligible professionals with the relevant experience/ qualifications for conducting the internal audit, it has been decided to include Cost Accountant (ACMA/ FCMA) and Diploma in Information System Security Audit (DISSA) qualifications from the Institute of Cost Accounts of India (ICMAI) to the audit team.

Accordingly, Para 33.1.3 of the Master Circular for CRAs stands modified as under

"The audit team must be composed of at least a Chartered Accountant (ACA/ FCA) or a Cost Accountant (ACMA/ FCMA) and a Certified Information Systems Auditor/ Diploma in Information System Auditor/ Diploma in Information System Security Audit (CISA/ DISA/ DISSA)."

The circular shall be applicable with immediate effect.

SEBI Update – Composition of the Internal Audit team for CRAs (Applicable – All Registered Credit Rating Agencies)

SEBI UPDATE – INVESTOR CHARTER FOR REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS (RTAS). (APPLICABLE – ALL REGISTERED REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS (RTAS))

SEBI issued the notification regarding the Investor Charter for Registrars to an Issue and Share Transfer Agents (RTAs).

The following has been stated

RTA are mandated to Disseminating the Investor Charter on their websites/through e-mail;

Display it prominently in office premises.

Continue to disclose on their respective websites, the data on complaints

The Registrar Association of India (RAIN) shall also disseminate the Investor Charter on its website.

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

SEBI Update – Investor Charter for Registrars to an Issue and Share Transfer Agents (RTAs). (Applicable – All registered Registrars to an Issue and Share Transfer Agents (RTAs))

SEBI UPDATE – RATING OF MUNICIPAL BONDS ON THE EXPECTED LOSS (EL) BASED RATING SCALE (APPLICABLE- ALL REGISTERED CREDIT RATING AGENCIES (CRAS) ALL REGISTERED DEBENTURE TRUSTEES, ISSUERS WHO HAVE LISTED AND/ OR PROPOSE TO LIST NON-CONVERTIBLE SECURITIES, SECURITIZED DEBT INSTRUMENTS, SECURITY RECEIPTS, MUNICIPAL DEBT SECURITIES OR COMMERCIAL PAPER RECOGNIZED STOCK EXCHANGES ALL DEPOSITORIES REGISTERED WITH SEBI)

SEBI issued a circular regarding Rating of Municipal Bonds on the Expected Loss (EL) based Rating Scale

The following has been stated

The Master Circular for Credit Rating Agencies (CRAs) provides that in addition to the standardized rating scales prescribed for various instruments, an Expected Loss (EL) based Rating Scale may be used by CRAs for ratings of projects/ instruments associated with the infrastructure sector. Pursuant to deliberations with various stakeholders, including the Corporate Bonds and Securitisation Advisory Committee (CoBoSAC), it is felt that EL Ratings, when used along with standardized rating scale/Probability of Default (PD) Rating, can better reflect the recovery prospects of municipal bonds.

Further, Urban Local Bodies/ Municipalities issue bonds primarily for the creation/development of infrastructure. Therefore, it has been decided that CRAs may, in addition to the standardised rating scale, extend the EL based Rating Scale for rating of Municipal Bonds which are issued for financing infrastructure assets.

This circular shall be applicable with immediate effect.

SEBI Update – Rating of Municipal Bonds on the Expected Loss (EL) based Rating Scale (Applicable- All Registered Credit Rating Agencies (CRAs) All Registered Debenture Trustees, Issuers who have listed and/ or propose to list Non-Convertible Securities, Securitized Debt Instruments, Security Receipts, Municipal Debt Securities or Commercial Paper Recognized Stock Exchanges All Depositories registered with SEBI)

SEBI UPDATE – EXTENSION OF TIMELINE FOR IMPLEMENTATION OF PROVISIONS OF SEBI CIRCULAR DATED DECEMBER 17, 2024 ON MEASURES TO ADDRESS REGULATORY ARBITRAGE WITH RESPECT TO OFFSHORE DERIVATIVE INSTRUMENTS (ODIS) AND FPIS WITH SEGREGATED PORTFOLIOS VIS-À-VIS FPIS (APPLICABLE-FOREIGN PORTFOLIO INVESTORS ("FPIS") DESIGNATED DEPOSITORY PARTICIPANTS ("DDPS") AND CUSTODIANS THE DEPOSITORIES ,THE STOCK EXCHANGES AND CLEARING CORPORATIONS

SEBI Has issued the circular regarding Extension of timeline for implementation of provisions of SEBI circular dated December 17, 2024 on Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs.

SEBI, in December, came out with the framework, which was to become effective from May 17. The framework provides for additional disclosures to be made by ODI subscribers and FPIs (Foreign Portfolio Investors) with segregated portfolios.

It has been decided to extend the timeline, to November 17, 2025

SEBI Update – Extension of timeline for implementation of provisions of SEBI circular dated December 17, 2024 on Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs (Applicable-Foreign Portfolio Investors ("FPIs") Designated Depository Participants ("DDPs") and Custodians The Depositories ,The Stock Exchanges and Clearing Corporations

SEBI UPDATE – SIMPLIFICATION OF OPERATIONAL PROCESS AND CLARIFYING REGARDING THE CASH FLOW DISCLOSURE IN CORPORATE BOND DATABASE PURSUANT TO REVIEW OF REQUEST FOR QUOTE (RFQ) PLATFORM FRAMEWORK.(APPLICABLE -ISSUERS WHO HAVE LISTED NON-CONVERTIBLE SECURITIES, SECURITISED

DEBT INSTRUMENTS, MUNICIPAL DEBT SECURITIES AND COMMERCIAL PAPER; RECOGNISED STOCK EXCHANGES AND CLEARING CORPORATIONS; REGISTERED DEPOSITORIES; STOCK BROKERS AND DEPOSITORY PARTICIPANTS)

SEBI issued the circular regarding Simplification of operational process and clarifying regarding the cash flow disclosure in Corporate Bond Database pursuant to review of Request for Quote (RFQ) Platform framework.
The following has been stated
Simplification of Yield to Price Computation

Prior method: Yield to price was computed by adjusting cash flow dates based on the day count convention.
New approach: No adjustment for day count convention; cash flows will be based strictly on the due date as per the cash flow schedule, not the actual payment date.

Insertion in NCS Master Circular:
Clause 9 added to Chapter XXII:
"In order to simplify the process of yield to price computation for non-convertible securities, cash flow dates... shall not be adjusted for day count convention... based on the due date of payment as per the cash flow schedule and not as per the date of payment."
Disclosure of Cash Flow in Centralized Bond Database
Regulatory Reference:
Clause 3.3.34 of Schedule I of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 mandates disclosure of cash flow in the offer document using the day count convention.
Issue Identified:
Currently, cash flow schedule is not captured in the centralized corporate bond database.
New Requirement:
Addition of Paragraph 57 in Annex-XIV-A of the NCS Master Circular:
Cash flow schedule regarding payment of interest/ dividend/ redemption in the centralized corporate bond database at the time of activation of ISIN in the following format:
| Sr. No. | Particulars | Due Date | Payment date as per day count convention |"
Updates required:
Any change in cash flow info must be updated within one working day in the centralized database.
This circular shall come into force with effect from August 18, 2025

Debt Instruments, Municipal Debt Securities and Commercial Paper; Recognised Stock Exchanges and Clearing Corporations; Registered Depositories; Stock Brokers and Depository Participants)

SEBI UPDATE – REVIEW OF PROVISIONS PERTAINING TO ELECTRONIC BOOK PROVIDER (EBP) PLATFORM TO INCREASE ITS EFFICACY AND UTILITY

SEBI has issued a circular regarding Review of provisions pertaining to the Electronic Book Provider (EBP) platform to increase its efficacy and utility.
The following has been stated

Mandatory Use of EBP Platform

Private placement of Debt securities,NCRPS, Municipal debt securities is mandatory through EBP if:

Single issue (with or without green shoe) ≥ ₹20 crore;

Shelf issues with cumulative tranches ≥ ₹20 crore/year;

Subsequent issues after reaching ₹20 crore cumulatively in a year.

Voluntary access is allowed for: Securitized debt instruments,Security receipts,Commercial papers (CPs), Certificates of Deposit (CDs),Private placement by REITs, InvITs, SM REITs.

Placement Memorandum & Term Sheet Timelines
Existing issuers: Submit 2 working days prior to issue opening.

First-time issuers: Submit 3 working days prior to issue opening.

Disclosure Requirements
Include issue size, green shoe option (max 5 times base size),
Disclose prior year's green shoe utilization details.
Allotment Rules
Pro-rata allotment for bids at the same cut-off coupon/price/spread,
Annexure VI A provides illustrations for:
Uniform yield allotment,
Multiple yield allotment.
Anchor Investor Framework
Allocation caps based on credit rating:

Rating	Max Anchor Portion (%) of base issue
AAA/AA+/AA/AA-	30%
A+/A-	40%
Others	50%

Applicable – Issuers who have listed and/ or propose to list Non-convertible Securities (NCS), NCRPS, Municipalities having listed bonds; Registered Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs), Small & Medium REITs (SM REITs) having listed units and/or proposing to list its units; Recognised Stock Exchanges; Registered Depositories; recognised Clearing

Corporation; Registered Credit Rating Agencies, Debenture Trustees, Merchant Bankers, Registrars to an Issue and Share Transfer Agents and Bankers to an Issue, Stock Brokers, Depository Participants, and other relevant market participants.

SEBI Update – Review of provisions pertaining to Electronic Book Provider (EBP) platform to increase its efficacy and utility

SEBI UPDATE – NORMS FOR INTERNAL AUDIT MECHANISM AND COMPOSITION OF THE AUDIT COMMITTEE OF MARKET INFRASTRUCTURE INSTITUTIONS (APPLICABLE – ALL RECOGNIZED STOCK EXCHANGES ALL RECOGNIZED CLEARING CORPORATIONS ALL DEPOSITORIES)

The Securities and Exchange Board of India (SEBI) issued a pivotal circular aimed at reinforcing the governance structure of Market Infrastructure Institutions (MIIs) which include Stock Exchanges, Clearing Corporations, and Depositories. SEBI has focused on two core governance areas: the internal audit mechanism and the composition of the Audit Committee of MIIs.

SEBI has made it mandatory for all MIIs to conduct internal audits annually across all their functional verticals:
Vertical 1: Critical operations like trading and settlement.

Vertical 2: Regulatory and compliance activities.

Vertical 3: Business development and other ancillary functions.
The internal auditor of the MII shall be an independent audit firm(s). The MIIs shall have a policy for appointment of internal auditors approved by the Audit Committee and governing board of the MII.
Internal auditor of an MII shall report only to the Audit Committee of the MII.
The internal auditor of the MII shall appraise the Audit Committee, at least once in every six months within 60 days from the end of September and March, on critical issues concerning the MII, in the absence of the management.
The provisions of the circular shall be applicable from the 90 th day of issuance of the circular

SEBI Update – Norms for Internal Audit Mechanism and composition of the Audit Committee of Market Infrastructure Institutions (Applicable – All Recognized Stock Exchanges All Recognized Clearing Corporations All Depositories)

RBI UPDATE – INVESTMENTS BY FOREIGN PORTFOLIO INVESTORS IN CORPORATE DEBT SECURITIES THROUGH THE GENERAL ROUTE – RELAXATIONS. (APPLICABLE – ALL AUTHORISED PERSONS)

The RBI has issued notification regarding Investments by Foreign Portfolio Investors in Corporate Debt Securities through the General Route.

The following has been stated
At present, investments by Foreign Portfolio Investors (FPIs) in corporate debt securities through the General Route are subject to the short-term investment limit and the concentration limit

It has been decided to withdraw the requirement for investments by FPIs in corporate debt securities to comply with the short-term investment limit and the concentration limitThe directions in this circular are issued with immediate effect.

RBI Update – Investments by Foreign Portfolio Investors in Corporate Debt Securities through the General Route – Relaxations. (Applicable – All Authorised Persons)

RBI UPDATE – RESERVE BANK OF INDIA (DIGITAL LENDING) DIRECTIONS, 2025

Reserve Bank of India has issued Reserve Bank of India (Digital Lending) Directions, 2025.

The following has been stated The instructions require REs to furnish the details of their DLAs through the Centralized Information Management System (CIMS) portal of the RBI. The portal will be available to the REs for reporting on or before May 13, 2025, and REs shall have time till June 15, 2025, to upload the initial data. The list of Digital Lending Apps (DLAs) is being made available on the website for the limited purpose of aiding the customers in verifying the claim of a DLA's association with a REs

RBI Update – Reserve Bank of India (Digital Lending) Directions, 2025

RBI UPDATE – REPORTING ON FIRMS PORTAL – ISSUANCE OF PARTLY PAID UNITS BY INVESTMENT VEHICLES. (APPLICABLE – ALL CATEGORY – I AUTHORISED DEALER BANKS)

The RBI has issued guidelines following the FEMA (Non-debt Instruments) (Second Amendment) Rules, 2024, allowing issuance of partly paid units to persons resident outside India by investment vehicles.

Key Points:

Form InVI Filing Requirement:

Investment vehicles issuing units to non-residents must file Form InVI within 30 days of issuance (as per FEMA Reporting Regulations, 2019).

Special One-time Window:

For partly paid units issued before May 21, 2024, filing must be done within 180 days from the date of the circular (i.e., by November 17, 2024).

No late submission fees will apply for such filings within this window.

Ongoing Compliance:
For issuances made on or after May 21, 2024, regular 30-day reporting applies.
These directions are effective immediately, and AD Category-I banks must inform their clients accordingly.

RBI Update – Reporting on FIRMS portal – Issuance of Partly Paid Units by Investment Vehicles. (Applicable – All Category – I Authorised Dealer Banks)

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RBI Update – Reporting on FIRMS portal – Issuance of Partly Paid Units by Investment Vehicles. (Applicable – All Category – I Authorised Dealer Banks)

IBBI UPDATE – INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) (AMENDMENT) REGULATIONS, 2025

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2025

After regulation 17A, the following regulation shall be inserted, namely: –

17B. Non-submission of repayment plan

Where no repayment plan has been prepared by the debtor under section 105 of the Code, the resolution professional shall file an application, with the approval of creditors, before the Adjudicating Authority intimating the non-submission of a repayment plan and seek appropriate directions.

IBBI Update – Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2025

IBBI UPDATE – INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS, 2025.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2025.

40B. Filing of Forms.

Form	Period covered and scope	To be filed by	Timeline
CP-1	From commencement of CIRP till constitution of CoC: This includes details of IRP, CD, and the Applicant, admission of application by AA (Adjudicating Authority), public announcement, details of Authorised Representatives, taking over management of the CD, receipt and verification of claims, constitution of CoC, etc.	IRP	On or before the 10th day of the subsequent month, after filing the report on constitution of CoC to AA

CP-2	From constitution of CoC till issue of RFRP: This includes details of RP, details of registered valuers, details in IM, expression of interest, RFRP and modification thereof, etc.	RP	On or before the 10th day of the subsequent month, after issuance of RFRP
CP-3A	Details of resolution plan / liquidation / closure application filed with AA: This includes details of the resolution applicants, details of approval or rejection of resolution plans by CoC, details of application filed with AA for approval of resolution plan, details of initiation of liquidation (if applicable), etc	RP	On or before the 10th day of the subsequent month, after filing application with AA
CP-3B	Approval of resolution plan / liquidation / closure by AA: This includes details of the resolution plan approved by the AA or liquidation order or closure order, etc	RP	Within 7 days of disposal of application by AA
CP-4	Avoidance transactions reported to AA: This includes details of the avoidance transactions (preferential, undervalued, extortionate credit, fraudulent), underlying amounts, date of reporting to AA, order of AA on the application (if any), etc.	RP	On or before the 10th day of the subsequent month, after filing of application(s) with AA or disposal of application(s) by AA
CP-5	Monthly: This includes updates on the status of CIRP, details of CoC meetings held, updates on litigations, details of expenses incurred, reasons for delay (if any), etc.	IRP/RP	On or before the 10th of every month for the preceding month

They shall come into force on 1st June, 2025.

IBBI Update – Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2025

MCA UPDATE – COMPANIES (ACCOUNTS) AMENDMENT RULES, 2025.

mendment related to Form CSR-2 in the Companies (Accounts) Rules, 2014, specifically in Rule 12(1B), fourth proviso:

Earlier Provision:For FY 2023-24, Form CSR-2 was to be filed on or before 31st March, 2025 after filing AOC-4/AOC-4-NBFC (Ind AS)/AOC-4 XBRL

Amended ProvisionThe deadline for filing Form CSR-2 for FY 2023-24 has been extended to 30th June, 2025, with no change in the sequence CSR-2 to be filed after AOC-4/AOC-4-NBFC (Ind AS)/AOC-4 XBRL.

Key Impact:Companies get an additional 3 months for CSR-2 filing.Filing sequence remains unchanged.

MCA Update – Companies (Accounts) Amendment Rules, 2025.

DOES A DEMAND NOTICE UNDER SECTION 8 OF THE IBC, SENT TO AN ADDRESS WITH A DIFFERENT PINCODE, CONSTITUTE VALID SERVICE OF THE NOTICE? – ANURADA CHEMICALS VS. SYNAPTICS LABS PVT. LTD. – NCLT HYDERABAD BENCH

Brief about the decision:

Facts of the case

- On 11.10.2019, Visa Coke Ltd. (Appellant/Operational Creditor/Seller) and Mesco Kalinga Steel Ltd. (Respondent/Corporate Debtor/Buyer) entered into a contract for sale and purchase of LAM Coke and accordingly, the Operational Creditor supplied LAM Coke to the Corporate Debtor and payment was made.
- While so, the Corporate Debtor sent emails dated 12.11.2019 and 16.11.2019 to the Operational Creditor, requesting delivery of 1700 MT of LAM Coke, with an assurance that LoC would be opened shortly. Based on the same, the Operational Creditor issued delivery orders for 1700 MT of LAM Coke on credit basis, but payment was not made, and the same remained due and payable by the Corporate Debtor.
- The Operational Creditor issued a demand notice in Form 3 on 31.03.2021 in compliance with section 8 of the IBC.
- The Operational Creditor served the demand notice under Section 8 of the Code in Form- 3 addressed to Director, Chief Financial Officer and Manager Commercial of the Corporate Debtor. The said notice was addressed to all the three Key Managerial Personnel (KMP) of the Corporate Debtor at their official address.
- Though the Corporate Debtor did not send any reply.
- The Operational Creditor filed an application before the NCLT under Section 9 of the IBC.
- The Corporate Debtor filed their reply on 24.09.2022.
- By order dated 24.01.2023, the NCLT dismissed the application observing that notice dated 31.03.2021 was sent to three managerial persons and no notice was sent/addressed to the Corporate Debtor and hence, the question whether service is valid or not, does not arise at all.
- Challenging the aforesaid order of the NCLT, the Operational Creditor preferred an appeal before the NCLAT under Section 61 of

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WHEN THE INGREDIENT OF LEVY OF INTEREST ON DELAYED PAYMENT IS ABSENT IN THE WRITTEN CONTRACT, STIPULATION OF INTEREST PAYMENT IN INVOICES CAN OVERRIDE THE WRITTEN CONTRACT ONLY IF THERE IS MUTUAL CONSENT AND MUTUAL UNDERSTANDING BETWEEN THE PARTIES | NEITHER THE NCLT NOR THE NCLAT IS THE APPROPRIATE FORUM FOR MAKING ANY DETERMINATION ON THE LIABILITY OF THE CORPORATE DEBTOR TO PAY INTEREST UNDER THE MSME ACT OR INTEREST ACT – SNJ SYNTHETICS LTD. VS. PEPSICO INDIA HOLDINGS PVT. LTD. – NCLAT NEW DELHI

Brief about the decision:

- When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties
- Unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.
- The preambular objective of the IBC being insolvency resolution has been oft emphasised by the Hon'ble Supreme Court in a catena of judgements.
- The provisions of IBC cannot be turned into a debt recovery proceeding.
- The provisions of IBC cannot be turned into a debt-recovery proceedings and to commend any such course of action would tantamount to pushing the Corporate Debtor to face the perils of corporate death instead of being rejuvenated and revived.
- Neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any determination on the liability of the Corporate Debtor to pay interest under the MSME Act or Interest Act.

SUPREME COURT REJECTS THE RESOLUTION PLAN SUBMITTED BY JSW STEEL LTD. AND ORDERS THE LIQUIDATION OF BHUSHAN POWER AND STEEL LTD. (BPSL) – KALYANI TRANSCO VS. BHUSHAN POWER AND STEEL LTD. AND ORS. – SUPREME COURT

Brief about the decision:

Facts of the case

- The CIRP proceedings were triggered against M/s. Bhushan Power and Steel Ltd. (BPSL/Corporate Debtor) at the instance of Punjab National Bank before the NCLT under the provisions contained in the Insolvency and Bankruptcy Code, 2016 (IBC/Code) which was admitted on 26.07.2017.
- The Resolution Professional admitted claims to the tune of INR 4,72,04,51,78,073.88 in respect of Financial Creditors, and admitted claims to the tune of INR 6,21,37,61,735 in respect of Operational Creditors.
- The Prospective Resolution Applicants – JSW, Tata Steel and Liberty House submitted their respective Resolution Plans.
- In the 18th Meeting held on 14.08.2018 the plans submitted by the Liberty House, the Tata Steel and the JSW were evaluated by the CoC, as per the evaluation matrix formulated by it, and the JSW was found to have scored the highest in terms of the said evaluation matrix. However, the CoC did not declare H-1 and H-2.
- The CoC e-voting resulted in the approval of the Consolidated Resolution Plan, as amended by Addendum Letter of JSW by the requisite majority of CoC.
- On 14.02.2019, the Resolution Professional filed an application for approval of Resolution Plan submitted by the JSW before NCLT.
- Pending the said proceedings, the CBI on 05.04.2019 registered an FIR against the Corporate Debtor, its Directors and others under Section 120B read with Sections 420, 468, 471, 477A IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.
- On the basis of the said FIR, the Directorate of Enforcement registered the case on 25.04.2019 for the offences under the Prevention of Money Laundering Act, 2002 (PMLA).
- The NCLT vide order dated 05.09.2019 dismissed the Company Applications filed by the erstwhile Directors, and approved the Resolution Plan of JSW.
- The Successful Resolution Applicant-JSW, challenged some of the conditions mentioned in said order passed by NCLT approving its Resolution Plan, by filing the Appeal being Company Appeal No. 957 of 2019, under Section 61 of IBC.
- After the approval of the plan by the NCLT as aforesaid, the Directorate of Enforcement of Central Government (ED), passed a provisional attachment order (PAO) on 10.10.2019 under Section 5 of the PMLA.

- The said PAO having been challenged by JSW before NCLAT and the NCLAT stayed the PAO as well as the Resolution Plan so far it related to the payment of creditors, vide the Order dated 14.10.2019.
- The NCLAT vide the impugned Judgment dated 17.02.2020, reported at JSW Steel Ltd. v. Mahender Kumar Khandelwal & Anr., approved the judgment dated 05.09.2020 passed by the NCLT, subject to the modifications/clarifications made by it in its impugned judgment.
- Appeals against the order of NCLAT have been filed in this case. There is no stay against implementation of the Resolution Plan.

Decision of the Supreme Court

A. An aggrieved person under Section 61 or Section 62 of IBC

- The issue of maintainability of the Appeals has to be decided by the Court considering the position of the parties at the time of the institution of the Appeals, as to whether the Appellants could be said to be the "persons aggrieved" as contemplated in Section 62 of the IBC.
- The recent decision of Three-judge Bench in case of GLAS Trust Company LLC v. BYJU Raveendran and Ors., clinches the issue as to who could be said to be an "aggrieved person" for filing an Appeal before the Supreme Court and before the NCLAT.
- The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an Appeal challenging the order of NCLT before the NCLAT, or an order of NCLAT before this Court. Any person who is aggrieved by the order may institute an Appeal.
- Once the CIRP is initiated, the proceedings are no longer restricted to any individual Applicant Creditor or to the Corporate Debtor, but rather they become collective proceedings in rem, where all the creditors and the Ex-Directors would be necessary stakeholders.(p10)
- Therefore, the Appellants who are the operational creditors, and the erstwhile Promoters, being important stakeholders, and whose Company Appeals have been dismissed by the NCLAT vide the impugned judgment, would certainly be the persons aggrieved entitled to file Appeals before this Court under Section 62 of the IBC.

B. Section 61 (3) of the IBC: Can SRA challenge the approved Resolution Plan

- In the instant case, indubitably, the NCLT vide the order dated 05.09.2019 approved the Resolution Plan of JSW as approved by the CoC. Hence, JSW as such, could not be said to be the "person aggrieved" by the order of NCLT approving the Resolution Plan of JSW itself. It seems that JSW was aggrieved by some of the conditions imposed by the NCLT while approving its plan, however,

- for filing such an Appeal under Section 61, the grounds specified in sub-section (3) thereof must exist.
- As deducible from the bare reading of Section 61(3), and as held in K. Sashidhar Vs. Indian Overseas Bank & Ors., and many other cases, an Appeal against an order approving Resolution Plan under Section 31 could be filed only on the grounds mentioned therein.(p14)
- When the Resolution Plan of JSW was approved, it was binding to all the stakeholders including the SRA/JSW as per Section 31(1), and the JSW/SRA could not have filed the Appeal before the NCLAT, when none of the grounds stated in Section 61(3) existed.
- Interestingly, the NCLAT vide the impugned judgment dated 17.02.2020, not only entertained but also allowed the said Appeal of JSW which was not legally maintainable, modified the conditions which were not suitable to JSW, and dismissed all the other Appeals filed by the Operational Creditors, the Ex-Promoters and the State of Odisha.

C. NCLAT's directions on issue which was neither the subject matter before the NCLT nor before the NCLAT

- The NCLAT gave certain directions in Para 147 of the impugned judgment, with regard to an issue, which was neither the subject matter before the NCLT in the application filed by the Resolution Professional seeking approval of the plan, nor the subject matter of the Company Appeal filed by the JSW before the NCLAT.
- The Hon'ble Supreme Court fails to understand as to how the directions such as declassifying the Corporate Debtor company as a promoter of any other company or entity etc., could have been given by the NCLAT in the Appeal filed by the JSW under Section 61, which was filed challenging only the conditions imposed by the NCLT while approving the Resolution plan of JSW under Section 31.

D. Mandatory requirement under Section 29A of IBC

- In the instant case, as transpiring from the record, the Resolution Professional had not submitted the Compliance Certificate in the prescribed Form 'H' of the Schedule, while submitting the Company Application being No. 254 of 2019 before the NCLT seeking approval of the Resolution Plan under Section 31(1) read with Section 30(6) of the IBC. In the said Company Application, the Resolution Professional had only reproduced the Clauses of the Resolution Plan, without submitting the Compliance Certificate as prescribed in Form 'H.'
- Since, the eligibility/ineligibility of the Resolution Applicant to submit the Resolution Plan goes to the root of the matter, it was incumbent on the part of the Resolution Professional to verify and certify that the contents of the mandatory affidavit, filed by the Resolution Applicant-JSW in respect of Section 29A were in order.

E. Whether the NCLAT has any powers of judicial review over the decisions taken by the Statutory Authority under the PMLA?

- After the NCLT vide the Order dated 05.09.2019 approved the Resolution Plan of JSW, the Directorate of Enforcement on 10.10.2019 had provisionally attached the assets of Corporate Debtor under Section 5 of PMLA. The SRA-JSW challenged the powers of ED to pass Provisional Attachment Order by raising an issue in the Appeal being Company Appeal No. 957 of 2019 pending before the NCLAT. The NCLAT vide the Order dated 14.10.2019 stayed the said PAO dated 10.10.2019, in the said Company Appeal No.957 of 2019.
- Section 32A came to be inserted in the IBC by Act 1 of 2020 w.e.f. 28.12.2019, which pertained to the liability of a Corporate Debtor for an offence committed prior to the commencement of CIRP.
- The NCLAT held in the impugned judgment dated 17.02.2020 that in view of Section 32A(1)(2) of IBC, the Directorate of Enforcement/Investigating Agencies did not have the powers to attach assets of Corporate Debtor, once the Resolution Plan had stood approved, and that the criminal investigations against the Corporate Debtor also would stand abated. The NCLAT also declared that the attachment of assets of Corporate Debtor by the ED pursuant to the order dated 10.10.2019 was illegal or without jurisdiction.
- The NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and NCLAT are well circumscribed under Section 31 and Section 60 so far as NCLT is concerned, and under Section 61 of IBC so far as the NCLAT is concerned. Neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law.
- As held by a Three-judge Bench in case of Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors., the Section 60(5) speaks about any question of law or fact, arising out of or in relation to insolvency resolution, but a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of Public Law, cannot be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in Section 60(5)(C) IBC. It has been further held therein that in the light of the statutory scheme as culled out from the various provisions of the IBC, it is clear that wherever the Corporate Debtor has to exercise a right that falls outside the purview of the IBC, especially in the realm of the public law, they cannot take a bypass and go before NCLT for the enforcement of such a right.

- In view of the settled proposition of law, when the NCLT could not exercise the powers of judicial review falling outside the purview of the IBC, or falling within the purview of public law, the NCLAT also, being an Appellate Authority under Section 61 over the orders passed by the NCLT, could not exercise any power or jurisdiction beyond Section 61 of IBC.
- For filing an Appeal under Section 61, there has to be an order passed by the NCLT so far as sub-section (1) is concerned, and if the Appeal is filed against the order of NCLT approving the Resolution Plan under Section 31, it could be filed only on the grounds mentioned in Section 61(3).
- The Prevention of Money Laundering Act, 2002 (PMLA) being a Public Law, the NCLAT did not have any power or jurisdiction to review the decision of the Statutory Authority under the PMLA.

F. CIRP Time Limit under Section 12 of IBC

- It has been reiterated time and again by this Court that one of the main objects for enacting the IBC is to complete the entire CIRP in a time bound manner, and that is the reason, a time-line is set out in the Code and its Resolutions for every stage of the proceedings. As well settled, time is a crucial factor of the scheme under IBC. To allow the proceedings to lapse into indefinite delay will frustrate the very object of the Code. The first and foremost time-limit set out for completion of Insolvency Resolution Process is in Section 12.
- It may be noted that the last two provisos that is the second and third provisos to Section 12 have been inserted by the Act 26 of 2019, which came into force with effect from 16.08.2019. Therefore, prior to 16.08.2019, there was only one proviso to Section 12. In the instant case, since the CIRP had commenced on 26.07.2017, the position of Section 12 as it stood prior to its amendment on 16.08.2019 will be considered.
- In view of the judgment in Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors., it is explicitly made clear that the provision contained in Section 12(1) is mandatory in nature as the expression “shall be completed” is used. Sub-section (3) further makes it clear that the duration of 180 days may be extended further “but not exceeding 90 days”, meaning thereby a maximum of 270 days’ time limit is statutorily laid down. The proviso to Section 12 also further clarifies that the extension of period of CIRP under the said Section shall not be granted more than once. Therefore, there remains no shadow of doubt that prior to insertion of two provisos by way of amendment in Section 12 which came into force w.e.f 16.08.2018, the entire CIRP had to be completed within maximum period of 270 days from the date of admission of the Application to initiate such process.

- As per Section 12(2), the Resolution Professional was required to file an application to the Adjudicating Authority. Meaning thereby it was incumbent on the part of the Resolution Professional to bring to the notice of the CoC about the expiry of 180 days and seek instructions in that regard from the CoC.
- There is a model time-line prescribed for the completion of CIRP proceedings in Regulation 40A of the Regulations, 2016. As per Regulation 39(4) also the Resolution Professional is required to submit the Resolution Plan approved by the CoC to the Adjudicating Authority at least 15 days before the maximum period for completion of CIRP under Section 12.
- However, no such application was filed by the Resolution Professional as contemplated in Section 12(2) seeking extension of time before the expiry of 180 days nor he had submitted the Resolution Plan approved by the CoC before the maximum period for completion of CIRP prescribed under Section 12, as contemplated in Regulation 39(4) of the Regulations.
- The consequences of not receiving the Resolution Plan under Section 30(6) before the expiry of CIRP period or the maximum period permitted for completion of the CIRP under Section 12, have been laid down in Section 33, according to which the NCLT had to pass an order requiring the Corporate Debtor to be liquidated in the manner laid down in Chapter III of IBC.
- Apart from the fact that the two provisos subsequently inserted in Section 12 w.e.f. 16.08.2019 were not applicable to the facts of the present case, the CIRP against BPSL having been initiated on 26.07.2017 and the Resolution Professional having filed the Application under Section 31 on 14.02.2019, even the maximum period of 330 days including the time taken in legal proceedings had expired much prior to filing of the said Application under Section 31 on 14.02.019.
- In that view of the matter, the application submitted by the Resolution Professional seeking approval of the Resolution Plan of JSW under Section 31 being hit by Section 12 of IBC, the NCLT had committed grave error of law in approving the said plan vide its order dated 05.09.2019.

G. Role of Resolution Professional while conducting the entire CIRP

- It cannot be gainsaid that as per the scheme of the Act, the role of the Resolution Professional while conducting the entire CIRP, is not only of an Administrator or Facilitator, but is also of an Invigilator, to ensure that the CIR proceedings are completed in a time bound manner, for maximisation of value of assets in order to balance the interest of the stakeholders and that there is compliance of all the mandatory provisions of the Code during the course of entire proceedings.

- As per Section 17, from the date of appointment of Interim Resolution Professional, the Management of the affairs of the Corporate Debtor vests in the Interim Resolution Professional, and he is responsible for complying with all the requirements under any law for the time being in force on behalf of the Corporate Debtor.
- As per Section 20, the Interim Resolution Professional is required to make every endeavour to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern. The duties of Interim Resolution Professional are enumerated in Section 18, and the duties of Resolution Professional are enumerated in Section 25.
- A very significant duty which is cast upon the Resolution Professional under Section 30(2) after the receipt of the Resolution Plans from the Prospective Resolution Applicants, is to examine each of such Resolution Plans and confirm that each Resolution Plan provided for the payment of Insolvency Resolution Process costs in the manner specified by the Board in priority to the payment of other debts of the Corporate Debtor; and provided for the payment of debts of Operational Creditors in such manner as may be specified by the Board. The Resolution Professional is required to confirm that each Resolution Plan provides for the matters stated in Section 30(2), and also specifically confirm that the Resolution Plan does not contravene any of the provisions of the law for the time being in force, and conforms to such other requirements as may be specified by the Board.
- Section 30(3) states that the Resolution Professional shall present to the Committee of Creditors for its approval such Resolution Plans which confirm the conditions referred to in sub-section (2).
- It is therefore, incumbent on the part of Resolution Professional to examine each Resolution Plan received by him and to confirm that each plan provided for the matters stated in Section 30(2). He has to present to the CoC for its approval, only such Resolution Plans which confirm the conditions referred to in sub-section (2).
- It is also required to be noted that as per Section 31(1), the Adjudicating Authority is empowered to approve only such Resolution Plan approved by the Committee of Creditors under Section 30(4), which meets the requirements as referred to in Section 30(2). Meaning thereby, not only that the Resolution Professional has to confirm that the Resolution Plan presented before the CoC for its approval confirmed the conditions referred to in Section 30(2), the Adjudicating Authority is also required to satisfy itself that the Resolution Plan presented by the Resolution Professional and approved by the CoC under Section 30(4), met with the requirements as referred to in Section 30(2).

H. Non-compliance of Mandatory Provisions and Misuse of Process of Law

- In the instant set of Appeals, the respondents-JSW, CoC and Resolution Professional have sought to sweep many seminal issues under the carpet to cover up gross violations of the provisions of the IBC and of the Regulations 2016, at every stage of the CIRP initiated against the Corporate Debtor.
- There is nothing on record to show as to how, when and by whom the Effective date as contemplated in the Resolution Plan was extended. If the Effective date was surreptitiously extended by some lenders, claiming to be part of CoC which had become functus officio and which had no authority to do so, any payment made or Equity infused by JSW under the garb of such decision, cannot be vindicated by the Court.
- No party can be permitted to deliberately create a situation where the proceedings in the Court would be frustrated or the Court's decision would become irrelevant or ineffective. A situation of fait accompli cannot be permitted to be created in the Court to frustrate the proceedings, more particularly when the CIR proceedings had ex facie stood vitiated on account of non-compliance of the mandatory provisions of law and on account of the misuse of the process of law by the parties. Any action taken or any deal/any settlement entered into by and between the parties in respect of the subject matter of the proceedings, have to pass the test of judicial scrutiny and would always be subject to the final outcome and adjudication of the proceedings.

I. Mandates given in CIRP Regulations have to be strictly complied with by all the stakeholders as well as by the Authorities under the IBC

- The CIRP Regulations, 2016 have been made by the Insolvency and Bankruptcy Board of India in exercise of the powers conferred under Section 5, 7, 9, 14, 15, 17, 18, 21, 24, 25, 29, 30, 196 and 208 read with Section 240 of the IPC. The said Regulations being subordinate legislation having statutory force, have the same binding effect as the Code itself.
- Therefore, the mandates given in the said Regulations to carry out the provisions of the Code have to be strictly complied with by all the stakeholders as well as by the Authorities under the Code.

J. Non-applicability CoC Commercial wisdom

- The position of law, propounded by this Court is that commercial wisdom of CoC means a considered decision taken by the CoC with reference to the commercial interest, the interest of revival of Corporate Debtor and maximization of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the CoC as the protagonist of CIRP.
- The CoC therefore has to take into consideration the mandatory requirements of the Code as well as the Regulations framed by the Board, and to see that the Insolvency Resolution of the Corporate Debtor is completed in a time bound manner and for maximization of value of assets of the Corporate Debtor. The mandatory requirements under the Code are, the compliance of the time limit specified in Section 12, the compliance of Section 29A to see whether the Resolution Applicant is an eligible applicant to submit the plan, the compliance of Section 30(2) of IBC etc.
- The mandatory requirements stated in Regulation 38 of the Regulations, 2016 are that the Resolution Plan must demonstrate that it addresses the cause of default, that it is feasible and viable, it has the provisions for its effective implementation and the Resolution Applicant has the capability to implement the Resolution Plan in a time bound manner.
- If Resolution Plan does not comply with such mandatory requirements and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan.
- Though the commercial wisdom of the CoC should have been given the primacy in any adjudicatory proceedings, the changing stance of CoC from time to time during the course of proceedings right from the holding of meetings for approving the Resolution Plan of JSW till the final hearing of the present Appeals, has led this Court to believe that the CoC also has played a very dubious role in the entire CIRP. Such a contradictory stands taken by the CoC at various stages of proceedings clearly proves that CoC had played foul and had not exercised its commercial wisdom in the interest of the Creditors. (p73&75)
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K. Implementation of the Resolution Plan by the Successful Resolution Applicant

- Nobody should be permitted to misuse the Process of law nor should be permitted to take undue advantage of the pendency of any proceedings in any Court or Tribunal. Instituting vexatious and frivolous litigations in the NCLT or NCLAT and delaying the implementation of Resolution Plan under the garb of pendency of proceedings, has clearly proved the mala fide and dishonest intention on the part of JSW, in firstly securing highest score making misrepresentation before CoC and then not implementing the same

- under the garb of pendency of proceedings, though the Resolution Plan was supposed to be an unconditional one. Such acts of misuse and abuse of process of law cannot be vindicated by this Court, which otherwise would tantamount to ratifying and pardoning the illegal acts committed by JSW and thereby giving them a clean chit.
- An illegality of any nature cannot be permitted to be perpetuated, and a plea of fait accompli cannot be permitted to be raised by any party to cover up their illegal acts, after achieving the ill motivated intentions circumventing the law.
- Merely because the Code is silent with regard to the phase of implementation of the Resolution Plan by the Successful Resolution Applicant, neither the Tribunal nor the Courts should give excessive leeway to the Successful Resolution Applicant to act in flagrant violation of the terms of the Resolution Plan or in a lackadaisical manner.

L. Binding nature of the NCLT's approved Resolution Plan

- It is needless to say that the Resolution Plan, after its approval by the Adjudicating Authority i.e. NCLT under Section 31, is binding not only to the Corporate Debtor, its employees, members, creditors and the Government authorities but also to all the stakeholders including the successful Resolution Applicant itself. It may be noted that any contravention of the terms of the approved Resolution Plan, by any person on whom such plan is binding under Section 31, is liable to be prosecuted and punished under Section 74(3) of the IBC.

M. Conclusion

- (i) The Resolution Professional had utterly failed to discharge his statutory duties contemplated under the IBC and the CIRP Regulations during the course of entire CIR proceedings of the Corporate Debtor-BPSL.
- (ii) The CoC had failed to exercise its commercial wisdom while approving the Resolution Plan of the JSW, which was in absolute contravention of the mandatory provisions of IBC and CIRP Regulations. The CoC also had failed to protect the interest of the Creditors by taking contradictory stands before this Court, and accepting the payments from JSW without any demurer, and supporting JSW to implement its ill-motivated plan against the interest of the creditors.
- (iii) The SRA-JSW after securing the highest score in the Evaluation matrix in the 18th meeting of CoC, submitted the revised consolidated Resolution Plan with addendum under the garb of complying with the amendments made in the CIRP Regulations, 2016, and got the same approved from the CoC. However, JSW even after the approval of its Plan by the NCLAT, willfully contravened and not complied with the terms of the said approved Resolution Plan for

- a period of about two years, which had frustrated the very object and purpose of the IBC, and consequently had vitiated the CIR proceedings of the Corporate Debtor-BPSL.
- (iv) The Resolution Plan of JSW as approved by the CoC did not confirm the requirements referred to in Section 30(2), the same being in flagrant violation and contravention of the expressed provisions of the IBC and the CIRP Regulations. The said Resolution Plan therefore was liable to be rejected by the NCLT under
- Section 31(2), at the very first instance.
- (v) The impugned judgment passed by the NCLAT in allowing the Company Appeal of JSW and issuing the directions without any authority of law and without jurisdiction is perverse, coram non judice and liable to be set aside.(p83)

N. Disposed of

- The judgments and orders dated 05.09.2019 and 17.02.2020 passed by the NCLT and NCLAT respectively are quashed and set aside.
- The Resolution Plan of JSW as approved by the CoC stands rejected, being not in conformity with the provisions contained in Section 30(2), read with Section 31(2).
- In view of the provisions contained in Section 33(1), and in exercise of the jurisdiction conferred under Article 142 of the Constitution of India, the Adjudicating Authority i.e. the NCLT is directed to initiate the Liquidation Proceedings against the Corporate Debtor-BPSL under Chapter III of the IBC and in accordance with law.
- The payments made by the JSW to the Financial Creditors and the Operational Creditors, as also the Equity contribution if any infused, under the garb of the implementation of the Resolution Plan, being subject to the outcome of the present set of Appeals, shall be dealt with by the parties as per the statement of Senior Advocate Dr. Abhishek Manu Singhvi appearing for the CoC, recorded in the order dated 06.03.2020.
- Since, the Resolution Plan of JSW has been rejected, the Hon'ble Court has not dealt with the issue of the EBITDA though raised and argued by the Learned Advocates for the parties. The question of law with regard to EBITDA is kept open.
- The Civil Appeal No. 1808 of 2020, 2192-2193 of 2020, 2225 of 2020, 3020 of 2020 and Civil Appeal No. 6390 of 2021 stand allowed to the aforesaid extent.
- The Civil Appeal No. 3784 of 2020 and 668 of 2021 stand disposed of accordingly.
- Pending application(s), if any, shall also stand disposed of.

THE PROPERTIES OF THE JUDGMENT DEBTORS AND GARNISHEES ATTACHED UNDER THE PROVISIONS OF THE MPID ACT, WOULD BE AVAILABLE FOR THE EXECUTION OF THE DECREES AGAINST THE JUDGMENT DEBTORS BY THE S.C. COMMITTEE, DESPITE THE PROVISION OF MORATORIUM UNDER SECTION 14 OF THE IBC | NO PRIORITY OF INTEREST CAN BE CLAIMED BY THE SECURED CREDITORS AGAINST THE PROPERTIES ATTACHED UNDER THE MPID ACT | NO INCONSISTENCY BETWEEN THE PROVISIONS CONTAINED IN THE MPID ACT AND THE IBC – NATIONAL SPOT EXCHANGE LTD. VS. UNION OF INDIA AND ORS. – SUPREME COURT

Brief about the decision:

Facts of the case

- In April 2012, the Department of Consumer Affairs issued a Show Cause Notice to National Spot Exchange Ltd. (NSEL) for allegedly violating the exemption terms. By July 2013, the Department instructed NSEL to halt new contracts and settle existing ones, after which NSEL suspended operations on 31.07.2013.
- Subsequently, around 13,000 investors claimed they were defrauded by 24 trading Members, leading to defaults of approx. Rs. 5,600 crores. Criminal complaints, enforcement actions, and lawsuits followed.
- In the process of recovery proceedings filed by NSEL, the decrees/ awards of about Rs. 3,365 Crores out of Rs.5,600 Crores were passed against the defaulters.
- The Enforcement Directorate had attached assets worth approximately Rs. 1740.59 Crores of the defaulters under the PMLA 2002.
- The State of Maharashtra under the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) had attached movable and immovable properties worth about Rs. 8,548 Crores belonging to the 24 defaulters, the Directors and Sister concerns of the NSEL.
- Due to the complexity and dispersion of legal proceedings, NSEL filed a writ petition seeking consolidation of all related cases before a Committee set up by the Bombay High Court

Supreme Court Committee

- On 04.05.2022, the Supreme Court exercising its powers under Article 142 with the objective of attaining a holistic solution for speedy recovery of the outstanding amounts to be distributed to be investors, passed an order, reported at National Spot Exchange Ltd. v. Union of India and Ors. and constituted Supreme Court Committee (S.C. Committee).

- The Supreme Court Committee raised an issue as to "Whether the Secured creditors would have priority of interest over assets attached under the Provisions of PMLA, 2002, and MPID Act, by virtue of the Provisions of the SARFAESI Act, 2002 and the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)?"
- The Supreme Court Committee addressing the said issue concluded vide the Order dated 10.08.2023 that given the overriding effect, the secured property being in the nature of proceeds of crime, as held by the Attachment orders, no priority of interest can be claimed by the Secured Creditors against such attached property.
- As regard the properties attached under the MPID Act, on which the Secured Creditors laid their claims, the S.C. Committee further concluded that the provisions of the MPID Act, would override any claim for priority of interest by the Secured creditors in respect of the property which has been attached under the MPID Act.
- During the course of proceedings before the S.C. Committee another issue that was raised for determination, was "whether properties of the Judgment Debtor and Garnishees attached under the MPID Act would be available to the said Committee for execution of decrees against the Judgment Debtor, in view of the commencement of Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) , on account of the initiation of Insolvency Proceedings against the Judgment Debtors." A similar issue also arose with regard to the commencement of the interim Moratorium under Section 96 of IBC in respect of the Garnishees in their capacity as personal Guarantors of a Corporate Debtor.
- The S.C. Committee vide the Order dated 08.01.2024 concluded inter alia that as regards the properties which were attached under Section 4 of the MPID Act prior to imposition of the respective dates of Moratorium of the Judgement Debtor or Garnishee under Section 14 or Section 96 of IBC, the property having been vested in the Competent Authority appointed by the State of Maharashtra, such properties were not liable to be made part of Insolvency Proceedings, and could be available to the said Committee for realisation in terms of the Order dated 04.05.2022 passed by the Supreme Court. It further concluded that as regards the properties which were sought to be attached after the date of commencement of Moratorium (if any) or assets of Judgment Debtor/ Garnishee/ Corporate Debtor which were not yet attached under the Provisions of the MPID Act, the decree holder would be entitled to pursue its claim as a Financial Creditor/ Secured Financial Creditor, as the case may be in such individual cases under the Provisions of the IBC.

Decision of the Supreme Court

A. Scope of Article 142: Can provisions of a Law/Act be circumvented or ignored while exercising the powers under Article 142?

- The exercise of power under Article 142(1) of the Constitution of India being curative in nature, the Supreme Court would not ordinarily pass an order ignoring or disregarding a statutory provisions governing the subject, except to balance the equities between conflicting claims of the litigating parties by ironing out creases in a "cause or matter" before it. Therefore, even while exercising the powers under Article 142, the Supreme Court has to take note of the express provisions of any substantive statutory law and accordingly regulate the exercise of its power and discretion to do complete justice between the parties in the pending "cause or matter" arising out of such statutes.
- Though, the powers of the Supreme Court cannot be controlled by any statutory provisions, when the exercise of powers under Article 142 comes directly in conflict with what has been expressly provided in a statute, ordinarily, such power should not be exercised. Article 142 cannot be used to achieve something indirectly what cannot be achieved directly.
- The Hon'ble Supreme Court does find substance in the submissions made by the learned counsel appearing for the applicants-Secured Creditors that while exercising the powers under Article 142, the express provisions in the other relevant Statutes should not be ignored, particularly when the exercise of powers under Article 142, would directly be in conflict with what has been express provisions in such Statutes.

B. Where two legislative fields have apparently overlapped

- It is trite that the Court, while interpreting the statutes which have arguably the conflicting provisions, has to keep in mind the Federal structure embedded in our Constitution, as a Basic Structure.
- A three-fold distribution of legislative power between the Union and the States made in the three Lists in the Seventh Schedule of the Constitution read with Article 246, exhibits the Principle of Federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List-I shall prevail over the State power as enumerated in Lists-II and III, and in case of overlapping between Lists II and III, the latter shall prevail.
- In view of such distribution of Legislative powers, situations have arisen where two legislative fields have apparently overlapped. In such situations, this Court has held that it would be the duty of the courts to ascertain as to what degree and to what extent, the authority to deal with the matters falling within these classes of subjects exists in each of such legislatures, and to define the limits of their respective powers.

C. Whether the SARFAESI Act or RDB Act prevails over the State Legislation i.e., MPID Act

- The State of Maharashtra was within its legislative competence to enact the MPID Act, the subject matter of which in pith and substance was relatable to Entries 1, 30 and 32 of the State List (List-II) of the Seventh Schedule of the Constitution of India.(p34)
- Both SARFAESI and RDB Act have been enacted with regard to the matter pertaining to "Banking," which subject matter is relatable to the Entry 45 "Banking" falling in the Union List (List-I) of Seventh Schedule.(p36)
- However, merely because the SARFAESI Act and RDB Act which are enacted in respect of the subject matter falling in List-I and having been enacted by Parliament, they could not be permitted to override the MPID Act, which is validly enacted for the subject matter falling in List-II – State List.(p38)
- Considering the pith and substance of the State and the Central Legislations in question, the Central Legislations i.e., SARFAESI Act or RDB Act cannot be permitted to prevail over the State Legislation i.e., MPID Act, merely because the Central Legislations are enacted by the Parliament.(p40)
- Since all these Acts have separate field of operations, provisions of SARFAESI Act or RDB Act cannot be permitted to override the provisions of MPID Act, which is a validly enacted State Legislation, otherwise it would tantamount to violation of federal structure doctrine envisaged in the Constitution. The respective legislative powers of the Union and the States are traceable to Articles 245 to 254 of the Constitution. The State qua the Constitution is Federal in structure, and independent in its exercise of legislative and executive power.(p40)
- The SARFAESI Act and RDB Act having been enacted by the Parliament for the subject matter falling in List-I and the MPID Act having been enacted by the State Legislature for the subject matter falling in List-II in the Seventh Schedule, the latter would prevail in the State of Maharashtra in respect of the specific subject matter for which the said Act was enacted, in view of Clause (3) of Article 246.

D. Priority under Section 26E of the SARFAESI Act, 2002

- The Hon'ble Supreme Court does not find any merit in the submission of learned counsels appearing for the Secured Creditors that in view of Section 26E of the SARFAESI Act, the debts due to the Secured Creditor have to be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority, and therefore, the security interest of the Secured Creditors in respect of the properties attached under MPID Act should be given priority.

- Apart from the fact that Section 26E has come into force with effect from 1st September, 2016, it gives right to the Secured Creditor, after the registration of security interest, to be paid in priority over all other debts and revenues, taxes etc. payable to the Central Government or State Government or local authority.
- In the instant case, the attachment of the properties over which the Secured Creditors is said to have security interest, have been attached under Section 4 of the MPID Act. Such properties are believed to have been acquired by the Financial Establishment i.e. NSEL either in its own name or in the name of other persons from out of deposits collected by the Financial Establishment. All such properties and assets of the Financial Establishment and the persons mentioned in the said provision, vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court. Such monies or deposits of depositors/ investors, who have been allegedly defrauded by the Financial Establishment, and for the recovery of which the MPID Act has been enacted, could not be said to be a "debt" contemplated in Section 26E of the SARFAESI Act, and hence also the provisions of Section 26E could not be said to have been attracted to the facts of the case.

E. Whether the Secured Creditors would have priority of interest over the assets attached under the provisions of PMLA and MPID Act, by virtue of the provisions of SARFAESI Act and RDB Act

- In that view of the matter, it is held that no priority of interest can be claimed by the Secured Creditors against the properties attached under the MPID Act and that the provisions of MPID Act would override any claim for priority of interest by the Secured Creditors in respect of the properties which have been attached under the MPID Act.

F. Overlap or inconsistency between the provisions contained in the IBC and MPID Act?

- The subject matter of IBC being "Bankruptcy and Insolvency", is relatable to the Entry 9 of List III-Concurrent List. The MPID Act having been enacted for the matters relatable to the Entries-1, 30 and 32 in List-II-State List, and the IBC having been enacted for the matters relatable to the Entry-9 in List-III- Concurrent List, the provisions of Article 254 would not be attracted.
- The issue of repugnancy or conflict as contemplated in Article 254 would arise only when the State Legislation and the Central Legislation, both, are relatable to the Entries contained in List-III-Concurrent List of Seventh Schedule.
- In the instant case, there is also no overlap or inconsistency between the provisions contained in the IBC and MPID Act.

WHEN THE PETITION IS FILED UNDER SECTION 241-242 OF COMPANIES ACT, 2013, PLEADINGS WHICH ARE SUBMITTED ARE RECORD OF THE COURT AND NO AMENDMENT OR TINKERING IN PLEADINGS FILED BY THE PARTIES CAN BE ALLOWED WITHOUT LEAVE OF THE COURT – DELOITTE HASKINS AND SELLS LLP VS. UNION OF INDIA AND ORS. – NCLAT NEW DELHI

Brief about the decision:

The Section 424 of the Companies Act, 2013 makes it clear that the NCLT is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. Even though provisions of the Code of Civil Procedure are not strictly applicable, however, the principles contained therein are always the guiding factor for the procedure for proceeding before the Tribunal. Statutory provision of Order VI, Rule 17 of the Civil Procedure Code, 1908 are not applicable to the proceedings before the NCLT. When the petition is filed under Companies Act, 2013 under Section 241-242, pleadings which are submitted are record of the Court and no amendment or tinkering in pleadings filed by the parties can be allowed without leave of the Court. The first principle which is to be noticed is the fact that any amendment in the pleadings which is filed by a party under Section 241 and 242 of the Companies Act requires leave of the Court.

G. No inconsistency between the provisions contained in the MPID Act and the IBC

- As such, Section 14 of IBC has the connotation which is very much different from Section 4 of MPID Act. The proceedings under the IBC arise out of the Debtor-Creditor relationships of the parties. As per Section 14 of IBC, which pertains to the Moratorium, a declaration has to be made to an order by the Adjudicating Authority prohibiting the acts mentioned therein. Therefore, Section 14 of IBC is consequent upon the order passed by the Adjudicating Authority declaring Moratorium.
- However, so far as the attachment of properties under Section 4 of the MPID Act is concerned, it is beyond the realm of the Debtor-Creditor relationship as contemplated in the IBC. On the publication of the Order of Attachment of Properties by the Government to protect the interest of the Depositors of the Financial Establishment, such properties and assets of the Financial Establishment and the persons mentioned in sub-section (1) of Section 4, would forthwith vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court.
- A conjoint reading of Section 4, 5 and 7 of the MPID Act, makes it clear that though Section 4(2) states about the attached properties being vested in the Competent Authority appointed by the Government, such vesting would be subject to the orders passed by the Designated Court. The Hon'ble Court therefore sees no inconsistency between the provisions contained in the MPID Act and the IBC.
- In absence of any inconsistency having been brought on record, between the provisions contained in the MPID Act and in the IBC, Section 238 of IBC, which gives overriding effect to the IBC over the other Acts for the time being in force, cannot be said to have been attracted.

H. Whether the properties of Judgment Debtors and Garnishees attached under the MPID Act would be available for the execution of decrees against the Judgment Debtors in view of the provisions of Moratorium under Section 14 of the IBC, 2016?

- In that view of the matter, it is held that the properties of the Judgment Debtors and Garnishees attached under the provisions of the MPID Act, would be available for the execution of the decrees against the Judgment Debtors by the S.C. Committee, despite the provision of Moratorium under Section 14 of the IBC.

I. Conclusion

- As a consequence, thereof, both the Orders passed by the Supreme Court Committee on 10.08.2023 and 08.01.2024 stand vindicated and upheld.

ROC PENALIZES COMPANY, MD AND & CFO & CS FOR DELAYED ALLOTMENT OF SHARES BEYOND PRESCRIBED TIME LIMIT

Background of this case

1. This particular order outlines the adjudication process and penalties imposed upon a company named on M/s. Veeda Clinical Research Limited for the violation / non-compliance committed by the company with the provisions of section 42(6) of the Companies Act, 2013 – pertaining to issue of shares on private placements basis – and this order emphasizes the importance of adherence to mandatory regulatory requirements and adherence in the corporate governance.

M/s. Veeda Clinical Research Limited failed to allot securities within the stipulated timeframe of the Companies Act 2013 i.e. within 60 days of receiving the application money and upon realizing the default committed, the company filed a suo moto adjudication application with the Registrar of Companies for the default committed. The Registrar of Companies after following the due procedure of the law i.e. providing an opportunity to appear for a personal hearing, finally passed an order against the company for the above violation penalizing the company and its manging director and the chief financial officer & company secretary to a tune of Rs. 63,000 for the default of 11 days delayed allotment of securities. Let us go through the case in details in order to understand the intricacies involved on this matter.

Provisions relating to this case under the Companies Act 2013.

2. The relevant provisions pertaining to this case is that of section 46 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 III – Prospectus and Allotment of Securities Part II – Private Placement Section 42 – Offer or invitation for subscription of securities on private placement.	
Section	**Provision**
42(6)	A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application

	money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:
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 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 liable to a penalty of ten thousand rupees, and in case of continuing contravention, with further penalty of one thousand rupees for each day after the first during which the contravention continue, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person. whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Consequences of default/violation

3. To understand the consequences of any default / non-compliance while complying with the provisions of section 42 of the Companies Act 2013 relating to allotment of securities within the time frame of the Companies Act 2013, let us go through the decided case law by the Registrar of Companies of Ahmedabad on this matter on 11th April 2023

The relevant case law on this matter

4. We shall go through the adjudication order passed by the Registrar of Companies, Ahmedabad bearing adjudication order No. ROC-GJ/ADJ. Order /42/Veeda Clinical / Sec.454/ 2023-24/ 56 to 59order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 for violation of section 42 read with section 450 of the Companies Act 2013. in the matter of M/s Veeda Clinical Research Limited

Details of the company

5. M/s. Veeda Clinical Research Limited is incorporated on 23rd April 2004 under the provisions of the Companies Act 1956 and having its registered office situated at "Shivalik Plaza-A, 2nd floor, Opp Ahmedabad Management Association, Ambawadi, Ahmedabad in the state of Gujarat. The company falls under the jurisdiction of Registrar of Companies of Gujarat, Dadra & Nagar Haveli and the office of the Registrar of Companies is situated at Ahmedabad. The company is

having eleven on its board as on date as per the details available at the Ministry of Corporate Affairs portal consisting of a managing director & chief executive officer, three nominee directors, one additional directors and other directors. The company is also having a chief financial officer and a company secretary as KMPs. The company is a full-service contract research organization that provides clinical research services to the pharmaceutical and biotechnology industries.

Authorized and paid-up share capital of the company

6. The authorized capital of the company is Rs. 36,44,06,800 (Rupees thirty-six crores forty-four lakhs six thousand and eight hundred only) divided into 18,22,03,400 (eighteen crores twenty-two lakhs three thousand and four hundred) equity shares of Rs.2/-(two) each. The issued, subscribed and paid-up share capital of the company is Rs. 13,15,54,990/- (Rupees thirteen crores fifteen lakhs fifty-four thousand nine hundred ninety only) divided into 6,57,77,495 (six crore fifty-seven lakhs seventy-seven thousand four hundred ninety-five only) equity shares of Rs.2 (two) each.

Officer-in default during the period of violation

7. The following Officer in default was the KMP of the company during the period of default i.e. from 7th July 2023 to
18th July 2023.

Sr. No	Name of officers	Date of appointment
1	Managing Director ------name ----------	25th May 2020
2	Company secretary (KMP) ---------name --------	26th October 2018

Fact of the Case

8. The following were the facts relating to this case.
(a) The company was in receipt of the application money on 9th May 2023 for the allotment of shares and the company should have made allotment within 60 days from the said date i.e. on or before 7th July 2023.
(b) However, the allotment was delayed, and the allotment was made on 18th July 2023.
(c) From the above it could be seen that company received the application money on 9th May 2023 and did not make the allotment within sixty days from the date of receipt of application money, the mandatory requirement of law.

Since the company made allotment on the 71st day i.e. on 18th July 2023 which contravened the provisions of Section 42(6) of the Companies Act 2013, the company was liable for the delayed allotment of shares by 11 days for violating the provisions of section 42(6) of the Companies Act 2013.

Action taken by the company

9. The company upon realizing the default committed had filed Suo moto adjudication application for the violation of section 42(6) of the Companies Act 2013 with the Registrar of Companies and made a prayer to adjudicate the matter as per the provisions of the Act. The company stated in its adjudication application that the non-compliance of section 42(6) of the Companies Act 2013 was purely procedural and that was due to oversight, and it was due to technical reasons.

Personal hearing notice issued by the Registrar of Companies / Adjudication Officer

10. Upon the receipt of the application, the Registrar of Companies / Adjudication Officer issued the hearing notice, and the hearing was fixed on e-mode (e-hearing) which was scheduled on 26th March 2025, in the interest of natural justice by giving an opportunity to be heard.

On the day of e-hearing

11. On the day of e-hearing i.e. on 26th March 2025 nobody was present from the company before the Adjudicating
Authority.

Submissions of the Presentation Officer

12. The Presenting Officer submitted that the company received the application money on 9th May 2023 and did not make allotment within sixty days from the date of receipt of application money. The company made an allotment on the 71st day i.e. on 18th July 2023. There was a delay of 11 days in making allotment which contravened the provisions of the section 42(6) of the Companies Act 2013. Since the allotment was made on 71st day of receipt of application.
Thereafter the company had filed e-form PAS-3 – the form for return of allotment pursuant to section 39(4) and 42 (9) of the Companies Act 2013 and rule 12 and 14 of Companies (Prospectus and Allotment of Securities) Rules 2014 on 29th July 2023 with necessary attachment. The Adjudication officer was empowered to impose penalty under the provisions of Section 42 (6) of the Companies Act 2013 in this case since the violation was regarding non-compliance of provisions of section 42(6) of the Companies Act 2013.

Conclusions arrived by the Registrar of Companies / Adjudication Officer

13. The Registrar of Companies / Adjudication Officer, after going through the content of the adjudication application filed by the company came to a conclusion that the company and its directors had violated the provisions of section 42(6) of the Companies Act 2013. This was based on the admissions made by the company in the Suo moto application filed by the company admitting that the securities were not allotted withing the prescribed limited of time and in fact the allotment was made after a delayed period of 11 days.

Conclusion reached by the Registrar of Companies / Adjudicating Officer

14.. After having considered the contents of the adjudication submitted by the company with regards the facts and circumstances of the case and also taking into the submissions made by the company the Registrar of Companies / Adjudication Officer came to a conclusion that the company and its officer(s default(s) had violated the provision of section 42(6) of the Companies Act 2013 since there was a delay of 11 days in making allotment which contravened Section 42(6) of the Companies Act, 2013. In view of this, the Adjudication Officer decided to proceed on this matter and pass the adjudication order as per the provisions of the Act.

Factors taken into consideration while passing the adjudication order

15. The Adjudication Officer while adjudging quantum of penalty under section 450 of the Companies Act, 2013 had due regard to the following factors, namely:
(a) The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.
(b) The amount of loss caused to an investor or group of investors as a result of the default.
(c) The repetitive nature of default.

With regard to the above factors, the Adjudication Officer considered while determining the quantum of penalty and noted that the disproportionate gain or unfair advantage made by the company and its officers in default or loss caused to the investor as a result of the delay on the part of the company and its officers in default to redress the investor grievance were not available on the record. As per the Adjudication Officer it was difficult to quantify the unfair advantage made by the company and its officers or the loss caused to the investors in a default of this nature.

With respect to levying lesser amount of penalty

16. On the above matter, the Presenting Officer submitted that it was observed from the annual return filed by the company for the year ended as at 31st March 2024, the paid-up capital of the company was Rs 10,57,87,972 /- and the turnover of the company was Rs. 2,96,15,33,751.04/- Hence, as per the Ministry's Notification No. G.S.R. 700(E) dated 15th September2022, in the light of Companies (Specification of definition details) Amendment Rules 2022 with respect to the provisions of section 2(85) of the Companies Act, 2013, the company was not falling under the ambit of "small company". Therefore, the provisions of imposing lesser penalty as per the provisions of section 446B of the Companies Act 2013 was not applicable to this company.

The order passed by the Registrar of Companies / Adjudicating Officer

17. The Registrar of Companies / Adjudication Officer after having considered the facts and circumstances of the case and after taking into account the factors discussed above, imposed the penalty upon the company and its officer(s) in default(s) for having violated the provision of section 42(6) of the Companies Act 2013. There was a delay of 11 days in making allotment which contravened the provisions of section 42(6) of the Companies Act 2013 and, therefore. the Adjudication Officer imposed penalty on the company and its Officer(s) in default under section 42(6) of the Companies Act 2013 pursuant to the penal provisions of section 450 of the Companies Act 2013 as per the details given below in the table: -

Default for delay of 11 days in making allotment with effect from 07th July 2023 to 18th July 2023

Nature of default	Violation of the Act	Company Directors/ Officers	Default days	Penalty for default	Max. penalty	Penalty imposed
			Days	Rupees	Rupees	Rupees
Non-allotment of shares within time	Section 42 (6) of the Act	Company	11	10,000 Plus 1000 Per day	20,00,000	10000+11*1000= 21000
		Managing Director	11		50,000	10,000+11*1000= 21000
		CFO & CS	11		50,000	10,000+11*1000= 21,000
Total Penalty						63,000

a. The Adjudication Officer was of the opinion that the penalty was commensurate with the aforesaid default committed by the company and its directors / officers.

b. The company /officers were directed to rectify the default failing which the office of the Registrar of Companies would be proceeding further on this matter, pursuant to section 454A of the companies Act 2013 for the non-compliance of the aforesaid provisions of the Companies Act 2013.

c. The order further stated that the company and its directors were required to pay the amount of penalty individually i.e. either the company & its officers from their personal sources/ income by way of e-payment available on Ministry Website www.mca.gov.in under "Pay Miscellaneous fees" category in MCA fee and payment Services under Rule 3(14) of Company (Adjudication of Penalties) (Amendment) Rules, 2019 within 60 days from the date of receipt of this order and copy of this adjudication order and Challan/SRN generated

d. The order further stated that an appeal if any against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, ROC Bhavan, Opposite Rupal Park, Near Ankur Bus stand, Naranpura, Ahmedabad, Gujarat within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall 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 as amended by Companies (Adjudication of Penalties) Amendment Rules 2019).

e. The order also drawn the attention to the section 454(8) (i) and 458 (8) (ii) where company does not pay the penalty imposed by the Adjudication Officer within a period of ninety days (90 days) from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees. Further as per section 454(8)(ii) of the Companies Act 2013, where an officer of a company who is in default does not pay the penalty within a period of Ninety days (90 days) from the date of receipt of the copy of the order, such officers shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

f. The order also drawn the attention of the company and its director to the provisions of section 454(8) of the Companies Act 2013 in the event of noncompliance of this order which provides that in case of default in payment of penalty, prosecution would be filed under section 454(8)(ii) of the Companies Act 2013 at the cost of the company without any further notice.

g. The order concluded in stating that the adjudication notice stands disposed off with this order.

Despatch of the order

18. The order was sent by the Registrar of Companies, Ahmedabad 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 i.e. M/s. Veeda Clinical Research Limited its managing director and to the chief financial officer & company secretary and to the Regional Director of North Western Region, Ministry of Corporate Affairs, Ahmedabad for information. A copy of the order was also sent to E-Governance Cell, Ministry of Corporate Affairs' New Delhi for publication of the order in the Ministry of Corporate Affairs portal.

Complete order for reading

19. The readers may like to read the complete details of the adjudication order passed by the Registrar of Companies, Ahmadabad dated 11th April 2025 bearing adjudication order No. ROC-GJ/ADJ. Order /42/Veeda Clinical / Sec.454/ 2023-24/ 56 to 59order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 for violation of section 42 read with section 450 of the Companies Act 2013. in the matter of M/s Veeda Clinical Research 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 (this order was uploaded under the ROC of Ahmedabad on 15th April 2025 titled as adjudication order in the matter of M/s Veeda Clinical Research Limited)

Conclusion

20. As per the framework of the Companies Act, every company which is raising the capital is required to adhere the required procedure such as receiving the share application money in the company's accounts, maintaining the same in a separate account, allotment of shares done within the prescribed time limit of 60 days and keeping the proper accounts on this matter. By going through the case law discussed above, one could understand as to how important to adhere the provisions of the Companies Act read with the relevant rules while raising the capital and allotting the shares withing the prescribed limit under the Act. As discussed in the case law, the company failed to allot the shares within the prescribed mandatory period of within 60 days and allotted the shares on the 71st day – by a delayed period of 11 days. The company on its own admitted the violation and submitted the application for adjudication on this matter. The Adjudication Officer following the

procedure of law The Adjudication Officer by following the procedure of adjudication, levied Rs 63,000 on the company, its managing director and upon the chief financial officer and company secretary. for the default committed by the company.

It is needless to mention, one has to be very careful, when it comes to compliance failing which the companies are sitting on a peril of heavy liabilities and penal actions like the one happened in this case. Better to work with a complete checklist, with a concept of maker / checker mechanism to avoid such situations.

1. Companies Act 2013
2. Companies (Adjudication of Penalties) Rules 2014
3. Companies (Adjudication of Penalties) Amendments Rules 2019
4. Adjudication order passed by the Registrar of Companies Ahmadabad dated 11th April 2025 bearing adjudication order No. ROC-GJ/ADJ. Order /42/Veeda Clinical / Sec.454/ 2023-24/ 56 to 59order for penalty under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 for violation of section 42 read with section 450 of the Companies Act 2013

SECTION 135- CSR COMPLIANCES

India is the first country for mandating the provisions relating to Corporate Social Responsibility. Section 135 of the Companies Act, 2013 stipulates the provisions pertaining to Corporate Social Responsibility (CSR). Through this section a legal obligation was imposed on a corporate entities to tackle the socio-economic and environmental challenges confronting the nation. The objective of CSR provisions is to involve the companies as partners in the social development process by allocating a portion of their profits to social and environmental causes & to bring accountability among companies through Ethical Responsibility, transparency, Community Welfare, Sustainable Development.

When companies channel their efforts into giving back, the impact is huge. It leads to benefits in return such as positive corporate image, employee engagement & retention, improved competitive advantage and consumer growth, more investments, economic progress, etc. As per **Section 135** every company including its holding or subsidiary, and a foreign company having its branch office or project office in India having net worth of Rupees 500 crore or more;
or turnover of Rupees 1000 crore or more; or net profit of Rupees 5 crore or more, in the immediately preceding financial year is required to comply with the CSR provisions. The obligated companies are obliged to spend at least 2% of their average net profit of the immediately preceding three financial years on CSR activities.

Which activities does qualify as CSR activities?

The activities which may be included by companies in their CSR policies are listed in Schedule VII of the Act. Schedule VII of the Companies Act 2013 serves as an essential element of the Corporate Social Responsibility framework. It provides clarity and serves as a guide for companies to decide on CSR activities or projects.

Schedule VII

Activities are broadly categorized in twelve areas which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:

- Healthcare & Poverty- Eradicating hunger, poverty and malnutrition, (“promoting health care including preventive health care”) and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

- **Education & skills development**- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- **Gender Equality & Empowerment-** Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups
- **Environment-** Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga
- **National Heritage, Art and Culture-** Protection of National heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts
- **Armed Forces-** Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows
- **Sports:** Activities for training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports
- **Relief Fund:** Contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women
- **Technology incubators-** Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government. Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)

- **Projects for Rural development**
- **Projects for Slum area development**
- **Disaster management-** Activities for disaster management, relief, rehabilitation and reconstruction activities

Link

Can CSR expenditure be incurred on activities beyond Schedule VII?

The MCA has clarified via Frequently Asked Questions (FAQs) dated 12 th January 2016 on CSR expenditure be spent on the activities beyond Schedule VII or not. The statutory provision and provisions of CSR Rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013 as per General Circular No. 21/2014 dated June18, 2014. Further, as per General Circular No. 14 /2021 dated 25 th August 2021 for FAQs on CSR, MCA has clarified that CSR expenditure cannot be incurred on activities beyond Schedule VII of the Act. The activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The items enlisted in the Schedule VII of the Act are broad-based and are intended to cover a wide range of activities. The entries in the said Schedule VII must be interpreted liberally to capture the essence of the subjects enumerated in the said Schedule.

s there any list of activities which does not qualify as eligible CSR activity?

The definition for the term Corporate Social Responsibility (CSR) is given under Rule 2 of The Companies (Corporate Social Responsibility Policy) Rules, 2014, which states list of six activities that do not qualify as eligible CSR activities: –

(a) Activities undertaken in pursuance of normal course of business of the company.

(b) Activities undertaken outside India, except for training of Indian sports personnel
representing any State or Union Territory at national level or India at international level.

(c) Contribution of any amount, directly or indirectly, to any political party under section
182 of the Act.

(d) Activities benefitting employees of the company as defined in section 2(k) of the
Code on Wages, 2019.

(e) Sponsorship activities for deriving marketing benefits for products/services.

(f) Activities for fulfilling statutory obligations under any law in force in India.

Transfer of unspent amount of CSR to specified funds

The compliance of CSR is fulfilled when the company spends the

prescribed amount as per its obligation. However, if the company fails to spend the requisite amount within the financial year pertaining to ongoing project and other than ongoing project, it shall fulfil its obligation as given under section 135.

For ongoing CSR projects, within 30 days from the financial year end, open a special account in any scheduled Bank named as “Unspent CSR account” and transfer such amount. The Company must shall spend such transferred funds within a period of three financial years from the date of such transfer in the Scheduled Bank account.
After three financial years, if anything remains unspent the same need to be transferred to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.
For activities / programs other than ongoing projects, within 6 months from financial year end, transfer the unspent amount to a fund specified under Schedule VII:

(i) Swachh Bharat Kosh
(ii) Clean Ganga Fund
(iii) Prime Minister’s National Relief Fund (PMNRF) (iv)
(iv) Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)
(v) Any other fund set up by the Central Government and notified by the Ministry of
Corporate Affairs, for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women. (FAQ 3.15 of General Circular No. 14 /2021)

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