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VEDANAM वेदनम्

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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 June 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 CIRCULAR – INVESTOR CHARTER FOR INVESTMENT ADVISERS – 2ND JUNE 2025

SEBI has issued a circular (rescinding its earlier circular dated December 13, 2021) that mandates Investment Advisers (IAs) to enhance transparency, investor protection, and service standards. The circular introduces a revised Investor Charter (Annexure A) which outlines the vision of promoting informed and secure investing and the mission of enabling investors to choose suitable products, monitor investments, and achieve financial wellness.

It requires IAs to enter into detailed agreements with clients covering fees, conflict disclosures, and confidentiality; perform risk profiling and suitability assessments; disclose complaints and firm details on their websites; employ only certified staff; use official communication channels; maintain records of client interactions; comply with advertisement norms; and avoid discriminatory practices. IAs must also provide disclosures on business affiliations and compensation. The circular is effective immediately and issued under SEBI's powers to protect investor interests and regulate securities markets.

SEBI Circular – Investor Charter for Investment Advisers – 2nd June 2025

SEBI CIRCULAR – INVESTOR CHARTER FOR RESEARCH ANALYSTS – JUNE 2, 2025

SEBI, through its circular dated June 2, 2025, has revised the Investor Charter for Research Analysts to enhance financial consumer protection, inclusion, and literacy, taking into account recent developments such as the Online Dispute Resolution (ODR) platform and SCORES 2.0. The updated charter (Annexure A), developed in consultation with the Industry Standards Forum (ISF), must be prominently displayed on Research Analysts' websites, mobile apps, and offices, and provided to clients during onboarding.

Additionally, Research Analysts are required to disclose monthly data on complaints and their redressal (Annexure B) on their websites by the 7th of each month. This circular, effective immediately, supersedes SEBI's earlier circular dated December 13, 2021, and amends Clause 5 of the Master Circular for Research Analysts dated May 21, 2024.

SEBI Circular – Investor Charter for Research Analysts – June 2, 2025

SEBI CIRCULAR – LIMITED RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI LODR REGULATIONS, 2015

Under Regulation 58(1)(b) of the SEBI (LODR) Regulations, 2015, issuers of listed non-convertible securities are required to send hard copies of the statement containing salient features of financial statements and related documents (as per Section 136 of Companies Act, 2013) to holders who have not registered their email addresses. However, SEBI had earlier provided temporary relaxation from this requirement (via circular dated October 6, 2023) until September 30, 2024, based on MCA's General Circular no. 09/2023 dated September 25, 2023. In view of the representations received, SEBI has decided to extend the relaxation from compliance with the Regulation 58(1)(b) Period Relaxation Granted Conditions October 1, 2024 – June 5, 2025 No penal action for noncompliance with Regulation 58(1)(b) For entities with listed non-convertible securities who have complied with the conditions as specified in MCA General Circular No. 09/2024 dated September 19, 2024 June 6, 2025 – September 30, 2025 Similar relaxation from the requirements of Regulation 58(1)(b) Mandatory disclosure of web-link to salient features of all documents, as specified in Section 136 in newspaper advertisements under Regulation 52(8) This Circular shall come into force with immediate effect.

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

SEBI VIDE ITS CIRCULAR DATED JUNE 5, 2025 HAS EXPANDED THE ESG FINANCING FRAMEWORK TO INCLUDE SOCIAL BONDS, SUSTAINABILITY BONDS, AND SUSTAINABILITY-LINKED BONDS, IN ADDITION TO GREEN BONDS, UNDER THE TERM "ENVIRONMENT, SOCIAL AND GOVERNANCE ("ESG") DEBT SECURITIES". THIS FRAMEWORK IS INTRODUCED UNDER THE REGULATION 2(1)(OA) AND REGULATION 12A OF THE SEBI (NCS) REGULATIONS, 2021. IT IS AIMED AT CREATING A UNIFORM FRAMEWORK FOR ESG DEBT SECURITIES.

1. Introduction and Regulatory Basis SEBI vide its circular dated June 5, 2025 has expanded the ESG financing

framework to include social bonds, sustainability bonds, and sustainability-linked bonds, in addition to green bonds, under the term "Environment, Social and Governance (“ESG”) Debt Securities". This framework is introduced under the Regulation 2(1)(oa) and Regulation 12A of the SEBI (NCS) Regulations, 2021. It is aimed at creating a uniform framework for ESG Debt Securities.

2. Applicability and Scope The framework applies to all ESG debt securities labelled as social or sustainability or sustainability-linked bonds that are listed or proposed to be listed on a recognised stock exchange. These requirements are in addition to existing SEBI NCS and SEBI LODR compliance , thereby layering ESG-specific obligations over the standard disclosure and governance regime.

3. Alignment with Global Standards ESG bonds can only be labelled as such if the funds raised are proposed to be utilised for financing or refinancing projects and/or assets aligned with any of the following recognized standards or fall under the definitions given in the following paras: • International Capital Market Association (ICMA) Principles / Guidelines • Climate Bonds Standard • ASEAN Standards • European Union Standards and • Any framework or methodology specified by any financial sector regulator in India.

4. Classification and Definitions SEBI defines each type of ESG bond distinctly: • Social Bonds: Must fund projects with clear social impact like housing, food security, healthcare, education, employment generation, etc., particularly targeting underserved populations. • Sustainability Bonds: Must finance/refinance a mix of green and social projects. • Sustainability-Linked Bonds (SLBs): Do not finance specific projects but are linked to the issuer’s sustainability performance indicators (KPIs) and targets (SPTs)—thus focusing on the issuer's overall ESG performance.

5. Issuer Discretion and Project Classification The classification of a debt security as a green debt security, social bond or sustainability bond should be determined by the issuer based on its primary objectives for the underlying projects.

6. Disclosures and Certification – Social Bonds Issuers of social bonds must make detailed initial disclosures in the offer document (as per Annexure-A Part I) and continuous disclosures in annual reports and financial results (as per Annexure-A Part II). They must also appoint an independent third-party certifier to validate compliance, review project alignment, and verify impact reporting (Annexure-A Part III).

7. Disclosures and Certification – Sustainability Bonds Issuers of sustainability bonds must comply with disclosure norms applicable to both green bonds (as per Chapter IX of SEBI NCS Master Circular) and social bonds (Annexure-A). The requirement to appoint a third-party certifier is also mandatory.

8. Disclosures and Certification – Sustainability Linked Bonds Issuers of sustainability-linked bonds must disclose KPIs and SPTs in their offer document (Annexure-B Part I) and track/report performance periodically (Annexure-B Part II). An independent reviewer/certifier must validate KPIs, methodologies, and outcomes (AnnexureB Part III), ensuring that claims of performance-linked structuring are verifiable.

9. Issuer Responsibilities Issuers must maintain a structured decision-making framework to assess the eligibility of funded projects and ensure strict utilisation of proceeds only for disclosed social/sustainable objectives. Any deviation can affect credibility and lead to regulatory or investor action.

10. Mitigating "Purpose-Washing" Risks SEBI has introduced robust safeguards to prevent misuse of ESG labelling, such as:
• Prohibiting misleading claims or use of labels.
• Mandating early redemption in case of ESG objective failure (with majority debenture holder approval).
• Disallowing use of funds for non-ESG-aligned projects.
• Enforcing quantification of negative externalities, discouraging cherry-picked data and false narratives.

11. SME Issuer Applicability Small and Medium Enterprises (SMEs) eligible to list under SEBI ICDR norms can also issue ESG debt securities. However, they must comply with bi-annual continuous disclosure requirements under Annexure-A and B and Chapter IX of the NCS Master Circular.

12. Effective Date and Implementation This framework shall come into force for issuances of ESG debt securities with effect from June 5, 2025.

SEBI vide its circular dated June 5, 2025 has expanded the ESG financing framework to include social bonds, sustainability bonds, and sustainability-linked bonds, in addition to green bonds, under the term "Environment, Social and Governance ("ESG") Debt Securities". This framework is introduced under the Regulation 2(1)(oa) and Regulation 12A of the SEBI (NCS) Regulations, 2021. It is aimed at creating a uniform framework for ESG Debt Securities.

SEBI CIRCULAR – 12TH JUNE 2025

SEBI, through its Circular dated June 11, 2025, has introduced a structured, standardised, and validated Unified Payment Interface (UPI) address mechanism for SEBI-registered investor-facing intermediaries to securely collect funds from investors. While adoption by investors is optional, intermediaries must obtain and display exclusive UPI IDs (formatted as username.segment@validbank) verified by SEBI and NPCI. This initiative, effective October 1, 2025, aims to enhance payment transparency, investor confidence, and security. It includes features like the "SEBI Check" tool for verification, mandatory awareness campaigns, and phased implementation timelines for MIIs, banks, and intermediaries.

SEBI Circular – 12th June 2025

SEBI CIRCULAR – REVIEW OF PROVISIONS RELATING TO PRODUCT ADVISORY COMMITTEE (PAC)

SEBI vide its Circular dated June 12, 2025, has amended the provisions related to the meetings of the Product Advisory Committee (PAC) under the Commodity Derivatives Segment. As per the revised provision (para 2.4.4.i of the Master Circular dated August 4, 2023), the PAC must meet at least twice a year for all commodities, while for agricultural commodities, the PAC is required to meet at least once a year.

This change follows industry representations and discussions within SEBI's Commodity Derivatives Advisory Committee and takes immediate effect.

SEBI Circular – Review of provisions relating to Product Advisory Committee (PAC)

SEBI CIRCULAR – INVESTOR CHARTER REAL ESTATE INVESTMENT TRUSTS (REITS) – JUNE 12, 2025

SEBI vide its dated June 12, 2025 issued Investor Charter for Real Estate Investment Trusts (REITs), which mandates REITs and Investment Managers (IRA) to display and disseminate the Investor Charter (Annexure-A) prominently on their websites, mobile apps, and office premises to enhance investor awareness, protection, and transparency.

This move aligns with recent market developments, including the launch of the Online Dispute Resolution (ODR) platform and SCORES 2.0.

Additionally, REITs are now required to disclose investor grievance redressal data monthly on their websites by the 7th of each month, in the format prescribed in Annexure-B. The circular is effective immediately and aims to reinforce transparency, accountability, and investor trust in REIT operations.

SEBI Circular – Investor Charter Real Estate Investment Trusts (REITs) – June 12, 2025

SEBI CIRCULAR – INVESTOR CHARTER INFRASTRUCTURE INVESTMENT TRUSTS – JUNE 12, 2025

SEBI on June 12, 2025 issued a circular introducing the Investor Charter for Infrastructure Investment Trusts (InvITs) to strengthen investor awareness, transparency, and grievance redressal. Based on inputs from the Hybrid Securities Advisory Committee (HySAC) and recent developments such as the Online Dispute Resolution (ODR) platform and SCORES 2.0, InvITs and their Investment Managers (BIA) are now required to display the Investor Charter (Annexure-A) on websites, mobile apps, and office premises and disseminate it to investors via emails or letters. Further, to enhance transparency in grievance redressal, InvITs must disclose monthly complaint data on their websites in the format specified in Annexure-B, by the 7th of the succeeding month.

The circular is effective immediately and forms part of SEBI's ongoing efforts to protect investor interests and strengthen market regulation.

SEBI Circular – Investor Charter Infrastructure Investment Trusts – June 12, 2025

RBI UPDATE – LIQUIDITY ADJUSTMENT FACILITY – CHANGE IN RATES. (APPLICABLE – ALL LIQUIDITY ADJUSTMENT FACILITY (LAF) PARTICIPANTS)

It has been decided by the Monetary Policy Committee (MPC) to reduce the policy repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 6.00 per cent to **5.50 per cent** with immediate effect.The standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 5.25 per cent and 5.75 per cent respectively, with immediate effect.

RBI Update – Liquidity Adjustment Facility – Change in rates. (Applicable – All Liquidity Adjustment Facility (LAF) participants)

RBI UPDATE – STANDING LIQUIDITY FACILITY FOR PRIMARY DEALERS (APPLICABLE- ALL PRIMARY DEALERS)

It has been decided by the Monetary Policy Committee (MPC) to reduce the policy repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 6.00 per cent to 5.50 per cent with immediate effect.

RBI Update – Standing Liquidity Facility for Primary Dealers (Applicable- All Primary Dealers)

RBI UPDATE – REVIEW OF QUALIFYING ASSETS CRITERIA (APPLICABLE- ALL NON-BANKING FINANCIAL COMPANIES – MICROFINANCE INSTITUTIONS)

The RBI has revised the qualifying asset criteria for NBFC-MFIs under paragraph 8.1 of the Master Direction on Microfinance Loans. Now, qualifying assets—aligned with the definition of microfinance loans — must constitute at least 60% of total net assets (excluding intangible assets) on an ongoing basis. If this condition is not met for four consecutive quarters, the NBFC-MFI must submit a remediation plan to the RBI. The revised norms are effective immediately.

RBI Update – Review of Qualifying Assets Criteria (Applicable- All Non-Banking Financial Companies – Microfinance Institutions)

RBI UPDATE – PENAL INTEREST ON SHORTFALL IN CRR AND SLR REQUIREMENTS – CHANGE IN BANK RATE (APPLICABLE – ALL BANKS)

The Bank Rate is revised downwards by 50 basis points from 6.25 per cent to 5.75 percent with immediate effect. Accordingly, all penal interest rates on shortfall in CRR and SLR requirements, which are specifically linked to the Bank Rate, also stand revised as under:

Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfall).	Bank Rate plus 3.0 percentage points (9.25 per cent) or Bank Rate plus 5.0 percentage points (11.25 per cent).	Bank Rate plus 3.0 percentage points (9.25 per cent) or Bank Rate plus 5.0 percentage points (11.25 per cent).

RBI Update – Penal Interest on shortfall in CRR and SLR requirements – Change in Bank Rate (Applicable – All banks)

RBI UPDATE – MAINTENANCE OF CASH RESERVE RATIO (CRR). (APPLICABLE – ALL BANKS)

It has been decided to reduce the Cash Reserve Ratio (CRR) of all banks by 100 basis points in four equal tranches of 25 basis points each to 3.0 percent of net demand and time Liabilities (NDTL). Accordingly, banks are required to maintain the CRR at 3.75 per cent, 3.5 per cent, 3.25 per cent and 3.0 per cent of their NDTL effective from the reporting fortnight beginning September 6, October 4, November 1 and November 29, 2025, respectively.

RBI Update – Maintenance of Cash Reserve Ratio (CRR). (Applicable – All banks)

RBI UPDATE – RESERVE BANK OF INDIA (LENDING AGAINST GOLD AND SILVER COLLATERAL) DIRECTIONS, 2025

Reserve Bank of India (RBI) issued comprehensive rules for Lending Against Gold and Silver Collateral, aiming to standardize and harmonize regulations governing silver and gold loan across all regulated entities (REs).

The RBI has permitted regulated entities to lend against gold jewellery, ornaments, and coins to meet borrowers'

short-term financial needs, while restricting lending against primary gold forms like bullion to curb speculative activities. However, the diverse mandates and risk appetites of various REs led to regulatory disparities.

Scope and Applicability: These directions apply to all commercial banks (excluding Payments Banks), primary (urban) and rural cooperative banks, and all Non-Banking Financial Companies (NBFCs), including Housing Finance Companies (HFCs). They cover loans for both consumption and income generation purposes where eligible gold or silver collateral is accepted.

These new directions, effective no later than April 1, 2026

RBI Update – Reserve Bank of India (Lending Against Gold and Silver Collateral) Directions, 2025

RBI UPDATE – FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) (SIXTH AMENDMENT) REGULATIONS, 2025

The "Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2025" primarily focuses on extending the qualification period for opening a Diamond Dollar Account (DDA) from 2 to 3 years for individuals residing in India.

RBI Update – Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2025

RBI UPDATE – THE DEPOSITOR EDUCATION AND AWARENESS FUND SCHEME, 2014 – SECTION 26A OF THE BANKING REGULATION ACT, 1949 – OPERATIONAL GUIDELINES

Banks must register under the DEA Fund module via RBI's e-Kuber system using two official email IDs, which serve as the main communication channel. Authorised signatories (up to ten) must be designated by board resolution and notified to RBI. Unclaimed deposits (over 10 years old) and interest must be transferred monthly to the DEA Fund through e-Kuber during the last five working days, with non-member banks acting via sponsor banks. Claims (Form II) can be submitted in the first 10 working days of each month after repayment to customers. Key returns include Form I (monthly statement), rectification forms, Form III (biannual reconciliation), and an annual certificate from statutory auditors.

All returns must be certified, audited, and submitted both physically and by email. Banks must maintain customer-wise details, ensure KYC compliance, and report balances under "Contingent Liability – Others" in financial statements.

RBI Update – The Depositor Education and Awareness Fund Scheme, 2014 – Section 26A of the Banking Regulation Act, 1949 – Operational Guidelines

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

Facilitating part-wise resolution of Corporate Debtor: The resolution professional, with the approval of the CoC, can invite expression of interest for submission of resolution plans for the corporate debtor as a whole, or for sale of one or more of assets of the corporate debtor, or for both. By enabling concurrent invitations, the resolution process can reduce timelines, prevent value erosion in viable segments, and encourage broader investor participation.

Harmonizing timelines for payment under resolution plan: Where a resolution plan provides for payment in stages, the financial creditors who did not vote in favour of the resolution plan shall be paid at least pro rata and in priority over financial creditors who voted in favour of the plan, in each stage. This approach balances the legitimate rights of dissenting creditors with the practical constraints of phased implementations.

Facilitating the providers of interim finance: CoC has been empowered to direct the resolution professional to invite the providers of interim finance to attend CoC meetings as observers without voting rights. This measure is intended to provide interim finance providers with a better understanding of the corporate debtor's operational status, thereby enabling them to make well-informed decisions regarding funding requirements.

Presentation of all plans before the Committee of Creditors (CoC): Resolution professionals are now required to present all resolution plans received, including those that are non-compliant, to the CoC along with relevant details. This provision ensures that the CoC has access to comprehensive information for decision-making, which may lead to more informed choices and ultimately contribute to a more transparent and effective resolution process.

IBBI Update – Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025

WHEN THE SECURITY INTEREST WAS EXTINGUISHED UNDER APPROVED RESOLUTION PLAN BY REQUIRING A FRESH PERSONAL GUARANTEE, INSOLVENCY PROCEEDINGS U/S 95 OF IBC CANNOT BE INITIATED AGAINST THE PERSONAL GUARANTOR BASED ON THE EARLIER PERSONAL GUARANTEE DEED – INDIAN BANK VS. ANJANEE KUMAR LAKHOTIA AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- The financial facilities were extended to the Corporate Debtor – M/s MBL Infrastructure Limited by consortium of banks lead bank being State Bank of Mysore.
- The deed of guarantee dated 17.02.2016 was executed in favour of the State Bank of Mysore – the lead Bank.
- The accounts of the Corporate Debtor were declared NPA on 21.12.2016. The Corporate Debtor – M/s MBL Infrastructure Limited was admitted to CIRP by order dated 30.03.2017 passed by NCLT, Kolkata Bench.
- NCLT, Kolkata vide order dated 18.04.2018 approved the Resolution Plan submitted by the Respondent No.1 – Anjanee Kumar Lakhotia, the Suspended Director of the Corporate Debtor
- Under the Resolution Plan, the debt of all the lenders was restructured and was proposed to be paid in phased manner. The Respondent No.1 herein, the Personal Guarantor was required to submit a fresh guarantee to the consortium of bank. A new Deed of Guarantee dated 04.07.2024 was executed by the Respondent No.1 in favour of the SBICAP Trustee Company Limited.
- Subsequent to the approval of plan, an application under Section 95(1) was filed by the Indian Bank to initiate insolvency process against the Personal Guarantor – Anjanee Kumar Lakhotia (Respondent No.1).
- The State Bank of India filed an application for impleadment in Section 95(1) application, which although was opposed by the Appellant but the Adjudicating Authority passed an order dated 26.07.2024 allowing the Intervention Application P-7 filed by the State Bank of India. The State Bank of India opposed the application filed under Section 95(1). It was contended by the State Bank of India that there are procedures laid down in the inter-se agreement on enforcement of security interest. The restructured debt under the Resolution Plan is secured by new Personal Guarantee which has been given by the Respondent No.1 on 04.07.2024.
- The Adjudicating Authority rejected the application under Section 95(1) filed by the Appellant by order dated 24.01.2025.

A. Judicial Precedents

- There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in Lalit Kumar Jain Vs. Union of India & Ors., (2021) ibclaw.in 61 SC that approval of Resolution Plan shall not ipso facto be treated extinguishment of personal guarantee.
- In Maharashtra State Electricity Board Bombay Vs. Official Liquidator High Court Ernakulam Anr., [2017] ibclaw.in 19 SC, the Hon'ble Supreme Court held that under Section 128 of the Indian Contract Act, 1872, the liability of the Guarantor is co-extensive with that of the Principal Debtor unless specified otherwise, and the liquidation of the Principal Debtor does not absolve the Guarantor of liability. There can be no dispute to the above proposition that liability of the Guarantor is coextensive with the Principal Debtor but present is a case where effect and consequence of the approval of the Resolution Plan has to be considered and looked into.
- In Kanwar Raj Bhagat Vs. Gujarat Hydrocarbons and Power SEZ Ltd., (2021) ibclaw.in 228 NCLAT, it was held that liability of the Guarantor remains even if the Principal Borrower's debt is discharged under the Resolution Plan.
- The judgment in Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors., [2019] ibclaw.in 07 SC is also with the same proposition that sanction of Resolution Plan and finality imparted by Section 31 of I&B Code does not per se operate as discharge of Guarantor's liability.
- In BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. and Anr., (2024) ibclaw.in 170 SC, the Hon'ble Supreme Court has laid down that payment of a sum under the Resolution Plan of Corporate Guarantor does not extinguish the liability of Principal Borrower to repay the entire loan amount, after deducting the amount recovered from the Guarantor.
- In Narendra Singh Panwar v. Pashchimanchal Vidyut Vitran Nigam Ltd. and 2 Others, (2023) ibclaw.in 10 HC, it was reiterated proposition laid down in Lalit Kumar Jain vs Union of India and others reported in (2021) ibclaw.in 61 SC that approval of Resolution Plan does not ipso facto absolve the Guarantor of his or her liability, which arises out of an independent contract of Guarantee.
- To the same effect is judgment of this Tribunal in Roshan Lal Mittal and Ors. v. Rishabh Jain and Ors., (2023) ibclaw.in 803 NCLAT as well as judgement of this Tribunal in UV Asset Reconstruction Company Ltd. v. Electrosteel Castings Ltd., (2024) ibclaw.in 50 NCLAT.

B. Present Case

- When the debt of all lenders was restructured and security interest were extinguished by asking the Personal Guarantor to submit a fresh personal guarantee to the consortium of bank, the Hon'ble Appellate Tribunal is of the view that relying on the earlier personal guarantee the Appellant cannot proceed to put the Personal Guarantor into personal insolvency who himself is the Resolution Applicant whose Resolution Plan has been approved upto Hon'ble Supreme Court.
- The Resolution Plan included clause for modification of security interest, issuance of securities of the Corporate Debtor, for cash, property, securities or in exchange for claims or interest. The Resolution Plan, thus, dealt with all securities.
- The present is a case where it is the Personal Guarantor, who has given guarantee, had submitted the Resolution Plan where Resolution Plan was approved. The assets of the Personal Guarantor as existing on the date when personal guarantee was given i.e. on 31.03.2017 has taken note of in the Resolution Plan and with respect to securities and all claims of lenders Resolution Plan provide for payment to lenders.
- The present is a case where Resolution Plan has been submitted by the Personal Guarantor himself and Resolution Applicant has been asked to submit a fresh personal guarantee which personal guarantee has again been executed by the Personal Guarantor. The Appellant being a dissenting Financial Creditor, who has opposed the Resolution Plan, is entitled for liquidation value as payment in the Resolution Plan to which proposition learned counsel for the Appellant has no objection.
- The Hon'ble Appellate Tribunal, thus, is of the view that no grounds have bene made out to interfere with the order impugned in the present appeal. Appeal is dismissed.

WHETHER NOTICE UNDER SECTION 13(2) OF SARFAESI ACT, 2002 IN A PARTICULAR CASE INVOKED THE GUARANTEE OR NOT DEPENDS ON THE WORDS AND INTENT OF THE NOTICE | JUDGMENT IN AMANJYOT SINGH V. NAVNEET KUMAR JAIN RP CANNOT BE READ TO MEAN THAT THE PERSONAL GUARANTEE CAN NEVER BE INVOKED BY NOTICE UNDER SECTION 13(2) – ASHA BASANTILAL SURANA VS. STATE BANK OF INDIA AND ORS. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- Appellant executed Deed of Personal Guarantee dated 12.11.2021 in relation to the credit facilities availed by M/s. Surana Metacast (India) Pvt. Ltd. (Principal Borrower).

- The loan account of the principal borrower was declared NPA on 01.05.2023.
- A notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 09.10.2023 to the principal borrower as well as to the Appellant personal guarantor demanding repayment of Rs.28,56,64,336.06/- as on 07.10.2023 with interest. Respondent Nos.2 and 3 similarly issued notice under Section 13(2) of the SARFAESI Act, 2002 and demanded amount from the Appellant.
- State Bank of India obtained an order on 06.04.2024 under Section 14 of the SARFAESI Act, 2002 for taking possession of the secured assets.
- On 05.08.2024, CIRP commenced against the principal borrower. State Bank of India also issued sale notice under Section 13(4) of the SARFAESI Act, 2002 for the some of secured assets.
- On 22.08.2024, Appellant filed the application under Section 94(1) of the IBC to initiate personal insolvency against the Appellant, the personal guarantor.
- The Adjudicating Authority by impugned order dated 04.12.2024 rejected Section 94(1) application holding that the Application under Section 94(1) has been filed by the Appellant without any cause and is premature. Adjudicating Authority took the view that apart from Section 13(2) notice, no other notice was issued to the Appellant, hence, the application is premature.
- Challenging the above order dated 04.12.2024, this Appeal has been filed.

Decision of the Appellate Tribunal

- Clause 7 of the Guarantee Agreement requires the Guarantors shall forthwith on demand made by the Bank deposit such sum or security as the Bank may specify for the due fulfilment of their obligations.
- Notice under Section 13(2) of the SARFAESI Act, 2002 which was addressed to the Guarantor i.e. Appellant clearly required Appellant to discharge liabilities within 60 days from the date of the Notice. The amount to be paid has also been mentioned as Rs.28,56,64,336.06/-. It is true that the Notice also mentioned to take steps under Section 13(4) of the SARFAESI Act, 2002.
- The judgment in *Amanjyot Singh Vs. Navneet Kumar Jain RP, (2023) ibclaw.in 10 NCLAT* cannot be read to mean that this Tribunal has held that the personal guarantee can never be invoked by notice under Section 13(2). This Tribunal held in the above case that the Bank has taken a categorical case that no steps have been taken against the Appellant, hence, there is no cause for the Appellant to pray for initiation of the CIRP against the Appellant, the personal guarantor. In the above case, notice under Section 13(2) was issued on 04.10.2013 and application was filed after 7 years. Thus, the dismissal of the Appeal in the Amanjyot Singh's case was on the facts of the said case and has no application in the facts of the present case.

- The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not.
- The judgment in Mavjibhai Nagarbhai Patel v. State Bank of India and Ors., (2024) ibclaw.in 841 NCLAT clearly holds that in a case where Notice under Section 13(2) makes a demand as per the Guarantee Agreement between the parties, the Notice has to be treated as notice for invocation of Bank Guarantee.
- The order of the Adjudicating Authority rejecting application under Section 94(1) cannot be sustained. In result, the Appeal is **allowed**. The order dated 04.12.2024 is set aside. Section 9 application being C.P.(IB) 317(AHM) 2024 is revived before the Adjudicating Authority to be heard and decided in accordance with law.

WHEN NO OBJECTION TO THE VALUATION WAS RAISED BY ANY STAKEHOLDERS, IT WAS NOT OPEN FOR THE ADJUDICATING AUTHORITY TO ENTER INTO THE ISSUE OF VALUATION OF ASSETS OF THE CORPORATE DEBTOR AND TO MAKE THE SAID GROUND FOR REJECTING THE RESOLUTION PLAN – VASHISHTH BUILDERS AND ENGINEERS LTD. AND VASHISTH ESTATES LTD. VS. TRISHUL DREAM HOMES LTD. AND ANR. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- The Resolution Professional filed an application for approval of the Resolution Plan.
- The Adjudicating Authority asked the Resolution Professional to file a compliance affidavit. The Adjudicating Authority also directed the Resolution Professional to file audited financial statements of the Corporate Debtor and certain other requirements were asked for.
- Vide order dated 23.04.2023, the Adjudicating Authority dismissed the application I.A. No.(Plan)05/CHD/2024 seeking approval of the plan:

1. Proposal for payment of CIRP cost of Rs.0.95 Crores has been provided for and Resolution Plan provides that "Any increase in actual CIRP cost from the proposed CIRP cost shall be paid out of amount proposed to Unsecured financial creditors proportionately. Any surplus from the proposed CIRP cost shall be infused in the construction of project. In nutshell, resolution debt amount shall not be changed with the increase of CIRP cost.". The Adjudicating Authority observed that said clause does not appear to be rational.
2. The proposal for payment of debts of Operational Creditors and other Creditors as well as dissenting Financial Creditors. In Para 18(b) (iii) and (iv), the Adjudicating authority has raised certain issues regarding valuation report.
3. Referred to certain statutory liabilities as shown in the balance sheet as on CIRP date of the Corporate Debtor and has observed that they have not been considered in the Resolution Plan.

Decision of the Appellate Tribunal

A. Clause of the Resolution Plan in increase of CIRP Cost

- Present is a case where there is no opposition to the resolution plan nor any objection was filed by any stakeholder objecting to the Resolution Plan. The Adjudicating Authority, however, has given certain reasons in rejecting the Resolution Plan.
- Section 31(1) provides that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in section 30(2), it shall by order approve the resolution plan. Thus, the Resolution Plan has to be scrutinized via compliance of Section 30(2) of the I&B Code.
- Present is a case where the creditors in class i.e. homebuyers consist the majority of CoC who have approved the Resolution Plan with 91% vote share. In event, any increase in the CIRP Cost is made that would be undertaken by the homebuyers. **The said provision cannot be said to be irrational.** Further the direction in Para 18(a) that said increase in cost shall be met by SRA, cannot be approved. **The CoC in its commercial wisdom, which consist of majority of homebuyers – creditors in class, having undertaken to bear the increased cost, if any, no exception can be taken in said clause.**

B. Valuation issue

- Value of the assets of the Corporate Debtor is asked for to assist the CoC to take decision. It is relevant to notice that order impugned does not show that any stakeholder has raised any objection to the valuation done by the Valuers.

- Referring M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr., (2023) ibclaw.in 60 SC and Ramkrishna Forgings Ltd. Vs. Ravindra Loonkar RP of ACIL Ltd. & Anr., (2023) ibclaw.in 144 SC, the Hon'ble Appellate Tribunal holds that when no objection to the valuation conducted of the Corporate Debtor was raised by any stakeholders, it was not open for the Adjudicating Authority to enter into the issue of valuation of assets of the Corporate Debtor and to make the said ground for rejecting the Resolution Plan.

C. Statutory liabilities as shown in the Balance Sheet of the Corporate Debtor

- On direction issued by the Adjudicating Authority by order dated 22.08.2024, an affidavit was filed by the SRA that all statutory liabilities including GST, workmen labour cess, compensation etc. would be borne by the SRA.
- When the SRA as per the order of the Adjudicating Authority has filed compliance affidavit, payment to certain creditors including statutory liabilities which was shown in the balance sheet, were not required to be mentioned. Only one claim was filed, which was admitted. It is not shown that other creditors have filed any claim.
- That could not have been any ground to reject the resolution plan since the creditors shown in the balance sheet have not filed their claim and the Resolution Plan does not deal with their claim.
- The Adjudicating Authority without adverting to the compliance affidavit has held that there is breach of Regulation 6A. Thus, the observation of the Adjudicating Authority that there is breach of Regulation 6A is unsustainable.
- Present is a case **where public announcement was made, the proviso to Regulation 6A is also relevant which contains an exception, that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.** Thus, rejection of the Resolution Plan on the ground as mentioned in Para 18(x) is unsustainable.

D. PUFE recovery after approval of Resolution Plan

- The plan provided that all the recoveries from the avoidance transactions shall be exclusively for the benefit of the Resolution Applicant and the financial and other creditors shall not have any rights on the ground that RA has proposed to settle all the claims in full.

- When the CIRP Regulation 38(2)(d) itself provides that the plan can provide for the manner in which the proceeds from such proceedings shall be distributed, no exception can be taken from the clause in the Resolution Plan that SRA shall prosecute the applications and recovery shall go to the SRA. The above provision of the Resolution Plan having been approved by 91% vote share, no exception can be taken from the said clause and the Adjudicating Authority committed error in finding fault with the said clause.

E. Scope of intervention by the Adjudicating Authority with the commercial wisdom of the CoC

- The provision of Section 31(1) which require the Adjudicating Authority to scrutinize the Resolution Plan and if the Resolution Plan meets the requirements of Section 30(2), it needs to be approved. The provision of Section 31(2) clearly provides that in event the resolution plan is in violation of Section 30(2), it can be rejected by the Adjudicating authority exercising its jurisdiction under Section 31(1). The scope of intervention by the Adjudicating Authority with the commercial wisdom of the CoC is well settled in the judgment of Hon'ble Supreme Court in *Arun Kumar Jagatramka Vs. Jindal Steel And Power Ltd. & Anr., (2021) ibclaw.in 46 SC*.
- **The Resolution Professional is not supposed to include every explanation with regard to matters covered in the plan and the Resolution Plan is a primary document which refers to various clauses contained in the plan.** The Adjudicating Authority has failed to point out any violation of Section 30(2) in Para 18 of the judgment on the basis of which rejection of the resolution Plan can be sustained.

F. Disposed of

- In result, all the Appeals are **allowed**. Impugned order dated 23.04.2025 is **set aside**. I.A. No.(Plan)05/CHD/2024 is **allowed**.
- Resolution Plan submitted by the SRA is **approved**.

ADJUDICATING AUTHORITY (AA), WHILE EXERCISING JURISDICTION UNDER SECTION 9 OF THE IBC, ALSO EXERCISES JURISDICTION OF NCLT UNDER THE COMPANIES ACT, 2013 | AA IN EXERCISE OF POWERS UNDER SECTION 213 OF THE COMPANIES ACT, 2013 CAN DIRECT FOR INVESTIGATION | AA WHILE EXERCISING JURISDICTION UNDER THE COMPANIES ACT, 2013 CANNOT ISSUE ANY DIRECTION TO SFIO FOR CARRYING OUT INVESTIGATION – MAX PUBLICITY & COMMUNICATION PVT. LTD. VS. ENVIRO HOME SOLUTIONS PVT. LTD. – NCLAT NEW DELHI

Brief about the decision:

Facts of the case

- An application under Section 9 was filed by Enviro Home Solutions Pvt. Ltd. (Respondent) claiming debt and default by the Appellant.
- The Adjudicating Authority by the impugned order although rejected the Section 9 application filed by the Respondent herein, however, while rejecting Section 9 application issued direction to forward the copy of the order to the Central Government through Ministry of Corporate Affairs and various other Central Authorities.

Decision of the Appellate Tribunal

A. Direction under Section 213 of the Companies Act, 2013 while disposing of Section 9 application under IBC

- The Adjudicating Authority itself has not issued any direction for investigation which is clear from following observations in paragraph 65 "*these contentions are left open for the appropriate authorities including ROC, Income Tax Department, EOW, SFIO to investigate and unearth the larger conspiracy behind the entire transactions relating to CSR obligations of Veda*". Further, in paragraph 66, the Adjudicating Authority observed "*Registry shall forward the Copy of this Order to following statutory authorities for taking appropriate steps under Companies Act, Income Tax Act and any applicable statutes*". The above observations and directions cannot be read as any direction for investigation. The Hon'ble Appellate Tribunal, thus, clarifies that the above directions as quoted in above paragraphs 65 & 66 cannot be read as any direction to statutory authorities to investigate.
- Section 213 (b) of the Companies Act, 2013, it provides "*on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that*". Thus, the use of expression '*or otherwise*' gives ample power to the Tribunal to issue any direction. However, for issuing direction for investigation under Section 213, there is one condition which also need to be fulfilled i.e. *"after giving a reasonable opportunity of being heard to the parties concerned*".
- Present is not a case where any investigation could have been ordered by the Tribunal under Section 213 since pre-condition for issuing any direction for investigation is giving a reasonable opportunity of being heard to the parties concerned. Thus, the above is another reason to hold that the observations and directions contained in paragraphs 65 and 66 cannot be held to be an order of investigation.

- From the scheme under Section 213 as noticed above, **it is clear that the Adjudicating Authority while exercising jurisdiction of the NCLT can also issue direction for investigation but said direction has to be in accordance with the statutory scheme i.e. after giving a reasonable opportunity of being heard to the parties against whom investigation is ordered.**

B. Conclusion

- The Adjudicating Authority while exercising jurisdiction under Section 9 of the IBC also exercise jurisdiction of NCLT under the Companies Act, 2013.
- Adjudicating Authority in exercise of powers under Section 213 of the Companies Act, 2013 can direct for investigation but the said investigation can be directed after complying the pre-condition i.e. affording a reasonable opportunity to the parties concerned.
- NCLT can also exercise inherent jurisdiction under Rule 11 in a case where NCLT is of the view that copy of the order need to be forwarded to the relevant statutory authorities, it can forward the copy for doing needful. The direction under Section 212 to carry out any investigation of company's affairs by SFIO can be made only in accordance with the statutory provisions of Section 212 and Adjudicating Authority while exercising jurisdiction under the Companies Act 2013 cannot issue any direction to SFIO for carrying out investigation.

C. Disposed of

- The observations and directions made in paragraphs 65 and 66 are not to be treated any direction for carrying out any investigation by the statutory authorities referred to therein.
- There was no occasion to make any observation or referring the matter to EoW or SFIO to investigate and reference of EoW and SFIO in paragraph 65 stands deleted. The direction in paragraph 66 to forward the copy of the order to statutory authorities for taking appropriate steps under the Companies Act, 2013 are upheld.

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. (2022) ibclaw.in 377 SC,* 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.

- 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.
- 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.
- 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.
- 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.
- 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.

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.

RD REDUCES RS. 15 LAKH PENALTY TO RS. 3 LAKH ON DELAYED FILING OF BENEFICIAL OWNERSHIP OF SHARES

Background

1. The Regional Director, South East Region, Ministry of Corporate Affairs, addressed an appeal filed by Credii Technologies Private Limited and five of its directors concerning a violation on filing of beneficial ownership intereston shares under the provisions of section 89 of the Companies Act 2013. The company had failed to file e-form MGT-6, which pertains to the declaration of beneficial interest in shares, within the stipulated timeframe. The Registrar of Companies, Bangalore of Karnataka, had previously adjudicated this non-compliance after the company itself applied for adjudication. The order of the Registrar of Companies dated 28th May 2024, imposed a penalty of Rs. 5,00,000 on Credii Technologies Private Limited and Rs. 2,00,000 each on the five directors, accumulating to a total penalty of Rs. 15,00,000.

Aggrieved by this penalty, the company and its directors filed an appeal, arguing that the non-compliance was unintentional, stemming from a "lack of guidance and expertise," and that there was no intent to deceive or cause any unlawful gain or loss. They contended that the imposed penalty was disproportionately high and would cause significant financial strain. After hearing the submissions made by the company, the Regional Director accepted the submissions made by the company and its directors and decided to reduce the penalty. The revised penalty was set at Rs. 1,00,000 for the company and Rs. 40,000 each for the five directors, bringing the total reduced penalty to Rs. 3,00,000 as against the penalty levied to a tune of Rs. 15,00,000 by the Registrar of Companies. Let us go through this case in details in order to understand the rationale behind the revision done by the Regional Director.

Details of the company

2. M/s CREDII Technologies Private Limited was incorporated on 17th June 2011 under the provisions of the Companies Act 1956 and the company's registered office is situated at # 13, MCHS Sector 4, HSR Layout, Bangalore in the state of Karnataka. The office of the Registrar of Companies is situated at Bangalore. The company, as per the details shown at the MCA portal has two directors on its board. This company is in software publishing, consultancy, and supply of software solutions offering ready-made software and custom software solutions, with a focus on the financial services and insurance sectors.

Default / violations committed by the company.

3. As per the findings of the Registrar of Companies / Adjudication Officer, the company had violated the provisions of section 89 of the Companies Act 2013 , stating that due to inadvertent, the company had failed to file the Form MGT-6 – return to the Registrar of Companies in respect of declaration under section 89 received by the company – required to be filed pursuant to section 89 (6) of the Companies Act 2013 read with Rule 9 (3) of the Companies (Management and Administration) Rules 2014 within the prescribed time limit which resulted in contravention of the provisions of section 89(6) of the Companies Act 2013.

Penalty levied by Registrar of Companies / Adjudication Officer

4. The Registrar of Companies / Adjudicating Officer, having considered the facts and circumstances of the case and after considering the submissions made by the company and also considering the various other factor concluded that the company and its directors in default were liable for penalty under relevant rules for the default in compliance with the requirements of section 89 of the Companies Act 2013 and accordingly passed the adjudication order bearing F No. ROC(B)/Adj.Ord.454-89/Credii Technologies/ Co.No.059191/2024/ dated 28th May 2024 under section 454 of the Companies Act 2013, for default in compliance with the requirements of section 89 of the Companies Act, 2013. The details of the penalty imposed on the company and directors in default were shown in the table below:

	Violation committed	**Company / directors**	**Penalty imposed Rs.**
1	Delayed filing of MGT-6 resulting into violation of section 89 of the Companies Act 2013 read with Rule 9 (3) of the Companies (Management and Administration Rules 2014	Company	5,00,000
2		Director –1	2,00,000
3		Director – 2	2,00,000
4		Director – 3	2,00,000
5		Director – 4	2,00,000
6		Director – 5	2,00,000
Total penalty			**15,00,000**

Appeal filed by the company.

5. By aggrieved by the order, the company and its directors filed an appeal on 22nd July 2024 pursuant to section 454(5) of the Companies Act, 2013 in e-form ADJ vide SRN F96920210 against the adjudication order passed by the Registrar of Companies, Bangalore of Karnataka in F No. ROC(B)/Adj.Ord.454-89/Credii Technologies/

Co.No.059191/2024/ dated 28th May 2024 under section 454 of the Companies Act 2013 for default in compliance with the requirements of section 89 of the Companies Act 2013.

Contents of the appeal

6. The main contention of the company and its directors on this matter was that the non-compliance was unintentional, stemming from a "lack of guidance and expertise," and that there was no intent to deceive or cause any unlawful gain or loss. Although the MGT 4 and 5 were received by the company, inadvertently, the company failed to file the MGT 6 form in time. The company and its directors also contended that the imposed penalty was disproportionately high and would cause significant financial strain.

Action taken by the Regional Director of SER – issue of personal hearing notice.

7. Upon the receipt of the appeal petition, the Regional Director after confirming that the appeal was filed well within the time limit admitted the appeal for hearing. The Regional Director thereafter call for a report from the Registrar of Companies before hearing the appeal. The Registrar of Companies in response, submitted his report on 27th August 2024.

Issue of personal hearing notice by the Regional Director

8. The Regional Director upon receipt of the reply from the Registrar of Companies had issued a personal hearing notice by granting an opportunity of being heard and accordingly and fixed the date of personal hearing on 8th October 2024 and directed the company and its directors to appear before him and make the submissions.

On the day of personal hearing

9. M/s CREDII Technologies Private Limitedand its directors had appointed an authorized representative – a practicing company secretary - who had appeared on behalf of the company and its directors and represented the matter and made the submissions on the day of personal hearing i.e. on 8th October 2024. During the hearing, the learned practicing company secretary on behalf of the company and its directors had reiterated the submissions made in the appeal petition once again and made the further submissions: -

(a) The learned practicing company secretary stated that one Mr. Vamshi was a shareholder of the company, and he held one share of Rs.10/- as a registered shareholder, wherein the beneficial interest in the said share was held by M/s. Siftery India Development Center Private Limited.

(b) The learned practicing company secretary stated that r. Vamshi had submitted the Form MGT-4 – the declaration by the registered owner of shares who does not hold the beneficial interest in such shares pursuant to section 89(1) of the Companies Act,2013 read with Rule 9(1) of the Companies (Management and Administration) Rules 2014within the period of 30 days.

(c) The learned practicing company secretary further stated that the company had also filed the MGT-5 – the declaration by the beneficial owner who held or acquires beneficial interest in shares but whose name was not entered in the register of members pursuant to sub-section (2) and (3) of section 89 of the Companies Act 2013 and Rule 9(2) of the Companies (Management and Administration) Rules 2014 within the period of 30 days.

(d) The learned practicing company secretary stated further that unfortunately due to a lack of guidance, the company had not filed MGT-6 – the declaration of beneficial interest in shares, within the stipulated timeframe with the Registrar of Companies which resulted in violation of the provisions of the section 89 of the Companies Act 2013.

(e) The learned practicing company secretary stated that the company never intended to violate the provision and it was only due to a lack of guidance and expertise and there was no any intention to deceive anyone and the non-compliance did not result in any unlawful gain or loss to any one including the appellant company and that the penalty imposed by the ROC was heavy and will inflict irreparable financial injury to the appellants and that to prove its bona fide, the appellants had filed application before the ROC. With the above submission the appellants have requested for reduced penalty as permitted under section 454(7) of the said act.

Conclusions reached by the Regional Director

10. After hearing the submissions from the authorized representative of the company stating that the company had not filed MGT-6 due to a lack of guidance which resulted in violation of the provisions of the section 89 of the Companies Act 2013 and also taking into consideration of the facts of the appeal, the Regional Director decided to modify the penalty imposed by the Registrar of Companies of Bangalore and decided to reduce the penalty from Rs. 15 lakh to Rs 3 lakh.

Order passed by the Regional Director

11. The Regional Director, in view of the above and after taking into consideration the fact of the appeal and the submissions made by the authorised representative, allowed the appeal and granted relief to the company and its directors and reduced the penalties imposed by the Registrar of Companies, Karnataka, at Bangalore on this matter, to meet the end of justice. The following table gives the details of the modified order along with the original penalty imposed by the Registrar of Companies.

Sr. No	**Violation committed by the company under the provisions of Companies Act 2013**	**Imposed on Company / directors**	**Penalty imposed by ROC**	**Penalty modified by RD**
			Rupees	Rupees
1	Delayed filing of MGT-6 resulting into violation of section 89 of the Companies Act 2013 read with Rule 9 (3) of the Companies (Management and Administration Rules 2014	Company	5,00,000	1,00,000
2		Director – 1	2,00,000	40,000
3		Director – 2	2,00,000	40,000
4		Director – 3	2,00,000	40,000
5		Director – 4	2,00,000	40,000
6		Director – 5	2,00,000	40,000
Total penalty			**15,00,000**	**3,00,000**

The order directed the company and its directors to comply with this order and were also reminded about the provisions of section 454(8) of the Companies Act 2013 in case of failure to comply.

Compliance with the order issued by the Regional Director

12. The company and its directors complied with the order issued by the Regional Director and made the payment of penalty imposed and communicated the same to the office of the Regional Director as per the details below appearing in the table.

Sr. No	Paid by	Date of payment	SRN no.	Amount paid
1	Company	25/10/2024	X84589498	1,00,000
2	Director- 1	25/10/2024	X84590298	40,000
3	Director- 2	25/10/2024	X84587799	40,000
4	Director- 3	25/10/2024	X84590090	40,000
5	Director- 4	25/10/2024	X84591585	40,000
6	Director- 5	25/10/2024	X84589753	40,000
Total				**3,00,000**

Issue and despatch of the order by the Regional Director

13. in view of the compliance reported, the Regional Director accordingly disposed off the appeal and issued the order on 28th day of May 2025 to the company and its directors with a copy to the Registrar of Companies of Bangalore. Further a copy of the order was also sent to e-governance cell, Ministry of Corporate Affairs at Delhi for information
and necessary action.

Complete order for reading

14. The readers may like to read the complete details of the order in appeal passed by the Regional Director (Southern
Eastern Region) Hyderabad on 8th January 2025 order bearing F.no:9/34/adj/sec.89 of CA, of 2013/Karnataka/RD(SER)/2024/1084 before the Regional Director, South East Region Ministry of Corporate Affairs,
Hyderabad in the matter of Companies Act 2013 in the matter of M/s. Credii Technologies Private Limited and the relevant website is https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/rd-adjudication - orders.html (the order uploaded under RD -South East on 29th May 2025 and the file name titled as adjudication order for violation of section 89 of the Companies Act 2013 in the matter of M/s. Credii Technologies Private Limited)

Conclusion

15. Appeal against the adjudication order passed by the Registrar of Companies could be filed with the jurisdictional Regional Director under the framework of the Companies Act 2013 pursuant to the provisions of section 454 (5) of the Companies Act 2013 by any aggrieved person within the prescribed time limit which is generally 60 days' time from the date of the receipt of the order. The Appellate Authorities would consider the merits of the case and also the justifiable reasoning and accordingly, the necessary remission / relief / reduction would be granted. In this case, the Regional Director of South East Region Hyderabad decided the appeal and granted a reduction on the penalties imposed by the Registrar of Companies of Bangalore after considering the grounds taken by the company and its directors. The main ground taken by the company was that the non-compliance was unintentional, stemming from a "lack of guidance and expertise," and that there was no intent to deceive or cause any unlawful gain or loss. Further to this the company also stated that the imposed penalty by the Registrar of Companies was disproportionately high and would cause significant financial strain. The Appellate Authority had accepted these arguments and granted the reduction in the penalty from Rs. 15 lakh to Rs. 3 lakh. This case exhibits that the regulators would consider the genuine reasoning and justification and accordingly grand the relief. However, companies should take care utmost case at the first place to ensure compliance and due to certain genuine reason, if violation occurs, they could approach the regulators and get the necessary relief as it had happened in this case.

Reference: -

1. Companies Act 2013
2. Companies (Management and Administration) Rules 2014
3. Companies (Adjudication of Penalties) Rules 2014
4. Companies (Adjudication of Penalties) Amendment Rules 2019
5. Appeal order passed by the Regional Director (South East Region) Hyderabad on 8th January 2025 order bearing F.no:9/34/adj/sec.89 of CA, of 2013/ Karnataka/ RD (SER)/2024/1084 before the Regional Director, South East Region Ministry of Corporate Affairs, Hyderabad in the matter of Companies Act 2013 in the matter of M/s. Credii Technologies Private Limited

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