

VEDANAM



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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 July 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 – EXTENSION TOWARDS ADOPTION AND IMPLEMENTATION OF CSCRF FOR RES

SEBI vide its circular dated June 30, 2025, has extended the timeline for compliance with the Cybersecurity and Cyber Resilience Framework (CSCRF) for all SEBI Regulated Entities (REs) by two months, now up to August 31, 2025. This extension, however, excludes Market Infrastructure Institutions (MIIs), KYC Registration Agencies (KRAs), and Qualified Registrars to an Issue and Share Transfer Agents (QRTAs). The circular aims to facilitate ease of compliance and mandates stock exchanges and depositories to inform their members and disseminate the circular on their websites.

SEBI Circular – Extension towards Adoption and Implementation of CSCRF for REs

SEBI CIRCULAR – EASE OF DOING INVESTMENT – 02.07.2025

SEBI vide its circular dated July 2, 2025, has introduced a special window from July 7, 2025, to January 6, 2026, allowing investors a one-time opportunity to re-lodge physical share transfer deeds that were originally submitted before April 1, 2019 but were rejected, returned, or not attended to due to deficiencies.

SEBI Circular - Ease of Doing Investment –Special Window for Re-lodgement of Transfer Requests of Physical Shares – July 02, 2025

SEBI had earlier discontinued the transfer of securities in physical mode with effect from April 01, 2019. However, it allowed re-lodgement of transfer deeds lodged before this date but returned/rejected due to document deficiencies, with a final cut-off of March 31, 2021.

Issue Represented: Several investors, RTAs, and listed companies raised concerns that some investors missed the March 31, 2021 deadline. SEBI discussed this in a panel comprising RTAs, listed entities, and legal experts.

Special Window Introduced: Based on the panel's recommendation, SEBI has now allowed one more opportunity for investors to re-lodge such transfer deeds through a special window for a period of 6 months from July 07, 2025, to January 06, 2026.

Eligible Cases: Only those transfer deeds lodged prior to deadline of April 01, 2019 and returned/rejected/not attended due to deficiencies are eligible for re-lodgement under this window.

Transfer Mode: All such securities re-lodged during this window shall be issued only in dematerialised form (transfer-cum-demat).

Standard procedures for dematerialisation must be followed.

Publicity Requirement: Listed companies, RTAs, and Stock Exchanges are required to publicize the availability of this special window on a bi-monthly basis during the six-month period through various media including print and social media.

RTAs/listed companies shall have focussed teams to attend to such requests.

Monthly Reporting to SEBI: RTAs/listed companies must submit monthly reports to SEBI in the format specified in Annexure-A, covering:

- Number of requests received during the month
- Number of requests processed
- Number of requests approved
- Number of requests rejected
- Average time taken to process requests (in days)

Analysis From Mehta & Mehta

SEBI Circular – Ease of Doing Investment – 02.07.2025

SEBI CIRCULAR – 23RD JULY 2025

SEBI vide its circular dated 23rd July, 2025 have issued FAQs related to regulatory provisions for Research Analysts.

SEBI Circular – 23rd July 2025

SEBI CIRCULAR –
MONITORING OF MINIMUM INVESTMENT THRESHOLD UNDER SIF

SEBI vide its circular dated 29th July 2025 has issued a framework to operationalize daily monitoring and enforcement of the ₹10 lakh minimum investment threshold in Specialized Investment Funds (SIFs). If an investor's investment value falls below the threshold due to any transaction (including redemptions or transfers), all units held by the investor across SIF strategies will be frozen for debit, and a 30-day notice will be issued for rebalancing. If the investor fails to restore the threshold within the notice period, the AMC will automatically redeem the units at the applicable NAV. AMCs, RTAs, and Depositories are directed to implement necessary systems with immediate effect.

SEBI Circular – Monitoring of Minimum Investment Threshold under SIF

SEBI CIRCULAR –
EXTENSION OF TIMELINE FOR IMPLEMENTATION OF SEBI CIRCULAR SEBI/HO/MIRSD/MIRSD-POD/P/CIR/2025/0000013 DATED FEBRUARY 04, 2025

SEBI vide its circular dated 29th July, 2025 has extended the implementation timeline of its earlier circular dated 4th February, 2025, which introduced a framework for safer participation of retail investors in algorithmic trading. Originally scheduled to come into effect from 1st August, 2025, the implementation date has now been deferred to 1st October, 2025 following industry representations seeking more time. Stock Exchanges are directed to notify members, update their systems and rules accordingly, and ensure compliance for smooth and disruption-free rollout.

SEBI Circular – Extension of timeline for implementation of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013 dated February 04, 2025

**SEBI CIRCULAR –
29.07.2025 – OPERATIONAL
EFFICIENCY IN
MONITORING OF NON-
RESIDENT INDIANS (NRI)
POSITION LIMITS IN
EXCHANGE TRADED
DERIVATIVES CONTRACTS
-EASE OF DOING
INVESTMENT**

SEBI vide its circular dated 29th July, 2025 in order to enhance operational efficiency and ease of investing for Non-Resident Indians (NRIs), SEBI has removed

the mandatory requirement for NRIs to notify Clearing Members and obtain Custodial Participant (CP) codes for trading in exchange-traded derivatives. Going forward, Exchanges and Clearing Corporations will monitor NRI position limits in the same manner as client-level limits, without requiring CP codes. Exchanges must update their rules and systems within 30 days and provide existing NRI clients a 90-day window to opt out of CP codes via email. The move aims to simplify processes and reduce compliance burdens for NRIs.

SEBI Circular – 29.07.2025 – Operational Efficiency in Monitoring of Non-Resident Indians (NRI) Position Limits in Exchange Traded Derivatives Contracts -Ease of Doing Investment



RBI UPDATE – RESERVE BANK OF INDIA (PRE-PAYMENT CHARGES ON LOANS) DIRECTIONS, 2025

The Reserve Bank of India (Pre-payment Charges on Loans) Directions, 2025, aim to ensure fair lending practices and facilitate affordable credit for Micro and Small Enterprises (MSEs) by standardizing norms on pre-payment charges. Effective from January 1, 2026, these Directions prohibit Regulated Entities (REs) from levying pre-payment charges on floating rate loans for non-business purposes to individuals, and for business loans extended to individuals and MSEs, subject to the type of RE and loan amount. The provisions apply regardless of the source of pre-payment or any lock-in period. Further, REs must disclose the applicability of pre-payment charges clearly in the sanction letter, loan agreement, and Key Facts Statement (where applicable). Charges cannot be levied retrospectively or where pre-payment is initiated by the RE. These Directions override all earlier circulars specified in the Annex and are issued under various provisions of the Banking Regulation Act, RBI Act, and National Housing Bank Act.

[RBI Update – Reserve Bank of India \(Pre-payment Charges on Loans\) Directions, 2025](#)

RBI UPDATE – FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS & SERVICES) (AMENDMENT) REGULATIONS, 2025

The **Foreign Exchange Management (Export of Goods & Services) (Amendment) Regulations, 2025** introduce a new provision under Regulation 4 of the principal regulations. The amendment permits the export of **tugs or tug boats, dredgers, and vessels used for providing offshore support services**, provided these are **re-imported into India**. This amendment will be effective from the date of its publication in the **Official Gazette**.

[RBI Update – Foreign Exchange Management \(Export of Goods & Services\) \(Amendment\) Regulations, 2025](#)

RBI UPDATE – BASEL III CAPITAL REGULATIONS – EXTERNAL CREDIT ASSESSMENT INSTITUTIONS (ECAIS) – CAREEDGE GLOBAL IFSC LIMITED (APPLICABLE-ALL SCHEDULED COMMERCIAL BANKS (INCLUDING SMALL

FINANCE BANKS)
(EXCLUDING LOCAL
AREA BANKS, PAYMENTS
BANKS AND REGIONAL
RURAL BANKS))

In terms of Paragraph 6 of the Master Circular Basel III Capital Regulations dated April 01, 2025, banks are permitted to use the ratings of Fitch, Moody's, and Standard & Poor's for assigning risk weights to claims on foreign entities for capital adequacy purposes. Additionally, the Reserve Bank of India has decided to permit banks to use the ratings of M/s CareEdge Global IFSC Limited for risk-weighting their claims on non-resident corporates originating at the International Financial Services Centre (IFSC). The applicable rating-risk weight mapping for CareEdge Global IFSC Limited is as follows: AAA – 20%, AA – 30%, A – 50%, BBB – 100%, and BB & below – 150%.

RBI Update – Basel III Capital Regulations – External Credit Assessment Institutions (ECAIs) – CareEdge Global IFSC Limited (Applicable- All Scheduled Commercial Banks (including Small Finance Banks) (excluding Local Area Banks, Payments Banks and Regional Rural Banks)).

RBI UPDATE – LENDING
AGAINST GOLD AND
SILVER COLLATERAL –
VOLUNTARY PLEDGE OF
GOLD AND SILVER AS

COLLATERAL FOR
AGRICULTURE AND MSME
LOANS. (APPLICABLE-
ALL SCHEDULED
COMMERCIAL BANKS
(INCLUDING REGIONAL
RURAL BANKS AND SMALL
FINANCE BANKS) ALL
STATE CO-OPERATIVE
BANKS AND DISTRICT
CENTRAL CO-OPERATIVE
BANKS)

The Reserve Bank of India (RBI) has clarified that banks can accept gold and silver as collateral for agriculture and MSME loans, even under the collateral-free limit, if the borrower offers it voluntarily.

RBI Update – Lending Against Gold and Silver Collateral – Voluntary Pledge of Gold and Silver as Collateral for Agriculture and MSME Loans. (Applicable- All Scheduled Commercial Banks (including Regional Rural Banks and Small Finance Banks) All State Co-operative Banks and District Central Co-operative Banks).

RBI UPDATE – RESERVE
BANK OF INDIA
(INVESTMENT IN AIF)
DIRECTIONS, 2025

The Reserve Bank of India (Investment in AIF) Directions, 2025, have been issued to revise and consolidate the regulatory framework governing investments by Regulated Entities (REs) in Alternative Investment Funds (AIFs). These Directions supersede the earlier circulars dated December 19, 2023, and March 27, 2024, and have been issued under the powers conferred by various provisions of the Banking Regulation Act, 1949, the RBI Act, 1934, and the National Housing Bank Act, 1987. They aim to align the regulatory landscape with industry feedback and SEBI's due diligence norms related to AIF investors and investments. These Directions shall come into effect from January 1, 2026, or any earlier date as may be adopted by an RE in accordance with its internal policy.

These Directions apply to investments in AIF schemes made by a wide range of regulated financial entities, namely, commercial banks (including small finance banks, local area banks, and regional rural banks), co-operative banks (urban, state, and central), all-India financial institutions, and non-banking financial companies (including housing finance companies). All such REs must ensure that their investment policies specifically include provisions to govern investments in AIFs, in line with applicable legal and regulatory requirements.

Key definitions under the Directions include the term "debtor company," which refers to any company to which an RE currently has or had loan or investment exposure (excluding equity instruments) in the preceding twelve months. Equity instruments are defined to include equity shares, compulsorily convertible preference shares (CCPS), and compulsorily convertible debentures (CCDs).

The Directions place limits on investments by REs in AIFs. An individual RE cannot contribute more than 10% of the total corpus of an AIF scheme, and the collective contribution by all REs in an AIF scheme must not exceed 20% of the scheme's corpus. Further, if a RE contributes more than 5% of an AIF's corpus and the AIF makes downstream investments (excluding equity instruments) in a debtor company of the RE, then the RE must make a 100% provision against its proportionate investment in the debtor company, subject to a cap equal to the RE's direct loan or investment exposure to that debtor company. In cases where the RE's contribution is made through subordinated units of an AIF, the entire investment must be deducted from the RE's capital funds—proportionally from Tier 1 and Tier 2 capital, wherever applicable.

Certain exemptions are provided under these Directions. Investments or commitments made by REs with prior approval from the RBI under the Master Direction – Financial Services provided by Banks (2016) are exempt from the investment limits specified in paragraph 6(a) and 6(b). Additionally, the RBI, in consultation with the Government of India, may notify exemptions for specific AIFs from the scope of these Directions, except for the requirement under paragraph 5 relating to internal investment policy.

With the issuance of these Directions, the earlier circulars dated December 19, 2023, and March 27, 2024, will stand repealed from the effective date. Any new commitment made by a RE post the effective date must comply with the 2025 Directions. However, investments made pursuant to commitments that have been fully honored as of the date of issuance will continue to be governed by the earlier circulars. For other existing commitments made prior to the effective date, REs are permitted to choose between continuing under the old circulars or fully transitioning to the new Directions, but must do so in a consistent and complete manner.

RBI Update – Reserve Bank of India (Investment in AIF) Directions, 2025



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

| Regulation | Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. | Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025. | Comments |
|--|---|---|--|
| <p>Reg - 36 Information Memorandum sub regulation (1)</p> <p>Sub regulation (2) New clause inserted (ha)</p> | <p>Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee [on or before the ninety-fifth day from the insolvency commencement date</p> | <p>Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee [on or before the ninety-fifth day from the insolvency commencement date and its subsequent updates thereof Details of all identified avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code and subsequent filings before Adjudicating Authority, as referred under sub-regulation (3A) of regulation 35A</p> | <p>Regulation 36(1) now includes the clause “and its subsequent updates thereof,” emphasizing continuous updates to the information memorandum after the insolvency commencement date</p> <p>A new clause (ha) under Regulation 36(2) requires disclosure of all identified avoidance transactions (such as preferential, undervalued, extortionate, or fraudulent transactions) and related filings before the Adjudicating Authority.</p> |
| <p>Reg -38 Mandatory contents of the resolution plan after sub-regulation (2), the sub-regulation (2A) shall be inserted</p> | | <p>(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code that were not: (a) disclosed in the information memorandum; and (b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans: Provided that this sub-regulation shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025</p> | <p>Regulation 38 has been amended to insert sub-regulation (2A), which prohibits the assignment of avoidance transactions or fraudulent/wrongful trading in resolution plans if: (a) they were not disclosed in the information memorandum, and (b) not communicated to prospective resolution applicants before the final submission deadline. However, this restriction does not apply to resolution plans already submitted to the Adjudicating Authority before the commencement of the Fifth Amendment Regulations.</p> |

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

IBBI UPDATE – WITHDRAWAL OF FORM IP-1 FOR ASSIGNMENTS UNDER IBC PROCESSES

The Insolvency and Bankruptcy Board of India (IBBI) has withdrawn the requirement for submission of Form IP-1 for all assignments under the Insolvency and Bankruptcy Code, 2016, with immediate effect. This follows the introduction of the Assignment Module on the IBBI electronic portal (vide circular dated 11th February 2025) and the revised forms framework (CP-1 to CP-5) for Corporate Insolvency Resolution Process (CIRP), effective from 1st June 2025, which replaces Form IP-1 and CIRP Forms 1 to 8. This circular is issued under the powers conferred by Section 196 of the Code.

IBBI Update – Withdrawal of Form IP-1 for assignments under IBC Processes

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (FIFTH AMENDMENT) REGULATIONS, 2025.

The Insolvency and Bankruptcy Board of India (IBBI) has released a notification dt. 4th July 2025 and amended the provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. IBBI has amended Reg.36 (1) whereby Resolution Professional (RP) has to submit Information Memorandum (IM) to CoC on or before 95th day from Insolvency Commencement Date (ICD) and its subsequent updates thereof. Reg.36(2) (ha) has been inserted to mandate that details of avoidance transactions has to be provided in IM. Further, IBBI has inserted Reg.38(2A) whereby Resolution Applicant (RA) cannot assign avoidance transactions if such transactions were not disclosed in IM or which were not intimated prior to last date for submission of Resolution Plan.

MCA FAQ FOR E-FORMS MIGRATED TO V3

MCA have issued FAQs for the final set of 38 e-forms which have been migrated from V2 to V3 Portal.

MCA FAQ for e-forms migrated to V3

FORM LEAP – 1 – NEW FORMAT

MCA vide its notification dated 3rd July, 2025 have amended Form LEAP – 1 in the Second Schedule for Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024.

Form LEAP – 1 – New format

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2025

MCA vide its notification dated 7th July, 2025 have amended Companies (Corporate Social Responsibility Policy) Rules, 2014 by substituting e-form CSR-1 – Registration of Entities for undertaking CSR Activities. These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025.

They shall come into force with effect from the 14th day of July, 2025.

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025

Vidarbha Industries judgment is an exception, not the rule | There is no scope under IBC for unrelated third parties to intervene at CIRP admission stage | Corporate Debtor being a going concern or a viable entity do not absolve | There is no legal embargo or bar upon a creditor to initiate CIRP subsequent to the initiation of recovery actions before any other forum (DRT etc.) – Edelweiss Asset Reconstruction Company Ltd. Vs. Takshashila Heights India Pvt. Ltd. – NCLAT New Delhi

Brief about the decision:

Facts of the case

- A Section 7 Petition was filed on 31.01.2024 claiming an outstanding sum of Rs 93.54 crores supported by evidence of debt and default.
- The Adjudicating Authority dismissed the Petition holding that the proceedings were aimed at recovery rather than resolution, thus constituting a misuse of IBC provisions, and that initiating CIRP would prejudice the interests of stakeholders, given the Corporate Debtor's status as a going concern. Relying on the Supreme Court's decision in *Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (2022) ibclaw.in 91 SC*, the NCLT exercised discretion to reject the Petition despite debt and default being established.

Decision of Appellate Tribunal

A. Vidarbha Industries judgment is an exception, not the rule

- In the case of *E S Krishnamurthy & Ors. v. M/s Bharath Hi Tech Builders Pvt. Ltd., (2021) ibclaw.in 173 SC*, Hon'ble Supreme Court has held that Adjudicating Authority under Section 7(5) of the Insolvency and Bankruptcy Code 2016 is empowered only to verify whether a default has occurred or not occurred.
- This issue has also been settled in a subsequent judgment of the of the division bench of Hon'ble Supreme Court in the case of *M. Suresh Kumar Reddy v. Canara Bank & Ors., (2023) ibclaw.in 67 SC* wherein it has been held that once the NCLT is satisfied that the default has occurred, there is hardly any discretion left with the NCLT to refuse admission of the Application under Section 7 IBC. The Apex Court referred to their decision in *Innoventive Industries Limited v. ICICI Bank and Another [2017] ibclaw.in 02 SC* wherein the entire scope of Section 7 was explained and it was held that if the NCLT is satisfied there is a debt and default, it is bound to admit a Petition under Section 7 of the IBC, which was reiterated in *E S Krishnamurthy & Ors. v. Bharath Hi Tech Builders Pvt. Ltd., (2021) ibclaw.in 173 SC*,

- while holding that the NCLT cannot direct parties to enter into settlement terms. In the aforesaid judgment of M Suresh Kumar Reddy (Supra), the Supreme Court has clearly held that the decision passed in the Vidarbha Industries (supra) was in the setting of the facts of that case only.
- Vidarbha Industries (supra) case is not applicable in this case basis subsequent judgements of Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Mr. Suresh Kumar Reddy (supra), itself has held that the decision in Vidarbha Industries (Supra) was passed in the peculiar facts of that case and is an exception, not the rule. The said judgment cannot be read as overriding or diluting the binding precedents laid down in Innoventive Industries Limited (supra) and E. S. Krishnamurthy (supra), which continue to govern the legal position under Section 7 of the Code.
- Therefore, the conclusion by the Adjudicating Authority that CIRP cannot be initiated merely on account of the existence of debt and default is contrary to the binding precedent.

B. There is no scope under the Code for unrelated third parties to intervene at the CIRP admission stage

- **Once the requirements of financial debt and default are satisfied, there is no scope under the Code for unrelated third parties to intervene, particularly at the admission stage.**
- Invocation of Rule 11 in this context is wholly impermissible and contrary to the principles laid down in the case of Innoventive Industries Limited v. ICICI Bank and Another [2017] ibclaw.in 02 SC, which mandates admission upon establishment of debt and default. The Intervenor is a registered society of a completed tower and cannot be treated as a representative of pending allottees.

C. Corporate Debtor being a going concern or a viable entity do not absolve the Corporate Debtor from its liabilities to repay the outstanding dues

- The averments made with respect to the Corporate Debtor being a going concern or a viable entity do not absolve the Corporate Debtor from its liabilities to repay the outstanding dues of the Applicant Financial Creditor.

D. There is no legal embargo or bar upon a creditor to initiate CIRP subsequent to the initiation of recovery actions before any other forum

- The Hon'ble Appellate Tribunal does not find **any bar against the Financial Creditor to proceed under the Code as well as the SARFAESI Act against a Corporate Debtor and the objections of the Corporate Debtor holds no water.**
- The Hon'ble Appellate Tribunal in the cases of Mr. Amar Vora v. City Union Bank Ltd., [\(2022\) ibclaw.in 341 NCLAT](#) and Securities & Exchange Board of India v. Rajesh Sureshchandra Sheth, [\(2023\) ibclaw.in 425 NCLAT](#) has reaffirmed the position that there is no legal embargo or bar upon a creditor to initiate CIRP subsequent to the initiation of recovery actions by the creditor before the DRT or under SARFAESI or before any other forum, as pendency of any such legal proceedings of recovery is no bar for initiating CIRP.
- In instant case, the stand taken that proceedings are pending before DRT and under Prohibition of Benami Property Transactions Act, 1988, cannot be sustained and the Section 7 cannot be stopped.
- Therefore, in the present case, the NCLAT agrees with the arguments of the Appellant that the decision of the Adjudicating Authority which is fundamentally premised on the fact that the Appellant had initiated various recovery actions before DRT, under the Negotiable Instruments Act, issued Notice of Sale after filing of the Section 7, which all purportedly gave rise to a 'malafide intent' that the Appellant is only interested in recovery instead of resolution of the Corporate Debtor, is misconceived and fundamentally flawed observation and even otherwise, cannot be a sustainable ground to reject the Section 7 Petition filed by the Appellant.

E. Present Case

- The Corporate Debtor has clearly acknowledged that:
 - Persistent defaults committed on the terms of the Sanction Letters as well the Restructuring Letter,
 - CD has been facing difficulties in procuring funds from other Financial Creditors,
 - CD has been facing difficulties in the sale of the assets of the Corporate Debtor due to issues with the projects of the Corporate Debtor itself,
 - the terms of Restructuring as well as the terms of penal interest applicable in terms of default thereof

- failure to comply with the rules and regulations of the civic authorities and its failure to receive mandatory compliance certificates and
- the failure to sell its units at the market rates despite various efforts with different entities.
- All above factors substantiate the Applicant's request for the initiation of CIRP of the Corporate Debtor.

F. Disposed of

- **Set aside** the order of the Adjudicating Authority and **direct admission** of insolvency under Section 7.

Interest Free Maintenance Security paid by allottees for the maintenance of common areas and other facilities does not fall under the definition of Financial Debt, under Section 5(8) of the IBC – ILD Owners Welfare Association Vs. ALM Infotech City Pvt. Ltd. – NCLAT New Delhi

Brief about the decision:

Facts of the case

- The respondent launched a project by the name ILD Trade Centre in Gurgaon, in which occupancy certificate was received on 19.11.2010.
- Builder Buyers Agreement (BBA) was executed and subsequently Conveyance Deed were also executed in favour of the different unit holders in the year 2015 onwards.
- Under the Conveyance Deed, unitholders were also required to pay a sum of Rs.100 sq. ft. super area of their respective unit to the respondent towards the Interest Free Maintenance Security (IFMS). The IFMS was collected towards maintenance of the common area and other common facilities and common area amenities.
- Completion Certificate was also received on 03.06.2016.
- With regard to maintenance, complaints were filed by the unitholders as well as the appellant.
- On 06.10.2023, appellant sent a demand notice of Rs. 2.95 Crore to the respondent, the project proponent and thereafter in April 2024 filed an application under Section 7 of IBC, claiming default of the financial debt.
- Adjudicating Authority by the impugned order **rejected** the application under Section 7 holding that the IFMS is not a financial debt, hence the application under Section 7 is not maintainable.
- Aggrieved by the order, rejecting Section 7 application, this appeal has been filed.

Question

Whether the amount which deposited by the Unitholders towards Interest Free Maintenance Security (IFMS) is a Financial Debt which is owed by the corporate debtor to the Unitholder?

Decision of the Appellate Tribunal

- The present is a case where Conveyance Deed has already been executed in favour of the unitholders and the appellant has demanded the amount of IFMS from the corporate debtor, which was to be deposited as per Clause 26 of the Conveyance Deed by the allottees towards maintenance of common area services, installation, common passage, etc. The corporate debtor has been referred as a vendor and the allottee as the vendee and by virtue of the Conveyance Deed, the title of the unit has been transferred to the vendee.
- From Clauses 26 & 27, it is clear that amount which has been deposited which was asked from the allottees @ Rs.100 per sq. ft. super area towards IFMS was in order to maintain the common area services, installation, common passages, interest corridors staircase and other common facilities and amenities lifts escalators, etc. Clause 27 indicates that the amount maintenance charges shall be payable by the vendee to the vendor or nominated maintenance agency. The amount which is paid by the allottee towards IFMS security is the amount which is paid towards obtaining services and the amount is payable to the vendors/nominated maintenance agencies. The services thus are to be provided by vendor or maintenance agencies.
- From the nature of transaction entered between the corporate debtor and the allottees towards for payment of IFMS, there is no disbursal for time value of money in the transaction. The amount was required to be paid by the allottees towards the services which was to be given towards maintenance of common areas and other facilities as referred to in Clause 26.
- The Hon'ble Supreme Court in *Global Credit Capital Limited & Anr. v. Sach Marketing Pvt. Ltd. & Anr.* reported in [\(2024\) ibclaw.in 125 SC](#), has laid down that for finding out the character of the debt, nature of the transaction entered between the parties has to be captured and find out and it is only after determining the real nature of transaction, issue can be answered as to whether there is a financial debt or not.
- For being a financial debt within meaning of Section 5(8), the amount needs to be disbursed against the consideration of time value of money and includes thus disbursement for time value of money is a condition precedent for falling any transaction within a definition of financial debt.

In all transactions from sub-Clauses (a) to (f) requirement of disbursement for time value of money is must, which has already settled by the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors. reported in [\(2019\) ibclaw.in 13 SC](#).

- In *Corab India Pvt. Ltd. v. Birendra Kumar Aggarwal & Anr.*, [\(2024\) ibclaw.in 734 NCLAT](#), security deposit was made for obtaining a lease from the corporate debtor. It was held that security deposit was to be treated as payment towards lease rent and never disbursed or deposited against consideration of time value of money. The appellant claimed that the security deposit is a financial debt. In the above context, this Tribunal had occasion to consider the above appeal. This Tribunal noticed the essential elements for proving a financial debt. This Tribunal also considered the question as to whether the amount claimed by the appellant fell into the category of operational debt. The said security deposit was held to be deposit advance for use of lease premises and was held to be covered in the provision of services and therefore fell in the purview of operational debt.
- In the present case, it is clear that **IFMS, maintenance security was towards providing services by the vendor/maintenance agencies and the amount was paid by the appellant for obtaining services regarding maintenance and the amount could not be held to be a financial debt.**
- The Hon'ble Appellate Tribunal, thus is of the view that finding of the Adjudicating Authority holding that amount in question i.e., IFMS does not amount to financial debt, suffers from no infirmity. There is no merit in the appeal. Appeal **dismissed**.

Can CIRP be commenced against a Joint Venture, which is not a corporate person under Section 3(7) of the IBC, even if it is formed by corporate entities (corporate persons)? – Gagan Chhabra Vs. SMS Vishwa JV – NCLAT New Delhi

Brief about the decision:

Facts of the case

- A Joint Venture name, SMS Vishwa JV created by SMS Paryavaran Ltd., M/s. Vishwa Infrastructures & Services Pvt. Ltd. and M/s. GSJ Envo Ltd.
- The appellant, a lawyer by profession provided legal services to SMS Vishwa JV (Respondent) in arbitration proceeding which took place between the respondent and Thane Municipal Corporation.
- SREI Equipment Finance Ltd. filed a Section 7 application against M/s. SMS Vishwa Infrastructures and Services Pvt. Ltd., one of the members of SMS Vishwa JV before the NCLT Hyderabad, which was admitted on 31.08.2018.

- A Section 7 petition was filed before the NCLT Delhi against SMS Paryavaran Ltd., which was admitted vide order dated 03.01.2020.
- The Appellant filed its claim as an operational creditor in Form-B dated 05.10.2020 for an amount of Rs.13,07,060/- to the Resolution Professional of SMS Paryavaran Ltd., which claim was admitted.
- Liquidation proceeding of M/s. Vishwa Infrastructures and Services Pvt. Ltd. was completed and was allowed by order dated 01.07.2022 by the NCLT Hyderabad.
- In the CIRP of the SMS Paryavaran Ltd., resolution plan was approved in which appellant was also proposed certain payment as an operational creditor.
- A demand notice dated 12.06.2023 has been issued by the appellant to the SMS Vishwa JV claiming a debt of Rs.2,49,00,000/-.
- The appellant filed Section 9 application before the NCLT, New Delhi on 18.07.2023.
- Adjudicating authority passed an order on 06.10.2023 requiring the appellant to file an affidavit on the maintainability of the application. Appellant filed an affidavit dated 26.10.2023 titled as "affidavit on the maintainability".
- The adjudicating authority heard the arguments of the appellant on the maintainability of the Section 9 application and by impugned order dated 14.05.2024 rejected the application as non-maintainable.

Decision of the Appellate Tribunal

- The proceeding under Section 9 can be initiated against the corporate debtor who owes a debt to any person. Definition under Section 3(8) provides that corporate debtor means a corporate person, thus precondition of entity to be treated as corporate debtor within the meaning of IBC is that it should be a corporate person. Corporate person has been defined in Section 3(7) which means a company defines under Clause 2 of the Companies Act 2013, limited liability partnership or any other person incorporated with limited liability under any law.
- It is the case of the appellant itself that respondent SMS Vishwa JV is a joint venture. Joint venture known as SMS Vishwa JV is not an incorporated entity.
- SMS Vishwa JV is not an incorporated entity and it was only unincorporated joint venture, which came together for a purpose and is not an incorporated entity. The three companies which came together to enter into agreement on 20.08.2008 to form a joint venture are not the party to Section 9 application. SMS Vishwa JV being not incorporated entity, application under Section 9 was clearly not maintainable.

- It is also relevant to notice that with respect to 2 companies of the joint venture, i.e., SMS Paryavaran Ltd. and M/s. Vishwa Infrastructures and Services Pvt. Ltd., CIRP had already been initiated which had come to an end. The rejection of the claim of same amount against the lead member was not even pursued by the appellant and the appellant in the CIRP of SMS Paryavaran Limited filed another claim in 'Form-B' for amount of Rs.13,00,000/- which was admitted and has been dealt in the resolution plan.(p13)
- Section 9 application filed by the appellant was not maintainable against SMS Vishwa JV. The appeal is dismissed, upholding the order of the adjudicating authority, although on the grounds as noted above. Parties shall bear their own costs.

Can State GST Dept. (SGST) be considered as secured creditor relying on Section 55 of the Odisha Value Added Tax Act | Can Rainbow Papers Judgment be applied in context of Section 11E of the Central Excise Act, 1944? – GST and Central Excise Angul Division, Rourkela GST Commissionerate Vs. Shri Dinesh Sood and Ors. – NCLAT New Delhi

Brief about the decision:

A. Rainbow Papers Judgment cannot be applied in context of Section 11E of the Central Excise Act, 1944

- The legislative scheme in Section 11E of Central Excise Act, 1944 recognizes the first charge on the assets of assessee, except in respect of the enactments mentioned therein, one of which is IBC. The plain meaning of the above provision is that except for the enactments mentioned in Section 11E, there shall be first charge on the property of the assessee. Section 48 of the Gujarat VAT Act, does not create any exception as has been carved out in Section 11E.
- The Hon'ble Appellate Tribunal, thus, is of the clear opinion that **Section 11E of the Central Excise Act is not *pari materia* to Section 48 of the Gujarat VAT Act and the judgment of the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd., (2022) ibclaw.in 107 SC*, cannot be applied in context of Section 11E of the Central Excise Act**, which is a provision on the basis of which claim was filed by the Appellant as Operational Creditor in Form-B.
- The Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd., (2022) ibclaw.in 107 SC* held that security interest can be created by operation of law, but Section 11E of Central Excise Act, cannot be held for creation of any security interest by operation of law, rather the provision itself recognizes exception contained therein. Use of expression "*save as otherwise provided*" clearly means that Section 11E does not create any first charge on the assets of the Corporate Debtor, which are being dealt with under the provisions of Insolvency and Bankruptcy Code, 2016.

B. Can State GST Dept. (SGST) be considered as secured creditor relying on Section 55 of the Odisha Value Added Tax Act?

- The submission pressed by the Appellant is that the State GST Department has been treated to be secured creditor and was allocated the amount equivalent to secured creditors, i.e. 29.61% relying on the judgment of Hon'ble Supreme Court in *Rainbow Papers (supra)*.
- The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors.* reported at [\(2019\) ibclaw.in 07 SC](#) has laid down that there has to be equal treatment of creditors in a class. The Hon'ble Supreme Court, however, has held that there has to be equitable treatment with respect to creditors of a particular class. The Hon'ble Supreme Court in the above case has held that equitable principle will apply in respect of creditors of the same class and that cannot be applied in case of secured and unsecured creditors.
- Section 55 of the Odisha Value Added Tax Act, 2004 is *pari materia* to Section 48 of Gujarat VAT Act. Hence, in the Resolution Plan, reliance on judgment of *Rainbow Papers (supra)* has rightly been made, treating the State GST Department to be secured creditor relying on Section 55 of the Odisha Value Added Tax Act and the Appellant cannot claim any parity with Section 55 of the Odisha Value Added Tax Act with respect to its claim in Section 11E.
- The Hon'ble Appellate Tribunal does not find any substance in the submission of the Appellant that there has to be equal treatment with respect to State GST Department and the Appellant. We do not find any violation of Section 30, sub-section (2), sub-clause (b) in the facts of the present case and submission of the Appellant on the above count also fails.

C. The legislative scheme under Section 142A of Customs Act, 1962 is same as under 11E of Central Excise Act, 1944

- Section 142-A of the Customs Act is *pari materia* to Section 11, sub-clause (E) of the Customs Act. The Customs Authorities would have the first charge on the property of the assessee under the Customs Act, except with respect to cases under Section 529A of the Companies Act, 1956; the Recovery of Debts Due to the Banks and the Financial Institutions Act, 1993; and the SARFAESI Act, 2002 and the IBC, 2016.
- Thus, the legislative scheme, which is delineated under Section 142-A is same as under 11E. Thus, there cannot be any first charge on the assets of the Corporate Debtor, which are being dealt with under the IBC.

D. Conclusion

- The Adjudicating Authority did not commit any error in rejecting the IA filed by the Appellant, being IA No.2537 of 2024. The Appellant cannot be held to be secured creditor of the Corporate Debtor and hence, the Appellant also cannot claim any parity with the payment of State GST.
- The judgment of the Hon'ble Supreme Court in Rainbow Papers (supra) cannot be relied by the Appellant for the proposition that for dues under Central Excise Act, there shall be first charge on the assets of the Corporate Debtor.
- The Appellate Tribunal does not find any error in the order of the Adjudicating Authority rejecting IA No.2537 of 2024. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

7 days' notice period under Section 99(5) of IBC is mandatory | The use of the word 'may' in Section 99(4) means that powers conferred on Resolution Professional are absolutely discretionary, however, once RP has issued a notice, Section 99 (4) will be no more directory in nature, and becomes mandatory – Comandur Parthasarathy Vs. Lalit Kumar Dangi and Ors. – NCLAT Chennai

Brief about the decision:***Facts of the case***

- In the Section 95 application, the Resolution Professional has issued a notice dated 21.06.2024 under Section 99(4) of IBC, calling for necessary information from the Personal Guarantor/Appellant herein.
- In the said notice, the number of days, which was granted to submit the information was confined to two days.
- On 29.06.2024 the Personal Guarantor sought a copy of the company petition and the Resolution Professional provided the copy of said petitions on 03.07.2024, reminding him to submit the information as called for by the notice of 21.06.2024.
- The Resolution Professional waited till 23.07.2024 for the required information and in the absence its receipt, he filed his report on the Section 95 of the I & B Code, 2016, application on 23.07.2024.
- The Personal Guarantor puts a challenge to the impugned order of 21.10.2024.

Decision of the Appellate Tribunal**A. Interpretation of Section 99(4) and Section 99(5) of IBC**

- If the language used under Section 99 (4) of IBC is taken into consideration, it has left it open, to be within an exclusive domain of the Resolution Professional **“who may”** seek such further **“information or explanation”** in connection with the application under Section 95 of the I & B Code, 2016, from the Debtor or the Creditor or any other person, who in the opinion of the Resolution Professional may provide the required information.
- Provisions under Section 99 (4) of the I & B Code, 2016, is not limited in its applicability, though it starts with the rider that it is the prerogative of the Resolution Professional who, according to his own wisdom, may call for an explanation or information. **The use of the word ‘may’ herein would be an absolutely discretionary exercise of powers by the Resolution Professional, which will absolutely depend upon his decision-making wisdom, depending on the requirements for preparing the report, whether to call for an explanation or information or not.**
- In other words, it could be said and as argued by the Respondents Counsel also that, **the provisions under Section 99 (4) of the I & B Code, 2016, since it uses the word ‘may’, and as the exercise of powers of calling for the information or explanation has been made discretionary at the wisdom of the Resolution Professional, it is argued that the provisions under Section 99 (4) of the I & B Code, 2016, is not mandatory.**

B. As soon as RP has issued a notice, the provision contained under Section 99 (4) of IBC, will be no more directory in nature, and the provision becomes mandatory

- As soon as the Resolution Professional has issued a notice dated 21.06.2024 calling for necessary information from the Personal Guarantor/Appellant herein, it means that he has exercised his wisdom in this regard of the need to collect and collate information to prepare his Report. **If that be so, as soon as the Resolution Professional has issued a notice on 21.06.2024, the provision contained under Section 99 (4) of the I & B Code, 2016, will be no more directory in nature, and the provision becomes ‘mandatory’, meaning thereby that the conditions following thereof would necessarily be required to be followed.**

C. If a short notice period (less than 7 days) is issued under Section 99(4), sending a reminder will not benefit the Resolution Professional (RP).

- Issuance of the Letter dated 03.07.2024 by way of reminder, will not help the Resolution Professional overcome the shortcomings of initial notice of 21.06.2024, because at no point of time till 03.07.2024 he ever contemplated to issue a reminder and because he by his own admissions had finalized the report on 26.06.2024 itself. Hence, **complying with the conditions of providing a time period upto 7 days to file the information under Section 99 (5) of the I & B Code, 2016, becomes mandatory for the Resolution Professional who issued the first notice on 21.06.2024 and non-compliance with the same cannot be ameliorated by issuance of a Letter on 03.07.2024, in the shape of a reminder, calling for a reply in pursuance to the notice of 21.06.2024,** the reason being that the Letter of 03.07.2024, apart from the fact that, it will not have an independent existence, to satisfy the conditions contemplated under Section 99 (5) of the I & B Code, 2016, of providing time upto 7 days to file reply under Section 99 (5) of the I & B Code, 2016, which was to be complied at the stage when the first notice was issued on 21.06.2024.
- The legislature has aptly thought to be appropriate that before the report is taken as to be the basis for admission of the procedure under Section 95 of the I & B Code, 2016, at the stage of Section 100 of the I & B Code, 2016, the report is required to be embellished with as much information and explanation as possible and therefore a procedure to obtain such information has been outlined in Section 99(4) & Section 99 (5) of the I & B Code, 2016. **Though calling for such information is purely at the discretion of Resolution Professional, but it will have to comply with the conditions of time frame prescribed under Section 99 (5) of the I & B Code, 2016.**

D. Dilip B. Jiwrajka v. Union of India & Ors. Case

- Meaning thereby, the judgment of *Dilip B. Jiwrajka v. Union of India & Ors.*, (2023) ibclaw.in 147 SC did not take into account a right, which stands created by exercise of wisdom by the Resolution Professional of calling for an explanation/information under Section 99 (4) of the I & B Code, 2016. Hence the principle, which has been attempted to be borrowed from the judgment of *Surendra B. Jiwrajka (Supra)* may not be applicable when the Resolution Professional himself has already exercised its discretion and had issued a notice on 21.06.2024. In that eventuality, **if the spirit of Section 99 (5) of the I & B Code, 2016, is required to be complied with, it has to be complied with in a symphonised reading of Section 99 (5) of the I & B Code, 2016, and that would be an independent provision, to be read in the light of the ratio laid down in the judgment of *Surendra B. Jiwrajka (Supra)*.**

- All actions taken thereafter the issuance of notice of 21.06.2024, were unilateral action taken at the behest of the Resolution Professional, of preparing the report on 26.06.2024, of issuing the letter of 03.07.2024 and of submission of the report on 14.08.2024, because all these acts at the hands of the Resolution Professional cannot camouflage or dilute the legislative spirit and purpose as aimed under Section 99 (5) of the I & B Code, 2016, which has to be read along with Section 99 (4) of the I & B Code, 2016.
- The issue of substantial compliance cannot be substituted herein, under the given facts. Issuance of a mere reminder letter will not constitute substantial compliance unless it is shown that such action fulfils the codal provisions of Section 99(5) of the I & B Code, 2016. Mere submission of the report of 14.08.2024 or a prior act of issuance of a letter of 03.07.2024 cannot be construed as to be substantial compliance post facto.

E. Disposed of

- In view of the matter as discussed above, the impugned order dated 21.10.2024 is hereby **quashed**. The matter is remitted back to be decided afresh after providing a time period of seven days from the date of the receipt of the certified copies of this order by the Ld. Adjudicating Authority for filing a reply furnishing information as contemplated under Section 99 (5) of the I & B Code, 2016.(p20)
- For the aforesaid reason, the appeal would stand **allowed**, the impugned order is **quashed**, and all pending interlocutory applications would stand closed.

RD UPHOLDS RS. 3.27 LAKH ROC PENALTY ON DIRECTOR FOR HOLDING DUPLICATE DIN FOR 555 DAYS

Director Identification Number (DIN) and the frame work of the Companies Act 2013

1. Director Identification Number (DIN) is a unique identification number, allotted by the Central Government to each of the aspiring individual who would like to be director of any company. The DIN number is allotted by the Central Government and is valid for the lifetime of the director. As per the provisions of Companies Act 2013, that an individual should have a valid DIN number for him / her to be appointed as a director in any company. Obviously, it means, any individual who is already a director would be having the DIN number. The framework of the Companies Act 2013 provides certain restrictions and prohibition to obtain more than one DIN number. As per the provisions of the Companies Act 2013, no person who already has a DIN number shall apply for another DIN number which means, one DIN number for each of the director. Further the Companies Act 2013 read with relevant rules also provide for the surrender of DIN number and the DIN number can be surrendered by making an application to the Central Government in the specified e-form on the ground that the individual concerned was never been appointed as director in any company and also the DIN number never been used for filing any document with any authority.

Relevant provisions relating DIN under the Companies Act 2013

2. Section 155 of the Companies Act 2013 provides that no individual, who has already been allotted a Director Identification Number (DIN) under section 154 shall apply for, obtain or process another Director Identification Number.

Penal provision for default / violation

3. Section 159 of the of the Companies Act 2013 provides that if any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156 such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each days after the first during which such default continues.

Consequences of default if any and the relevant case law

4. As the provisions of law, prohibits in obtaining more than one DIN by a director, any violation to the above provision i.e. obtaining more than one DIN would constitute the violation of the provisions of the Companies Act 2013 and the regulators would initiate penal action and levy the penalty as provided under the Companies Act 2013.

To understand the consequences let us go through a decided case by the Registrar of Companies of Kolkata on 3rd December 2024 and upheld by the Regional Director of Eastern Region, Kolkata recently on 7th May 2025.

Details of the director

5. The case pertaining to a director named Nirmala Baid having the DIN no. 03640941 approved on 10th October 2011) and residing at 1B, Outram Street, Kolkata, in the state of West Bengal A and the company in which she was a director was under the jurisdiction of the Registrar of Companies of West Bengal.

Facts of the case

6. As per the adjudication order passed by the Registrar of Companies, West Bengal of Kolkata, the concerned director was holding the duplication DINs for period of 555 days in violation of section 155 of the Companies Act 2013. The Registrar of Companies after following the due procedure of law imposed a penalty of Rs. 3,27,500 on the concerned director for violating section 155 of the Companies Act 2013 on 3rd December 2024. The details of duplicate DIN held by the director was as under: -

| Sr. No | No. of DINs | DIN number | DIN obtained on | Associated with Company /LLP |
|---------------|--------------------|-------------------|------------------------|---|
| 1 | First one | Din 03191514 | 10-10-2011 | ----- |
| 2 | Second one | DIN 10088540 | 17-04-2023 | 1. Velvet Hopes & Fashions Private Limited 2. Ramkali Projects Private Limited 3. Kingsmen Enclave LLP 4. Mulberry Enclave LLP |

Adjudication order passed by the Registrar of Companies / Adjudication Officer

7. The Registrar of Companies / Adjudication Officer, after having considered the facts and circumstances of the case, in exercise of the powers conferred vide Companies (Amendment) Ordinance 2019, was entrusted to adjudicate penalties under section 159 of the Companies Act 2013 and accordingly the Adjudication officer imposed the penalty of Rs. 3,27,500/- (Rupees three lakh twenty-seven thousand and five hundred only) on the concerned director pursuant to Rule 3(12) of Companies (Adjudication of Penalties) Rules 2014 and the proviso of the said Rule and Rule 3(13) of Companies

(Adjudication of Penalties) Rules 2014 read with General Circular No. 1/2020 dated 2nd March 2020 as per table below for violation of section 155 read with section 159 of the Companies Act 2013.

| Sr. No | Name of the director in default upon whom penalty imposed | Nature of violation committed under the Companies Act 2013 | Penalty under section 159 of the Act | Penalty imposed |
|--|---|--|--------------------------------------|-----------------|
| | | | Rupees | Rupees |
| 1 | Nirmala Baid Director-DIN: - 03640941 | Section 155 of the Co's Act 2013 | 50,000 + 500*555 = 3,27,500 | 3,27,500 |
| Total Penalty | | | | 3,27,500 |
| The delay period of 555 days of default calculated from 17.04.2023 i.e. date of obtaining duplicate DIN to 23.10.2024 i.e. date of filing of DIR-5 to surrender the duplicate DIN. | | | | |

Appeal filed by the director to the Regional Director (Eastern Region)

8. The appeal under sub-section (5) of section 454 of the Companies Act 2013 read with the Companies (Adjudication of Penalties) Rules 2014 had been filed by the concerned director in default on 16th January 2025 using e-form ADJ bearing SRN No. A82443565 challenging the penalty order passed by the Registrar of Companies of Kolkata on 3rd December 2024 for violating section 155 of the Companies Act 2013.

Main contention of the appeal

9. The appeal petition had placed reliance on certain orders passed by some of the other Regional Directors wherein the penalty order had been reduced and in view of this the prayer was made to the Appellate Authority for the for reduction of penalty levied upon by the Registrar of Companies.

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

10. Upon the receipt of the appeal petition, the Regional Director had noted that the Adjudication order was communicated to the concerned director through letter No. ROC/ADJ/650/2024/8637 on the same date of the order i.e. on 3rd December 2024 and the appeal was submitted within the 60 days' time limit as required under section 454(6) of the Companies Act 2013.

The Regional Director admitted the appeal for hearing and thereafter the Regional Director issued a personal hearing notice to the concerned director directing him to appear in his office for a personal hearing on 21st March 2025 and make the submissions.

On the day of personal hearing

11. The concerned director had appointed an authorized representative – a practicing company secretary - who had appeared on behalf of the director and represented the matter and made the submissions on the day of personal hearing i.e. on 3rd March 2025. The Regional Director. The authorized practicing company secretary was requested to make submissions, by virtue of which the Regional Director could invoke the provisions of section 454(7) of the Companies Act 2013.

The practicing company secretary had reiterated the submissions as stated in the appeal petition and once again the practicing company secretary had placed on certain orders passed by some of the other Regional Directors wherein the penalty order had been reduced, and the practicing company secretary had requested for reduction of penalty in the current case.

Conclusions reached by the Regional Director

12. After hearing the submissions from the authorized representative of the concerned director and also based on the facts and circumstances of the present matter, the Regional Director had come to a conclusion that there was no ground made out to interfere in the order passed by the Registrar of Companies and therefore decided not to interfere in the impugned adjudication order passed by the Registrar of Companies dated 3rd December 2024.

Order passed by the Regional Director

13. 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, considered that it was fit, not to interfere in the impugned adjudication order passed by the Registrar of Companies dated 3rd December 2024 and accordingly he upheld the decision of the Registrar of Companies.

As such the concerned director was directed to comply with the adjudication order passed by the Registrar of Companies, West Bengal of Kolkata dated 3rd December 2024 by paying the penalty amount of Rs. 3,27,000 as stated therein within a period of 90 days and failure to pay the penalty would attract the provisions of section 454(ii) of the Companies Act 2013. The order ended up in stating that the instant appeal stood disposed of accordingly.

Despatch of the order

14. The order was sent by the Registrar of Companies in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the concerned director at his address as per the details registered under the Ministry of Corporate Affairs portal and also to the Registrar of Companies, Kolkata, West Bengal and a copy was also sent the Officer in Charge, E-Gov. Cell, Ministry of Corporate Affairs at New Delhi-110001, with a request to upload this order on the website of the Ministry.

The complete order for reading

15. The readers may like to read the complete order passed by the Regional Director, Eastern Region, Kolkata – bearing application No. RD/T/ADJ / 155/NB/Appeal/2025 /1355-57 in the matter of M/s Nirmala Baid (Director) – RD East 3.6.2025 before the Regional Director, Eastern Region. Ministry of Corporate Affairs Kolkata. in the matter of the Companies Act 2013 and in the matter of M/s Nirmala Baid (Director)18, Outram Street, Kolkata, West Bengal (DIN:03640941) and in the matter of application under section 454 (5) of The Companies Act, 2013 for preferring an appeal against the penalty order dated 03.12.2024 of Registrar of Companies, West Bengal passed for violation of the Provisions of section 155 of the Companies Act, 2013 and the relevant website is as provided below: - [https:// www.mca.gov .in/ content/ mca/ global/ en/data-and- reports/rd-roc-info/rocadjudication-orders.html](https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/rocadjudication-orders.html) (the order is uploaded under RD East on 3rd June 2025 titled as in the matter of M/s Nirmala Baid (Director)

Conclusion

16. We can conclude in saying that any director obtaining Director Identification Number (DIN) should keep in mind that the DIN is allotted by the Government to each of the aspiring individual who would like to be director of any company and the same is valid for the lifetime of the director. Further, the law prohibits in obtaining more than one DIN number and also the law says, the DIN could be surrendered any time by an individual when the DIN number never been used. The directors should keep this mind and ensure that they always have only one DIN number and if they happen to obtain another DIN then – though this may appear as a trivial matter would attract penalty and fines, in view of the provisions of the Companies Act 2013 as has been in this case. The concerned director in this case was penalized to a tune of Rs. 3.27 lakh the director could not point our any infirmity in the adjudication order passed by the Registrar of Companies.

FORM CSR-1 AMENDMENT

- **Applicability**

With effect from 1st April 2021, CSR-1 registration was made mandatory by the Ministry of Corporate Affairs for various entities registered as **Trust, Society or Section 8 company** seeking to implement CSR projects funded by companies mandated under Section 135 of the Companies Act 2013 to carry out CSR activities.

- **As per Rule 4 of The Companies (CSR Policy) Rules 2014**

(a) Every entity who intends to undertake any CSR activity shall register with the Central Government by **filing the form CSR-1 electronically with the Registrar**, w.e.f. 1st April 2021.

(b) Form CSR-1 shall be signed and shall be **verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice**.

(c) On the submission of the Form CSR-1 on the portal, a **unique CSR Registration Number** shall be generated by the system automatically.

- **Amendment**

The MCA will review the application and may request additional documentation or clarification. If the application is approved, the NGO will receive a CSR-1 registration certificate, which allows them to receive CSR funding from companies.

MCA vide its notification dated 7th July, 2025 have amended Companies (Corporate Social Responsibility Policy) Rules, 2014 by substituting e-form CSR-1 – Registration of Entities for undertaking CSR Activities. These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025.

They shall come into force with effect from the 14th day of July, 2025.

CSR - 1

The **amendment involves substituting the existing e-form with a new one** for registration of entities undertaking CSR activities. However, **the Ministry of Corporate Affairs has not specified in this Notification whether CSR implementing agencies already having CSR-1 registration and the Unique Identification Number need to re-apply in the new form with the additional details**.

- **What are the benefits of getting registered with MCA?**

1. Secure funding from Corporate with fewer legal hurdles
2. It enhances the goodwill & public image of NGOs
3. CSR activities become hassle-free

If you are seeking CSR funding being an NGO, it is beneficial to register with the MCA by filing Form CSR-1 as soon as possible.

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