

VEDANAM



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August 2025

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 August 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 – 30TH JULY 2025

SEBI, via circular dated July 30, 2025, has extended the timelines for implementing Phase II and Phase III of its earlier circulars on revamping nomination facilities in the Indian securities market (dated January 10 and February 28, 2025). Due to operational challenges highlighted by depositories, depository participants, and industry associations, Phase II implementation is deferred to August 8, 2025, and Phase III to December 15, 2025. All other provisions of the earlier circulars remain unchanged.

SEBI Circular – 30th July 2025

SEBI CIRCULAR – 31ST JULY 2025

SEBI, through its circular dated July 31, 2025, has mandated all SEBI-regulated entities (REs)—such as stock exchanges, brokers, mutual funds, depositories, and other intermediaries—to make their digital platforms fully accessible to persons with disabilities (PwDs), in compliance with the Rights of Persons with Disabilities (RPwD) Act, 2016 and related rules. This follows the Supreme Court’s landmark judgment on April 30, 2025, which recognized digital access as a fundamental right under Article 21 of the Constitution.

To implement this, REs must follow accessibility standards such as WCAG 2.1, GIGW, and IS 17802, ensuring accessible websites, mobile apps, e-KYC processes, investor documents, and grievance mechanisms. They are required to appoint IAAP-certified auditors, conduct audits within 3 months, and complete remediation within 6 months. Annual compliance reports must also be submitted. Additionally, REs must embed accessibility into staff training, procurement policies, and design processes, promoting a “digital accessibility by design” approach across the securities market ecosystem.

SEBI Circular – 31st July 2025

SEBI CIRCULAR – 5TH AUGUST 2025

SEBI, vide its circular dated 5th August, 2025, has revised the mechanism for handling requests for review, appeal, or waiver of penalties imposed by Market Infrastructure Institutions (MIIs) such as stock exchanges, clearing corporations, and depositories. Earlier, all such requests were placed before the Member Committee (MC) for consideration. Now, SEBI has clarified that only appeals against actions taken by the Internal Committee (IC) of the MC or under a pre-approved regulatory policy will continue to be reviewed by the MC. However, appeals against actions taken directly by the MC itself must now be handled by a separate

mechanism established by the Governing Board of the MII, comprising Public Interest Directors and/or independent external professionals who are not part of the MC. The Governing Board is also required to formulate a Standard Operating Procedure (SOP) for this process. These provisions will come into effect from the 45th day of the circular's issuance, and MIIs must amend their internal rules and inform market participants accordingly.

SEBI Circular – 5th August 2025

SEBI CONSULTATION PAPER – AMENDMENTS TO RPT UNDER SEBI (LODR), 2015 AND CIRCULARS THEREUNDER – 4TH AUGUST 2025

SEBI vide its consultation paper dated 4th August, 2025 has proposed significant changes to the SEBI LODR Regulations, 2015, regarding Related Party Transactions (RPTs). The key objective is to simplify compliance for listed entities, especially those with high turnovers, while enhancing corporate governance and minority shareholder protection.

The proposed amendments can be categorized into following main areas:

- Threshold for determining material Related Party Transactions (“RPTs”) undertaken by listed entities.
- Threshold for determining material RPTs undertaken by subsidiaries of a listed entity.
- Relaxation in the minimum information to be furnished to the Audit Committee and shareholders for the approval of RPTs.
- Inclusion of provision in Regulation with respect to validity of omnibus approval for RPTs granted by the shareholders.
- Clarifications pertaining to applicability of RPT provisions.

Analysis From Mehta & Mehta

SEBI Consultation paper – amendments to RPT under SEBI (LODR), 2015 and circulars thereunder – 4th August 2025

EASE OF DOING BUSINESS (EODB) -POLICY FOR JOINT ANNUAL INSPECTION BY MIIS –INFORMATION SHARING MECHANISM– ACTION BY LEAD MII

SEBI, through Circular SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/113 dated August 7, 2025, has introduced a new policy for joint annual inspections of stock brokers and depository participants by Market Infrastructure Institutions (MIIs), effective from December 1, 2025, replacing the earlier system of separate inspections.

This move aims to improve supervision, reduce duplication, and enhance ease of doing business. The circular mandates joint inspections for entities selected based on specific high-risk criteria (such as repeated penalties, high investor complaints, or high-risk scores), establishes an inter-MII information sharing mechanism, and introduces a Lead MII system to coordinate enforcement actions. It also exempts certain inactive or recently inspected entities and provides for special inspections based on specific triggers. MIIs must formulate a joint SOP by November 1, 2025.

Ease of doing business (EODB) - Policy for joint annual inspection by MIIs -information sharing mechanism-action by Lead MII

REVIEW OF FRAMEWORK FOR CONVERSION OF PRIVATE LISTED INVIT INTO PUBLIC INVIT

SEBI, through Circular SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2025/114 dated August 8, 2025, has revised the framework for the conversion of private listed InvITs into public InvITs (Chapter 14 of the Master Circular dated May 15, 2024) to streamline sponsor contribution requirements and align public issue norms with those applicable to follow-on offers. Key changes include updated provisions for minimum unitholding and lock-in requirements for sponsors and sponsor groups as per

Regulations 12(3), 12(3A), and 12(5) of the InvIT Regulations, and substituting procedural and disclosure references related to “initial offer” with those applicable to “follow-on offer” to ensure consistency in regulatory compliance during conversion.

Review of Framework for conversion of Private Listed InvIT into Public InvIT

TRANSACTION CHARGES PAID TO MUTUAL FUND DISTRIBUTORS

SEBI, via Circular SEBI/HO/IMD/IMD-PoD-1/P/CIR/2025/115 dated August 8, 2025, has removed the provision allowing Asset Management Companies (AMCs) to pay transaction charges to mutual fund distributors for bringing in minimum subscriptions of ₹10,000, as specified in paragraphs 10.4.1.b and 10.5 of the Mutual Funds Master Circular dated June 27, 2024. This change, effective immediately, follows public and industry consultations and reflects SEBI’s stance that distributors, as agents of AMCs, should be remunerated directly by the AMCs through other means rather than fixed transaction charges.

Transaction charges paid to Mutual Fund Distributors

SEBI CIRCULAR – AUGUST 12, 2025

SEBI, via Circular dated August 12, 2025, has allowed Investment Advisers (IAs) and Research Analysts (RAs) to meet their deposit requirement under Regulation 8 of the SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 not only through a bank deposit with a scheduled bank (lien marked in favour of IAASB/RAASB) but also through units of liquid mutual funds or overnight mutual funds (also lien marked). This change, approved by the SEBI Board in June 2025 and notified via the respective Amendment Regulations on August 6–7, 2025, must be complied with by September 30, 2025, with IAASB/RAASB directed to establish systems for implementation.

SEBI Circular – August 12, 2025

EXTENSION OF TIMELINE FOR IMPLEMENTATION OF SEBI CIRCULAR ‘MARGIN OBLIGATIONS TO BE GIVEN BY WAY OF PLEDGE/RE-PLEDGE IN THE DEPOSITORY SYSTEM’ DATED JUNE 03, 2025

SEBI, vide its Circular dated August 18, 2025, has extended the implementation timeline of its earlier circular dated June 03, 2025 on “Margin obligations to be

given by way of pledge/re-pledge in the Depository System” from September 01, 2025 to October 10, 2025.

Extension of timeline for implementation of SEBI Circular ‘Margin obligations to be given by way of pledge/Re-pledge in the Depository System’ dated June 03, 2025

RELAXATION IN TIMELINE TO SUBMIT NET WORTH CERTIFICATE BY STOCK BROKERS TO OFFER MARGIN TRADING FACILITY TO THEIR CLIENTS

SEBI, vide its circular dated August 26, 2025, has relaxed and harmonized the timelines for submission of half-yearly net worth certificates by stock brokers offering margin trading facility. Instead of the earlier due dates (30th April and 31st October), brokers are now required to submit the auditor-certified net worth certificate within 60 days from March 31 (i.e., by May 31) and within 45 days from September 30 (i.e., by November 15) each year. This amendment, effective immediately, aligns the compliance timeline with financial results filing under SEBI (LODR) Regulations, 2015, and stock exchanges have been directed to amend their bye-laws and notify members accordingly.

Relaxation in timeline to submit net worth certificate by Stock Brokers to offer margin trading facility to their clients

SEBI CIRCULAR – TECHNICAL CLARIFICATIONS TO CYBERSECURITY AND CYBER RESILIENCE FRAMEWORK (CSCRF) FOR SEBI REGULATED ENTITIES (RES)

SEBI, vide its circular dated August 29, 2025, has issued technical clarifications to the Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs), supplementing earlier circulars and FAQs issued between August 2024 and June 2025. The clarifications cover principles for REs regulated by multiple regulators (Principle of Exclusivity & Equivalence), technical requirements (VAPT, audits, Market-SOC onboarding, ISO 27001 certification, disaster recovery timelines, applicability of NCIIPC guidelines), and confidentiality safeguards for cyber audit reports. Further, SEBI has revised the categorization thresholds for Portfolio Managers and Merchant Bankers under CSCRF and directed REs to follow CERT-In Cyber Security Audit Policy Guidelines. Stock Exchanges, Depositories, and BSE have been instructed to amend their byelaws, notify members

(including IAs and RAs), and implement the directions with immediate effect to strengthen cyber resilience in the securities market.

SEBI Circular – Technical Clarifications to Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs).

EXTENSION OF TIMELINES AND UPDATE OF REPORTING AUTHORITY FOR IAS AND RAS W.R.T. SEBI CIRCULAR FOR COMPLIANCE TO DIGITAL ACCESSIBILITY CIRCULAR 'RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 AND RULES MADE THEREUNDER- MANDATORY COMPLIANCE BY ALL REGULATED ENTITIES' DATED JULY 31, 2025 (CIRCULAR NO. SEBI/HO/ITD- 1/ITD_VIAP/P/CIR/2025/111)

SEBI, through this circular dated 29th August 2025, has granted extensions of timelines for compliance with its earlier circular on mandatory adherence to the Rights of Persons with

Disabilities Act, 2016 for all Regulated Entities (REs). The revised timelines include: submission of compliance/action taken reports and list of digital platforms by 30th September 2025, appointment of IAAP-certified accessibility professionals by 14th December 2025, completion of accessibility audits by 30th April 2026, remediation of findings by 31st July 2026, and annual accessibility audit compliance starting from FY 2026–27. Further, SEBI has updated reporting authorities, designating BSE Ltd. as the reporting authority for both Investment Advisers (IAs) and Research Analysts (RAs), while Stock Exchanges/Depositories will oversee brokers/DPs, and SEBI will remain the authority for MIs and other REs.

Extension of timelines and Update of reporting authority for IAs and RAs w.r.t. SEBI Circular for Compliance to Digital Accessibility Circular 'Rights of Persons with Disabilities Act, 2016 and rules made thereunder-mandatory compliance by all Regulated Entities' dated July 31, 2025 (Circular No. SEBI/HO/ITD-1/ITD_VIAP/P/CIR/2025/111).



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

RBI UPDATE – INTERNATIONAL TRADE SETTLEMENT IN INDIAN RUPEES (INR). APPLICABLE – ALL CATEGORY-I AUTHORISED DEALER BANKS

It has been decided to allow AD banks to open Special Rupee Vostro Accounts (SRVAs) of overseas correspondent banks without referring to the Reserve Bank for approval.

It is applicable with immediate effect.

RBI Update – International Trade Settlement in Indian Rupees (INR). Applicable – All Category-I Authorised Dealer Banks

RBI UPDATE – RESERVE BANK OF INDIA (CO-LENDING ARRANGEMENTS) DIRECTIONS, 2025. APPLICABLE – COMMERCIAL BANKS (EXCLUDING SMALL FINANCE BANKS, LOCAL AREA BANKS AND REGIONAL RURAL BANKS);

ALL-INDIA FINANCIAL INSTITUTIONS; AND, NON-BANKING FINANCIAL COMPANIES (INCLUDING HOUSING FINANCE COMPANIES).

The RBI (Co-Lending Arrangements) Directions, 2025 provide a regulatory framework for co-lending arrangements (CLAs) between regulated entities (REs) such as banks and NBFCs, effective from January 1, 2026. These guidelines mandate a minimum 10% loan retention by each RE, define roles and responsibilities, and ensure clear borrower disclosures through the Key Facts Statement (KFS). Interest rates must be a blended average based on each RE's share, and additional fees must be transparently disclosed. Operationally, loan shares must be transferred within 15 days, routed through an escrow, and classified at borrower-level for asset quality. Default Loss Guarantee is allowed up to 5%, and all REs must ensure compliance with KYC, grievance redressal, and fair practices. Disclosure of CLA partners and aggregate data in financial statements is mandatory.

RBI Update – Reserve Bank of India (Co-Lending Arrangements) Directions, 2025. Applicable – Commercial Banks (excluding Small Finance Banks, Local Area Banks and Regional Rural Banks); All-India Financial Institutions; and, Non-Banking Financial Companies (including Housing Finance Companies).

RBI UPDATE – RESERVE BANK OF INDIA (NON-FUND BASED CREDIT FACILITIES) DIRECTIONS, 2025. APPLICABLE – COMMERCIAL BANKS (INCLUDING REGIONAL RURAL BANKS AND LOCAL AREA BANKS); PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)/ STATE CO-OPERATIVE BANKS (STCBS)/ CENTRAL CO-OPERATIVE BANKS (CCBS); ALL INDIA FINANCIAL INSTITUTIONS (AIFIS); NON-BANKING FINANCIAL COMPANIES (NBFCs) INCLUDING HOUSING FINANCE COMPANIES (HFCS)

The Reserve Bank of India (Non-Fund Based Credit Facilities) Directions, 2025 aim to harmonize and consolidate the regulatory framework governing non-fund based (NFB) facilities like guarantees, letters of credit, and co-acceptances across all regulated entities (REs).

These Directions provide a comprehensive structure for issuance, monitoring, and risk management of NFB exposures, while enhancing transparency, credit discipline, and operational resilience. They also introduce enabling provisions for infrastructure financing through mechanisms like Partial Credit Enhancement (PCE), strengthen prudential norms, and emphasize digital integration for guarantees. These Directions shall be effective from April 1, 2026, with earlier adoption permitted as per the internal policy of the RE.

RBI Update – Reserve Bank of India (Non-Fund Based Credit Facilities) Directions, 2025. Applicable – Commercial Banks (including Regional Rural Banks and Local Area Banks); Primary (Urban) Co-operative Banks (UCBs)/ State Co-operative Banks (StCBs)/ Central Co-operative Banks (CCBs); All India Financial Institutions (AIFIs); Non-Banking Financial Companies (NBFCs), including Housing Finance Companies (HFCS).

RBI UPDATE – INVESTMENT IN GOVERNMENT SECURITIES BY PERSONS RESIDENT OUTSIDE INDIA THROUGH SPECIAL RUPEE VOSTRO ACCOUNT (APPLICABLE - ALL AUTHORISED

DEALER CATEGORY-I BANKS)

The RBI has allowed persons resident outside India holding Special Rupee Vostro Accounts (SRVA) for international trade settlement in INR to invest their surplus rupee balances in Central Government Securities, including Treasury Bills. This provision, effective immediately, is incorporated in the updated Master Direction – RBI (Non-resident Investment in Debt Instruments) Directions, 2025.

RBI Update – Investment in Government Securities by Persons Resident Outside India through Special Rupee Vostro account (Applicable -All Authorised Dealer Category-I banks).

RBI UPDATE – INTRODUCTION OF CONTINUOUS CLEARING AND SETTLEMENT ON REALISATION IN CHEQUE TRUNCATION SYSTEM (APPLICABLE- THE CHAIRMAN / MANAGING DIRECTOR / CHIEF EXECUTIVE OFFICER OF BANKS PARTICIPATING IN CHEQUE TRUNCATION SYSTEM/ NATIONAL PAYMENT CORPORATION OF INDIA)

RBI has issued a circular announcing the transition of Cheque Truncation System (CTS) from the current approach of batch processing to continuous clearing with settlement on realisation.

Under the new CTS modalities, there will be a single cheque presentation session (10 AM–4 PM) with continuous image delivery to drawee banks, which must process and confirm cheques in real time. In Phase 1 (Oct 4, 2025–Jan 2, 2026), confirmations must be given by 7 PM, after which unconfirmed cheques are deemed approved; in Phase 2 (from Jan 3, 2026), confirmations must be within T+3 hours. Settlements, based only on positive or deemed approvals, will occur hourly from 11 AM, with presenting banks required to credit customers within an hour of settlement.

RBI Update – Introduction of Continuous Clearing and Settlement on Realisation in Cheque Truncation System (Applicable- The Chairman / Managing Director / Chief Executive Officer of Banks participating in Cheque Truncation System/ National Payment Corporation of India).

RBI UPDATE – RESERVE BANK OF INDIA (KNOW YOUR CUSTOMER (KYC)) (2ND AMENDMENT) DIRECTIONS, 2025

The Reserve Bank of India has issued the Reserve Bank of India (Know Your Customer (KYC)) (2nd Amendment) Directions, 2025, amending the 2016 KYC Directions. The amendments include: addition of a link to KYC FAQs on the RBI website; ensuring no KYC application, including for Persons with Disabilities (PwDs), is rejected without proper reasoning; extending KYC requirements to occasional transactions of ₹50,000 or above and international money transfers; recognition of Aadhaar Face Authentication as valid authentication; and mandating that liveness checks should not exclude persons with special needs. These directions take immediate effect.

RBI Update – Reserve Bank of India (Know Your Customer (KYC)) (2nd Amendment) Directions, 2025



IBC AMENDMENT BILL, 2025

IBC Amendment Bill 2025: Group and Cross-Border Insolvency

The Insolvency and Bankruptcy Code (IBC) Amendment Bill, introduced in the Lok Sabha by Finance Minister Nirmala Sitharaman on August 12, 2025, marks a significant overhaul of India's Insolvency framework. The Bill, referred to a select parliamentary committee for further scrutiny, aims to tackle systemic delays, complexity, and inefficiencies that have impeded effective insolvency resolution for Indian businesses.

Key Features and Reforms:

1. Group Insolvency Framework:

- Enables coordinated Insolvency proceedings for companies within the same corporate group.
- Allows a common Bench, shared Insolvency professionals, and joint creditors' committees to reduce delays and costs.
- Prevents value loss in complex conglomerate cases.
- For example, cases like the Gensol and BluSmart group stand to benefit significantly from these changes.

2. Cross-Border Insolvency:

- Introduces a framework for resolving insolvency involving overseas assets and creditors.
- Aligns with the UNCITRAL Model Law, improving investor confidence.
- Provides legal clarity for multi-jurisdictional asset recovery.

3. PPIRP for large corporates:

- Extends the quicker, out-of-court "pre-pack" process (earlier for MSMEs) to big corporations.
- Can be triggered by creditors holding 55% of debt, with resolution in 150 days, with possible 45 days extension by adjudicating authority.

Additional Highlights:

- Only creditors with proven contractual security can be deemed "secured." Courts can reject applications only for lack of default or procedural issues.
- Lenders can access assets of personal guarantors during insolvency to boost recoveries.
- Mandatory early Competition Commission of India (CCI) clearance to avoid delays after creditor approvals.
- Less reliance on courts, more powers to creditors' committees, ensuring quicker and higher-value recoveries.

Implications:

- Speeds up resolution and liquidation of distressed firms.
- Simplifies processes for multi-entity groups and cross-border cases.
- Reduces judicial bottlenecks and resolution costs.
- Enhances asset value preservation and investor protection.

IBC Amendment Bill, 2025

IBBI UPDATE – AMENDMENTS TO THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (CONTINUING PROFESSIONAL EDUCATION FOR INSOLVENCY PROFESSIONALS) GUIDELINES, 2019

IBBI amended the Continuing Professional Education (CPE) Guidelines, 2019 for Insolvency Professionals (IPs). Key changes include:

Minimum CPE: IPs must complete **30 credit hours** annually (except in the year of registration), even if suspended or without authorisation.

In-person learning: Mandatory share of total CPE via in-person programs — **40% (2026), 50% (2027), 60% (2028 onwards)**.

Learning activities: Expanded list with specified credit hours for activities like workshops, faculty roles, publications, courses, exams, and serving as NCLT/NCLAT members.

Approval requirement: Prior IPA approval needed for programs by entities other than IBBI/IPAs.

IBBI Update – Amendments to the Insolvency and Bankruptcy Board of India (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019

MCA – IEPFA – PUBLIC NOTICE – 31ST JULY 2025

As per the IEPFA's public notice dated 31.07.2025, all companies that filed IEPF-1 in non-Excel formats (under old or current regimes) must file Form IEPF-1A with the prescribed Excel template by 30th August 2025.

Non-compliance will lead to regulatory action. Please review past filings urgently and ensure compliance via the MCA V3 portal.

[Analysis From Mehta & Mehta](#)



An order passed by NCLT President, in deciding applications for transfer of case from one Bench to another Bench listed before the President as coram of a Bench, is a judicial order and not an administrative order | President has jurisdiction to request the concerned NCLT Benches to defer the proceedings | No exception can be taken, if the Court proceeds to hear during lunch hour – Sayam Shares & Securities (P) Ltd. Vs. KSS Petron (P) Ltd. and Anr. – NCLAT New Delhi

Brief about the decision:

A. No Appeal under Section 61 is maintainable against order passed by the NCLT President, NCLT under Rule 16(d)

- The order passed by the President, NCLT under Rule 16(d), is not an order passed by Adjudicating Authority in Part-II of the IBC. Hence, it is clear that the Appeal under Section 61 of the IBC is not maintainable. In a recent judgment delivered on 17.07.2025 *Imbulle Realtors Pvt. Ltd. v. Sanjeev Kumar and Ors.*, ([2025](https://ibclaw.in/514-NCLAT/)) [ibclaw.in 514 NCLAT](https://ibclaw.in/514-NCLAT/), the issue of maintainability of an Appeal under Section 61 of the IBC against an order passed by the President, NCLT under Rule 16(d) was considered and this Tribunal held that no Appeal under Section 61 is maintainable against order passed by the President, NCLT under Rule 16(d).
- This Tribunal, however, has also noticed the provisions of the Companies Act, 2013 and has come to the conclusion that order passed by the President is an order under Rule 16(d), exercising the powers of NCLT and hence, the Appeal shall lie under Section 421 against the stay order. In the said judgment, the provision of Section 419 of the Companies Act was also noticed.
- Although the Appeal under Section 61 of the IBC is not maintainable, however, the Appeal being maintainable under Section 421 of the Companies Act, 2013, it is needed to consider the submissions of the parties.

B. The nature of jurisdiction, which is exercised by the NCLT President in passing an order under NCLT Rule 16(d)

- Rule 16(d) is couched in wide terms, empowering the President for transferring a case from one Bench to other when the circumstances so warrant. Under Rule 16(d), the President exercises administrative powers to transfer cases from one Bench to other Bench. Rule 89 provides for 'Preparation and publication of daily cause list', which is prepared subject to directions of the President.
- The President of the NCLT, is the Master of the Roster and hence, listing of cases and distribution of work is under general and special order of the President. Conducting the business of NCLT, Principal Bench and its different Benches is vested in the President and the

work distribution and listing of cases under general and special order. Thus, the power of the President to direct for distribution of work and listing of cases before the Principal Bench and different Benches of the NCLT is administrative powers vested in the President.

C. Orders passed by the NCLT President sitting in the Court are not administrative order

- Under Section 419 of the Companies Act, which deals with the Benches of the Tribunal. Section 419(3) of the Companies Act, 2013, provides that the powers of the Tribunal shall be exercisable by Benches consisting of two Members, out of whom one shall be a Judicial member and other shall be a Technical Member.
- Thus, Bench can also be of a Single Judicial Member, which can exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify. Thus, the President while sitting in a Court as a single Judicial Member, exercises the jurisdiction of a Bench as per Section 419(3) proviso.
- Further, when the TAs are listed in the Court, which is shown in the Cause List, which are matters to be considered by Bench of Hon'ble President, who is a Judicial Member sitting singly and the TAs, which are filed by the Applicants for transfer of a case from one Bench to another Bench, is thus business of a Court.
- Thus, when the President decides the applications, which are listed in the Court before the President as coram of a Bench, passing an order by the President are judicial order and thus, orders passed by the President sitting in the Court are not administrative order.
- **Although, the President has administrative jurisdiction conferred under the Rules to direct the distribution of business, listing of cases and transfer of cases, but when the said power is exercised on an Application filed for transfer by an Applicant and the matter is listed in the Court for consideration of business of the Court, on which any order passed by the President is a judicial order.**
- **It is, thus, clear that when order is passed by the President on an application filed by an Applicant for transfer of case from one Bench to another Bench and the said application is listed in the Court for hearing, the Hon'ble President has to act judicially in considering the application and any order passed in the said application is an order of judicial nature and is an order passed by NCLT amenable to an appeal.**
- In view of the foregoing discussions, the Hon'ble Appellate Tribunal holds that the order passed by the President dated 10.07.2025 in TA Nos.37, 38 and 39 of 2025 is order passed by NCLT, which is an order of a judicial nature and is amenable to an appeal under Section 421 of the Companies Act.

D. NCLT President has jurisdiction to request the concerned NCLT Benches to defer the proceedings

- The Hon'ble Appellate Tribunal does not find any lack of jurisdiction in the President to request the concerned NCLT Benches to defer the proceedings till the TAs are heard and decided.
- NCLT, New Delhi Bench (Court – II) having noticed the fact that parties have initiated the process of transfer of pending proceedings from one Bench to another, it is incumbent upon the Court, not to take up the matter for hearing till the process of transfer of hearing is culminated. It is relevant to notice that TA No.37 of 2025 has been filed for transfer of case from NCLT, New Delhi Bench-II to NCLT, Mumbai Bench; whereas TA No.38 of 2025 was filed by the Appellant for transferring of Company Petition pending in NCLT Mumbai Bench to NCLT, New Delhi Bench (Court – II). Thus, present is a case where both the parties are praying for transfer of petition vice-versa.
- In the above case, the NCLAT does not find any error in the order of NCLT, New Delhi Bench (Court – II), to not take up the matter till the process initiated for transfer of both the parties is culminated. Sufficient reasons have been given by the NCLT, New Delhi Bench (Court – II) for awaiting the order passed in the transfer applications, which are pending consideration.

E. When the matter is heard, no exception can be taken, if the Court proceeds to hear during lunch hour

- Learned Counsel for the Appellant has also raised one more submission, i.e. TAs were taken by the Hon'ble President during lunch hours. He referring to Rule 9 of the NCLT Rules, 2016 submits that sitting hours of the Court of NCLT are 10:30 AM to 01:00 PM and 02:00 PM to 04:30 PM. Rule 9 of the Rules.
- When the party mentions for taking up the matter on very next date and the Court after notice to both the parties, hear the matter, during lunch hours, the order cannot be faulted on this ground as submitted by the Appellant.
- When the matter is heard, no exception can be taken, if the Court proceeds to hear during lunch hour, specially, when the matter was mentioned on the ground of urgency, one day before, and listed in the Cause List. When Applicant who has filed TA, which is listed and Applicant is heard before passing the order, no exception can be taken to the continued hearing during lunch time.

F. Disposed of

In result, both the Appeal(s) are **dismissed**. There shall be no order as to costs.

Time limit for payment under Liquidation Regulation 21A(2)(a) read with Section 52 and 53 of IBC, by secured creditor who realised secured assets, is not dependent on realisation of security interest | In exceptional cases where there is no fault of the party it may request the NCLT to extend the timeline or to exclude certain period – HDFC Bank Ltd. Vs. Hema Engineering Industries Ltd. – NCLAT New Delhi

Brief about the decision:

Facts of the case

- A Petition under Section 9 of the IBC was filed by an Operational Creditor (OC) namely, M/s PR Rolling Mills Pvt. Ltd. whereon vide order dated 05.04.202, the CIRP Process was initiated against the Corporate Debtor.
- Since, no Resolution Plan was approved by the CoC Members, initiation of liquidation was approved by the Adjudicating Authority vide its order dated **17.05.2022**.
- The appellant submitted Form D on 01.06.2022 for a total amount of Rs. 87,61,99,358.13/- and sought to realise its Security Interest outside the liquidation estate in terms of Section 52 of the IBC.
- The Respondent/ Liquidator on 30.07.2022 took a decision and identified all the properties over which the Appellant/Bank claimed exclusive charge and allowed the Appellant/Bank to realise the Security Interest in terms of Section 52 of the IBC subject to certain conditions.
- This decision is stated to have been communicated to the appellant vide email of the Liquidator dated 09.08.2022 while the Liquidator has stated to have communicated the same on the day the decision was taken i.e. on 30.07.2022.
- On 08.09.2022, Liquidator addressed a letter to the appellant/bank informing that since the appellant has failed to make the contribution as required under Section 53 of the IBC within 90 days as per Regulation 21A of the liquidation Regulations, 2016, the assets which were sought to be realised by the appellant/bank shall now be part of the liquidation common pool.
- The appellant replied to this letter of the Liquidator on 14.09.2022 pointing out certain discrepancies with regard to the amount and also that the Bank be permitted to pay the dues as provided under Section 53 of the IBC after the realisation of the security interest by it.
- An IA No. 4610 of 2022 was thereafter filed by the Appellant/ Bank before the Adjudicating Authority with various prayers, including a prayer to permit the bank to deposit the dues under Section 53 of the IBC offer realisation of security interest.
- The IA has been **dismissed** by passing the impugned order.

Decision of the Appellate Tribunal

A. Even if secured creditor proceeds to realise its security interest it is under a mandatory obligation to pay dues as contemplated under Section 52/53 of the Code within the time as contemplated under Regulation 21A(2)(a) of the Liquidation Regulations 2016

- Section 36 (4) of the IBC protects the workmen dues under the Provident Fund, Gratuity Fund, and Pension Fund which may not be treated as liquidation estate and these are required to be paid by the Secured Creditor in full and could not be used to satisfy the claim of any Creditor under Section 53 of the Code.
- A Secured Creditor who opts to realise its Security interest under Section 52 of the Code is required to pay as much towards the amount payable under Section 53 of the Code, therefore, it is/was obligatory on the part of the appellant/bank to pay as much amount which was required under the relevant provisions of Section 53 of the IBC. The law with regard to the dues required to be paid under Section 53 of the IBC is now settled and in this regard following case laws may be considered.
- The ratio propounded by the Hon'ble NCLAT in Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors., [\(2022\) ibclaw.in 861 NCLAT](#) relying on the law laid down by the Hon'ble Supreme Court in Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner and Ors., [\(2017\) ibclaw.in 119 SC](#) has also been followed in other cases decided in Assam Tea Employees Provident Fund Organization v. Mr. Madhur Agarwal RP of Hail Tea Ltd., [\(2022\) ibclaw.in 894 NCLAT](#) as well as in Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma, [\(2022\) ibclaw.in 879 NCLAT](#) wherein it has been reiterated that the compliance of regulations 2(ea), 2A, 21A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.
- Thus it is clear from the legal precedents (State Bank of India v. Navjit Singh, [\(2022\) ibclaw.in 230 NCLAT](#), Sunil Kumar Jain & Ors. v. Sundaresh Bhatt & Ors, [\(2022\) ibclaw.in 23 SC](#), Moser Baer Karamchari Union v. Union of India and Ors., [\(2023\) ibclaw.in 59 SC](#)) that **even if the secured creditor proceeds to realise its security interest it is under a mandatory obligation to pay dues as contemplated under Section 52/53 of the Code within the time as contemplated under Regulation 21A (2)(a) of the Liquidation Regulations 2016.**

B. Timeline as provided in the IBC and relevant regulations framed by the IBBI must be followed strictly

- The timeline as provided in the IBC and relevant regulations framed by the IBBI must be followed strictly as in Resolution Process or Liquidation Process time is of the essence. However, in exceptional cases where there is no fault of the party it may request the Adjudicating Authority to extend the timeline or to exclude certain period, however this could only be done in rare cases of exceptional nature.
- Reciprocal duties and obligations have been casted on Secured Creditor as well as on liquidator. Under Section 52 (2) of the Code a duty is cast on the secured creditor to inform the liquidator about his intention to realize the security interest in a property and also to identify, verify those assets/properties which may be subject to realisation of such security interest. Simultaneously, sub-Section 3 of this Section cast a reciprocal duty on the liquidator to verify such security interest and thereafter permit the secured creditor to realize only such security interest, existence of which has been proved to the satisfaction of the liquidator.
- Permission of liquidator, permitting secured creditor to realize his security interest after due verification of the assets appears to be a condition precedent and without such permission a secured creditor may not be in a position to realize the secured interest in that asset.

C. Payment which is to be made under Section 52 and 53 of the IBC by the secured creditor is not dependent on the realisation of security interest by a secured creditor

- **It is to be recalled that the provision as contained under Liquidation Regulation 21A (2) (a) pertaining to deposition of such dues in 90 days is a mandatory provision, unless rare circumstances of exceptional nature occurs, in which case time extension may be considered and the same is also not dependent on realisation of security interest by secured creditor and therefore it could not be linked with realisation of security interest.**
- **In simple words the payment which is to be made under relevant provisions of Section 52 and 53 of the IBC by the secured creditor is not dependent on the realisation of security interest by a secured creditor.**

D. Present case

- The decision which has been taken by the liquidator permitting the appellant/bank secured creditor to realize his security interest in specific properties on 30.07.2022 could only be communicated to the appellant on 09.08.2022 and the 90 days' timeline as per Regulation 21(2)(a) was expiring on 15.08.2022. Certainly this period

from 09.08.2022 till 15.08.2022 of only six days appears to be not sufficient for realisation of security interest by the appellant.

- In this short period of time (from 09.08.2022 to 15.08.2022) it was not possible for the appellant/ secured creditor to realize its security interest in the targeted properties and thus ample time should have been provided to the appellant for this purpose and also that Tribunal has committed a manifest illegality by dismissing the IA filed by appellant/bank.
- Before Tribunal no request has ever been made by the appellant to provide him sufficient time for the purpose of deposition of dues as required under Section 53 of the IBC. Contrary to this the appellant has requested to grant permission to pay the dues as required under Section 53 of the IBC only after realization of his security interest.
- Thus the NCLT in this regard has not erred in returning a finding that prayer of the appellant to pay the required dues under Section 53 of the IBC only after realisation of his security interest is not justified and legal.

E. When no prayer for extension or exclusion of time has been made before Tribunal by the appellant, he may not be deemed to be an aggrieved person

- The Judgment impugned before the NCLAT is required to be tested on the basis of the prayers made before the Tribunal and reasons given by the Tribunal in order to arrive at a particular finding.
- Therefore, when no prayer for extension or exclusion of time has been made before Tribunal by the appellant, he may not be deemed to be an aggrieved person so far as this prayer is concerned.

F. Conclusion

- The appellant did not make any prayer before the Tribunal to extend time or to provide sufficient time to deposit the money as required under Section 53 of the IBC and has only requested the Tribunal to permit him to realise his security interest first and to further permit to deposit the dues under Section 53 of the IBC thereafter from the proceeds of such realisation and this prayer of the appellant in our considered opinion has been rightly rejected by the Tribunal.
- It is also to be recalled that non-deposition of dues as required under Section 53 of the IBC read with Regulation 21A (2) (a) of Insolvency Regulations within stipulated period has resulted in the automatic vesting of the assets in liquidation pool and the liquidator vide his email dated 08.09.2022 has only formally communicated it.
- Though the dispute before us has not been contested by Ld. Counsel for liquidator with tooth and nail but even thereafter in our considered opinion when no request to extend time or exclusion of time was prayed before the Tribunal by the appellant, the Tribunal was not obliged to grant it on its own. At the cost of repetition, it is stated

that the appellant before tribunal has requested to permit him to realise the secured interest from specified properties at first and thereafter to deposit the dues as provided under Section 53 of the IBC, which have been duly communicated to the appellant by the Respondent/liquidator and after getting knowledge of these dues the appellant instead of making efforts to deposit it, chosen to challenge the decision of the liquidator and has also challenged the vires of Insolvency Regulation 21A. Thus the intention of the appellant, before the tribunal was not of deposition of the dues.

G. Disposed of

- The appeal appears to be having no force and is **dismissed** as such. No order is as to costs. Pending IA's if any will also stand disposed of.

Grant of extension of time to enforce the scheme of arrangement beyond 90-days period is not absolutely barred as per Regulation 2B of Liquidation Process Regulations, 2016 | No bar to consider a scheme of compromise/arrangement, at any time within the time period allowed for completion of Liquidation Process – Prakash Oil Depot Vs. G. Madhusudhan Rao Liquidator for Sarda Agro Oils Ltd. and Anr. – NCLAT Chennai

Brief about the decision:

Facts of the case

- The Corporate Debtor M/s. Sarda Agro Oils LLtd., was ordered under liquidation on 09.01.2023.
- In the light of the Proviso as appended to Regulation 2B(1) of the Liquidation Process Regulations, 2016, the proposal of a scheme of Compromise/arrangement should have been preferred within 30 days from the date of the liquidation order, that is, 09.01.2023. Such scheme should have been approved within a period of 90 days, from the date of commencement of liquidation.
- The NCLT, by a series of orders, excluded the following periods from the computation of the prescribed period under Regulation 2B:
 - 09.01.2023 to 29.08.2023 (order dated 29.08.2023)
 - 29.08.2023 to 08.03.2024 (order dated 08.03.2024)
 - 08.03.2024 to 31.07.2024 (order dated 31.07.2024)
- Even though, the period from 09.01.2023 to 31.07.2024 stood excluded by the orders of Tribunal, the Appellants could not finalise and present the scheme of compromise/arrangement within 29.10.2024, that is, 90 days from 31.07.2024.

- Despite the averment of the Appellants that a cheque for an amount of Rs.4.30 crores has been submitted on 31.05.2024, towards EMD, the liquidator filed application IA(IBC)833/2025 on 26.04.2025 only, inter alia praying for grant of 90 days from the date of the order on said application for completion of the scheme as per Section 230 of the Companies Act read with Regulation 2B of the Liquidation Process Regulations, 2016.
- The NCLT rejected the applications vide its order dated 26.05.2025 on the grounds that it is in contravention of Regulation 2B(1) of the Liquidation Process Regulations, 2016, and that it could find no reason to deviate from the time limit prescribed by the said Regulation.

Decision of the Appellate Tribunal

A. Scheme of compromise or arrangement under IBC

- A scheme of compromise or an arrangement which is proposed to be made as per the provision contained under Section 230 of the Companies Act, 2013 has to be completed within a period of 90 days from the date of order of liquidation. This has been further qualified by the proviso, to Regulation 2B(1) of the Liquidation Process Regulations, 2016, to the effect that, a person who is not eligible under the code to submit a plan shall not be a party in any manner, to such compromise or an arrangement.
- Regulation 2B(1) of the Liquidation Process Regulations, 2016, provides that, the Liquidator shall file the proposal of compromise or a scheme of arrangement only in those cases where, such recommendation has been made by the Committee, under Regulation 39BA of the CIRP Regulations, 2016.
- It stipulates, in the light of the third proviso contained in the said Regulation, that no proposal of a compromise or of an arrangement as contemplated under Section 230 of the Companies Act, 2013, shall be entertained, if it is not filed within the expiry of 30 days from the date of the liquidation commencement date.

B. Extension of Timelimit for Scheme of compromise or arrangement under IBC

B.1 Extension of time beyond 90-days period is not absolutely barred

Looking to the wider objective of Regulation 2(B) of the Liquidation Process Regulations, 2016, and that though it prescribes for a restriction of time limit for the purposes of completing the compromise or arrangement, the same cannot be permitted to be applied in a rigid manner because that would frustrate the very purpose and objective of Section 230 of the Companies Act, 2013, and also the objective of I & B Code, which is resolution of insolvency and revival of the Corporate Debtor.

- The enforcement of 90 days time limit as prescribed under Regulation 2(B) of the Liquidation Process Regulations, 2016, without a proper appreciation of the circumstances when extensions had already been granted in three previous occasions and refusal to grant further extension as prayed for completing the scheme of arrangement does not appeal to be sustainable, that too when the finding, recorded by the NCLT in the impugned order is not based upon a sound reasoning, as to why the extension as prayed for cannot be granted to meet the objectives of the code, even if it is sought for a fourth time when it is not restricted by law, and when it promises to cut short the litigation between the parties.
- **Grant of extension of time to enforce the scheme of arrangement beyond 90-days period is not absolutely barred as per Regulation 2 (B) of the Liquidation Process Regulations, 2016.**
- In view of the ratio in:
 1. Bharat Sharma v. Reshma Mittal RP & Anr., (2022) ibclaw.in 885 NCLAT
 2. Y. Shivram Prasad v. S. Dhanapal & Ors., (2019) ibclaw.in 03 NCLAT
 3. S.C. Sekaran v. Amit Gupta & Ors., (2019) ibclaw.in 02 NCLAT
 4. Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) ibclaw.in 03 SC
 5. Sanjeev Mitla v. Mr. Madhusudhan Rao Gonugunta and Anr., (2023) ibclaw.in 833 NCLAT

has been laid down by the various judgments settled by NCLAT, it could very well be established and concluded that **since the statute doesn't create any specific bar under law from seeking an extension of time for enforcement of the scheme of arrangement, the decision to grant such extensions, if it facilitates the enforcement of the scheme, ought to be made permissible**, because the provision under Regulation 2(B) of the Liquidation Process Regulations, 2016, has been held to be directory in nature and not mandatory.

- It will be always the commercial wisdom of the parties, which has to come into play, in order to take a decision, after considering the viability, benefits and the propriety of the scheme by the requisite majority regarding grant of an extension of time. Though NCLAT at this point of time may not have that equivalent powers to manually scrutinize the viability of the scheme, it has to give due respect to the commercial wisdom of the parties to the scheme while determining the usefulness of the scheme.
- The NCLT is not supposed to act, as a court of appeal, at the stage when the implications of Regulation 2(B) of the Liquidation Process Regulations, 2016, is being taken into consideration limited for the purposes of extension of time, for the enforcement of the scheme of arrangement, and that too, particularly in the given set of circumstances, when the scheme stands approved by the Stakeholders Consultation Committee, by a majority decision after the rectification of minor defects.

- The scheme, once having been arrived at, should have been given a pragmatic treatment and an effective conclusion for making the scheme effective particularly when it is not prejudicial to the interest of any of the parties to the proceedings.

B.2 An extension IA should be considered independently without being affected or influenced by the earlier extensions

- When the intention behind the application seeking extension of time, is to ensure completion of the scheme of arrangement, so as to meet the object of the I & B Code, 2016, and the Companies Act, the Tribunal ought to have taken into consideration.
- The earlier extensions which had been granted, would be rendered otiose if the extension sought for in the instant case is not given and that, the extension which has been prayed for by filing of the instant IA should have been considered independently without being affected or influenced by the earlier extensions which already stood granted, because the factors governing the prayer for grant of extension in the instant case are distinct to those based on which the earlier extensions were granted.

B.3 No bar to consider a scheme of compromise/arrangement, at any time within the time period allowed for completion of Liquidation Process

- The Hon'ble Appellate Tribunal is of a considered view that **Regulation 2B of the Liquidation Process Regulations, 2016, it is only for the purposes of exclusion of time consumed for considering the scheme under Section 230, from the total time provided to complete the liquidation process and there is no specific or an absolute bar under law to consider such a scheme of compromise/arrangement, at any time within the time period allowed for completion of the liquidation process**, and that even if the said time period as stipulated for completion of the scheme is exhausted, then too the time period granted by the NCLT, could be further extended, so as to bring the scheme of compromise/arrangement to its logical conclusion to shorten the litigation and to revive the Corporate Debtor.
- In the instant case, the approval of the scheme of compromise/arrangement by a requisite majority of the Stakeholders Consultation Committee, doesn't suffer from any absolute legal disability in proceeding to enforce the scheme even beyond the prescribed time period.

- The scheme attains a binding character upon the stakeholders including the Liquidator, who has been appointed under the I & B Code, 2016, who then will have to ensure the enforceability of the scheme of arrangement even after the expiry of the time period as provided therein, owing to the provisions contained under Section 230(6) of the Companies Act, 2013.

C. Conclusion

- The impugned order denying to grant the extension of time as sought for,
 - merely because of the fact that there had been earlier extensions granted and the scheme was not implemented which does not create an absolute restriction or a legal bar against grant of further extension of time especially when the scheme has been approved by SCC by majority and
 - merely because of the fact, that the Liquidator despite being aware of the applicable provisions of law has engaged with the individuals connected with the Suspended Directors of the Corporate Debtor,

is not sustainable in the face of law and the judicial precedents as laid down by the NCLAT, as well as the Hon'ble Apex Court especially when the proposed scheme of arrangement, promises to meet the objective of the Code, coupled with the fact that there is no absolute bar is grant of the extension of time and that, the same could be granted subject to the restrictions to be imposed by exercise of a judicial wisdom by the NCLT.

D. Disposed of

- The impugned order is quashed.
- A further period of 90 days is granted from the date of uploading of the order to the Appellant to complete the scheme of Arrangements subject to the Appellants complying with the provisions contained under Section 230(5) of the Companies Act, 2013, to be read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- The Company Appeal (AT) (CH) (Ins) No.304/2025, would too stand **allowed** under the same terms and conditions. All pending interlocutory applications would stand closed.

Balance Sheet, even without expressly naming the creditor, can constitute acknowledgment of debt under Section 18 of the Limitation Act, particularly when considered alongside Cash Flow Statement (CFS) and previous years' Balance Sheets – IL & FS Financial Services Ltd. Vs. Adhunik Meghalaya Steels Pvt. Ltd. – Supreme Court

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

- On 27.02.2015, a Loan Agreement was entered into between the appellant and the respondent for a term loan facility of Rs. 30 crores. The loan was secured by way of a pledge of 8,10,804 shares of Adhunik Metaliks Ltd. in favour of the appellant by virtue of a Pledge Agreement dated 27.02.2015.
- The Balance Sheet of the Corporate Debtor for the FY 2016- 17 acknowledged the loan from the Financial Creditor amounting to Rs 24.57 Cr. secured by the pledge of 8,10,804 shares of Adhunik.
- Since the Corporate Debtor failed to repay the outstanding debt in terms of the loan facility documents, the Financial Creditor declared the account of the Corporate Debtor as NPA on **01.03.2018**.
- The Balance sheet for FY 2017-18 similarly recorded the pledge of same number of shares besides reflecting an amount of Rs 23.68 Cr. under the heading of “secured borrowings”.
- Subsequently, on 10.07.2018, the Financial Creditor issued a notice of default to the Corporate Debtor and followed it up with a Recall Notice on 10.08.2018.
- The Balance Sheet of the Corporate Debtor for FY 2018-19 had not been filed by the Corporate Debtor with the Registrar of Companies.
- The Balance Sheet of the Corporate Debtor for the subsequent FY 2019-20 recorded an amount of Rs 24.41 Cr. under “secured borrowings”. The F.Y. 2019-20 Balance Sheet was approved by the Board of Directors and signed by the authorised signatory on **12.08.2020** and uploaded on the portal of MCA on **14.02.2021**.
- The Financial Creditor filed a Section 7 application on **15.01.2024** for a claim amount of Rs 55.45 Cr.

Decision of Adjudicating Authority

- *NCLT, Guwahati Bench vide its order dated 16.05.2024, reported at IL&FS Financial Services Ltd. v. Adhunik Meghalaya Steels Pvt. Ltd. (2024) ibclaw.in 1244 NCLT, held that there was no acknowledgement of liability in the Balance Sheet of F.Y. 2019-20, since the name of the financial creditor did not appear in the Balance Sheet.*
- *It also held that the application under Section 7 filed by the appellant was barred by limitation, since, according to the NCLT, the application ought to have been filed on or before 30.05.2022 applying Para 5(III) of the order of this Court dated 10.01.2022 extending the period of limitation.*
- *The Section 7 application was rejected by the Adjudicating Authority on the grounds of being time-barred.*

Decision of Appellate Tribunal

- The appellant aggrieved filed an appeal before the NCLAT.
- The NCLAT in the impugned order, reported at *IL&FS Financial Services Ltd. v. Adhunik Meghalaya Steels Pvt. Ltd.*, ([2025](#)) [ibclaw.in 211 NCLAT](#), held that as far as the Balance Sheet of F.Y. 2017-18 was concerned, it was signed on 02.09.2018 and the three-year period would have ended on 01.09.2021. According to the NCLAT, limitation would have extended in view of the order of Supreme Court dated 10.01.2022. The NCLAT further held that even if the entry in the Balance Sheet of F.Y. 2019-20 is taken, since the said Balance Sheet was signed on 12.08.2020, limitation would have extended only up to 30.05.2022.
- Thereafter, the NCLAT examined the argument whether the date of signing the Balance Sheet would be the relevant date or whether the date of uploading the Balance Sheet on the website of the Ministry of Corporate Affairs would be the relevant date for commencement of time. On this issue, it was held that the date of signing the Balance Sheet would be the relevant date and, on that basis, concluded that the Section 7 petition ought to have been filed on or before 30.05.2022. Holding so, it dismissed the appeal of the appellant.

Issues before Supreme Court

- Does the entry in the Balance Sheet of F.Y. 2019-20 constitute a valid acknowledgement of debt by the respondent under Section 18 of the Limitation Act, 1963?
- If the answer to the above question is in the affirmative, will Para 5(I) or 5(III) of the order dated [10.01.2022](#) passed by the Supreme Court in *Suo Moto Writ Petition No. 3 of 2020* govern the situation?

Decision of the Supreme Court

- It is now well settled in view of Section 238A of the IBC that the Limitation Act, 1963 shall, as far as may be, apply to the proceedings under the Code. It is also well settled that Article 137 of the first schedule to the Limitation Act providing a period of three years from the date when the right to apply accrues will govern the situation. [*Dena Bank v. C. Shivakumar Reddy and Anr.*, ([2021](#)) [ibclaw.in 69 SC](#), *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd & Anr*, ([2019](#)) [ibclaw.in 16 SC](#), *B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates*, ([2018](#)) [ibclaw.in 32 SC](#) and *Jignesh Shah and Anr. v. Union of India and Anr.*, ([2019](#)) [ibclaw.in 19 SC](#)]
- In this case, the account of the respondent was declared as a NPA on 01.03.2018. However, the appellant is relying on the entries adverted to hereinabove in the Balance Sheet of F.Y. 2019-20 signed by the Directors on 12.08.2020.

- It will be clear from *Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria and Ors.* 1961 AIR 1236 that an acknowledgment of debt merely renews the debt and does not create a new right of action. It is further essential that the acknowledgment must relate to a subsisting liability and must indicate the jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. It was also held that such intention can be inferred by implication from the nature of the admission and need not be expressed in words. It has also been held that in construing the words used in the statements, surrounding circumstances can always be considered and that Courts lean in favour of a liberal construction of such statements, though intention cannot be fastened by an involved or far-fetched process of reasoning.
- In *Lakshmirattan Cotton Mills Co. Ltd. and M/s Behari Lal Ram Charan v. Aluminium Corporation of India Ltd.*, (1971) 1 SCC 67, the Court followed the judgment in *Khan Bahadur Shapoor (supra)* and reiterated the ratio laid down in the said judgment.
- The facts of the above two precedents are relevant only to repel an express argument raised by the respondent herein that the Balance Sheet of F.Y. 2019-20 has to be read as a standalone document and the other documents cannot be looked at to construe the said document.
- It was not disputed before us that entries in Balance Sheets could constitute a valid acknowledgement and in fact it could not have been disputed, in view of the categorical pronouncement of this Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.*, (2021) [ibclaw.in 55 SC](#). The only dispute was whether the entry in F.Y. 2019-20 did or did not constitute a valid acknowledgement. Among the grounds canvassed was the aspect that the name of the appellant was not mentioned in the Balance Sheet of F.Y. 2019-20. It is worthwhile to notice certain observations from the judgement in *Bishal Jaiswal (supra)*, as it does have a bearing for the disposal of the present matter. This Court in *Bishal Jaiswal (supra)* held that entries in Balance Sheet had to be examined on a case-by-case basis to examine whether an acknowledgment of liability exists.
- The other aspect which remains to be examined is the contention of the respondent that the name of the appellant is nowhere mentioned in the Balance Sheet of F.Y. 2019-20 and as such the Balance Sheet of F.Y. 2019-20 cannot be construed as an acknowledgement of any jural relationship between the parties.
- In *Vidyasagar Prasad v. UCO Bank and Anr.*, (2024) [ibclaw.in 274 SC](#), the Court, at the outset, dealt with the earlier judgments in *Laxmi Pat Surana v. Union Bank of India*, (2021) [ibclaw.in 53 SC](#), *Dena Bank v. C. Shivakumar Reddy and Anr.*, (2021) [ibclaw.in 69 SC](#) and *Rajendra Narottamdas Sheth & Anr. v. Chandra Prakash Jain & Anr.*, (2021) [ibclaw.in 155 SC](#) to reiterate that Section 18 of the Limitation Act dealing with acknowledgment of debt applies to proceedings under the IBC in view of Section 238A.

- It will be noticed that even in Vidyasagar Prasad (supra), a similar argument about the name of creditor not being mentioned was repelled and additionally the aspect of the proposal given by the corporate debtor therein for a one-time settlement was taken into account as an additional aspect in favour of acknowledgment of debt.
- As to whether a certain document in a given case constitutes a valid acknowledgement would depend on the facts and circumstances of each case.
- Having said that, the legal principles as to what constitutes a valid acknowledgement as laid down in the precedents, have to be rigorously applied. It should also not be forgotten that this Court in Khan Bahadur Shapoor (supra) has held that surrounding circumstances could be considered and that a liberal construction should be favoured, though the process of reasoning should not be involved or far-fetched. The Court in Khan Bahadur Shapoor (supra) had considered the general tenor and context of the document. Further, as noticed in Lakshmirattan Cotton Mills (supra), the previous correspondence and the surrounding circumstances were also taken into consideration. In Bishal Jaiswal (supra), the Court held that a case-to-case examination will be made with regard to entries made in Balance sheets to decide the question of acknowledgment. In Dena Bank (supra), the Court held that in relation to proceedings under the IBC, Section 18 of the Limitation Act cannot be construed with pedantic rigidity. In Vidyasagar Prasad (supra), the Court affirmed the finding of the NCLAT in that case wherein the NCLAT had held that the company's Balance Sheet is prepared in the statutory format as per schedule 3 of the Companies Act which did not provide for giving the specific name of every secured or unsecured creditor.
- In OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd. and Anr., (2024) ibclaw.in 247 SC, the Hon'ble Court summarised the essence of Section 18 of the 1963 Act.
- *Keeping all these principles in mind, it will be clear that the Balance Sheet of F.Y. 2019-20, viewed in the background of the other admitted documents, including the financial statements of the previous years, clearly constitutes a valid acknowledgment of a subsisting liability and indicated the existence of a jural relationship and an admission as to the existence of such relationship. For the following reasons:-*
 - i) The general tenor and context of the balance sheet of F.Y. 2019-20 considered in the background of surrounding circumstances arising from the balance sheets of F.Y. 2015-16, 2016-17 & 2017-18 clearly points to the fact that the entry in the balance sheet of F.Y. 2019-20 constitutes a valid acknowledgement and pertains to the same borrowing as was reflected in the balance sheet of F.Y. 2015-16, 2016-17 & 2017-18.

- ii) Under the Indian Accounting Standards (Ind AS) 7, a cash flow statement is appended to the financial statement. The cash flow statement indicates that in F.Y. 2018-19 there was proceeds from borrowings of Rs.72,30,902/- and added to Rs.23,68,91,933/-, a figure of Rs.24,41,22,835/- is arrived at.
- iii) More importantly, in the cash flow statement it was indicated that no part of cash flow proceeds was utilised in the repayment of existing borrowings under the financial activities since the amount under the head “cash flows from (used in) financial activities” is nil. This clearly indicates that the debt remained unpaid even in 2019-20.
- In addition to the above, it is significant to note that in this case in the reply filed to the Section 7 application, apart from a general objection as to the application being barred by limitation only a bare denial was made in the following terms:- “(sic) deny that Balance Sheet of CD can be treated as acknowledgment of debt as wrongfully alleged or at all.”
- In the application under Section 7 detailed averments were made referring to a series of audited financial statements and Balance Sheet from F.Y. 2015-16 to F.Y. 2019-20 to make out a case that the entry in F.Y. 2019-20 constituted an acknowledgment under Section 18 of the Limitation Act by the respondent.
- **The Balance Sheet of F.Y. 2019-20 was admittedly signed by the board of directors on 12.08.2020. This date was within the subsisting period of limitation for the reason that taking 01.03.2018 as the commencement of limitation, limitation ordinarily would have continued till 28.02.2021. Since an acknowledgment came into effect on 12.08.2020, limitation would have stood extended till 11.08.2023.** However, Covid-19 intervened resulting in this Court passing a series of orders extending the period of limitation. The relevant order applicable in this case is the order of 10.01.2022.
- Parties were at daggers drawn on the aspect whether sub Para (I) of Para 5 of the order of 10.01.2022 would apply or sub Para (III) would apply.
- Sub-Para 1 of Para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean that the limitation would, reckoning the acknowledgment of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025. Since the application has been filed on 15.01.2024 the same is within time. Limitation, in view of the acknowledgment as found above, having commenced only on 12.08.2020, the question of limitation expiring between 15.03.2022 and 28.02.2022 cannot arise. Hence, Para 5(III) of the order dated 10.01.2022, has no application to the facts of this case.
- In view of the observations made hereinabove, the judgments of the NCLAT dated 25.03.2025 and NCLT dated 16.05.2024 are **set aside**. The appeal is **allowed**.

- The matter is remitted to the adjudicating authority to proceed with and decide in accordance with law, treating the application under Section 7 of the IBC, filed by the appellant, as one filed within limitation. No order as to costs.

CoC can accept a revised resolution plan, submitted before the completion of voting on resolution plan, by a Resolution Applicant whose name was included in the final list of RAs – Orissa Metaliks Pvt. Ltd. Vs. Avil Jerome Menezes (RP) and Ors. – NCLAT New Delhi

Brief about the decision:

Facts of the case

- The CIRP of M/s. Future Enterprises Ltd. (Corporate Debtor) commenced by order dated 27.02.2023.
- Both the appellant and R-3 submitted their Expression of Interest (EoI) in response to the request to the resolution plan which was issued on 01.02.2024. Both appellant and R-3 submitted their respective resolution plan for Cluster 3 assets of the corporate debtor.
- Name of both appellant and R-3 were included in the final list of the RA.
- The Committee of Creditors (CoC) requested both the appellant and R-3 to revise their plan.
- Revised resolution plan was submitted by appellant for Rs.75 crore, whereas, no revised compliant plan was submitted by R-3.
- The CoC decided to commence voting on the plan of the appellant which voting commenced on 22.05.2024 and voting was upto 04.06.2024.
- The R-3 on 29.05.2024 has sent an email to the RP expressing its intention to withdraw from the process.
- On 31.05.2024, another email was sent by R-3 requesting to ignore earlier request. It was mentioned in email dated 31.05.2024 that R-3 will submit a revised plan.
- On 03.06.2024, the R-3 has filed a revised plan as well as I.A. No. 2956/2024 before the adjudicating authority.
- When the application came for consideration, the RP took time from the court to obtain instructions. The court was communicated by the CoC that it has decided to consider the revised plan of R-3. 24th CoC meeting took place on 24.06.2024, where CoC decided to consider the plan of R-3. The affidavit on behalf of the CoC was filed before the adjudicating authority communicating the decision to consider the revised resolution plan of R-3 for value maximisation.

- Adjudicating authority pronounced the order on 07.01.2025. There being split opinion, Hon'ble Judicial Member permitted revised plan from both parties, whereas, Hon'ble Technical Member rejected the R-3's belated revised plan. Matter was referred to 3rd Member who gave its opinion on 16.06.2025 approving the decision of the CoC to permit the R-3 to submit revised plan as well as to the appellant. Third Member agreed with the opinion of Judicial Member.
- Aggrieved by the order dated 16.06.2025, this appeal has been filed.

Decision of the Appellate Tribunal

A. CoC can accept a revised resolution plan, submitted before the completion of voting on the resolution plan, by a Resolution Applicant whose name was included in the final list of RAs

- Clause 2.8.5(d) of the RFRP reserves the power of the CoC to approve or not to approve resolution plan which has secured the highest as per the evaluation matrix and it is solely on the basis of discretion of the CoC to approve any compliant resolution plan. The subsequent steps are provided for approval of the resolution plan. In the present case, the facts brought on the record indicate that the voting on the resolution plan of the appellant was not completed and before completion of the voting, revised plan was submitted by R-3 for an amount of Rs.85 crore that was more than Rs.75 crore of the appellant's revised plan.
- On 03.06.2024 before voting could be completed, application was filed before the adjudicating authority by R-3. The present is a case where voting was not complete and CoC in 24th CoC meeting took a conscious decision to consider the resolution plan of R-3. Affidavit was also filed by the CoC before the adjudicating authority where it had categorically stated that CoC has decided to consider revised plan.(p15)
- It is the sole discretion of the CoC to approve or not approve the resolution plan.
- The present is a case where out of two RAs only one has submitted a revised resolution plan and since R-3 did not submit a revised resolution plan, CoC decided to vote on the plan of the appellant with effect from 22.05.2024. Voting was to complete on 04.06.2024 and on 31.05.2024 email was received from R-3 and it is informed that R-3 shall be filing a revised plan and on 03.06.2024 revised plan was also submitted along with the application filed before the adjudicating authority seeking a direction where the plan value disclosed by R-3 was Rs.85 crore.

B. Present case different from Jindal Stainless case

- In *Jindal Stainless Ltd. v. Mr. Shailendra Ajmera RP of Mittal Corp Ltd. & Ors.*, ([2023](https://www.ibclaw.in)) [ibclaw.in](https://www.ibclaw.in) 55 NCLAT, the CoC has never taken a decision to

consider the plan which was sought to be filed by Shyam Sel & Power Ltd. CoC on the other hand has taken a decision not to grant any further opportunity.

- As noticed by the adjudicating authority in Jindal Stainless Ltd. (Supra) the name of the applicant was never included in the final list of RA. In the present case, the CoC has taken a decision to permit the R-3 (whose name was in the final list of RA) to submit a revised plan as well as the appellant.

C. Without permission of the CoC no applicant can permit to withdraw the resolution plan once submitted

- The submission of the appellant that R-3 vide email dated 29.05.2024 has withdrawn from participation and asked for refund of the EMD hence R-3 could not have been permitted to further continue in the process. As noted above, within two days from sending the email on 29.05.2024, on 31.05.2024 R-3 requested to ignore its email 29.05.2024 and informed that revised plan shall be submitted. Clause 1.11.1 of the RFRP prohibits any RA to amend or revise plan. **When without permission of the CoC no applicant can permit to amend or revise the plan no applicant is permitted to withdraw the resolution plan once submitted.**
- RFRP further provides that CoC reserve the absolute right, at any stage of the resolution plan submission process to accept or reject any or all the resolution plans.
- The provisions of RFRP thus clearly empowers the CoC to take a decision not to continue with any resolution plan submission process and has right to engage in negotiation discussion with any or all the RAs.

D. Conclusion

- NCLT has rightly come to answer the questions in the facts of the present case, CoC's decision to permit R-3 to submit a revised plan is in accordance with law.
- In view of our foregoing discussions and conclusion, the Hon'ble Appellate Tribunal does not find any ground to interfere with the impugned order dated 16.06.2025.
- The appeal is **dismissed**. The interim order stand discharged.

DIRECTOR DEFAULT DISQUALIFICATION UNDER SEC.164 IS A REASONABLE RESTRICTION ON ARTICLE 19(1)(G) RIGHTS: KARNATAKA HC RULING

Background of the case

The Honourable Karnataka High Court held that a director can be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made. This judgement was delivered by the Honourable High Court of Karnataka on 25th of July 2025 in the case of two of the directors of M/s Vihaan Direct Selling (India) Private Limited v/s Union of India against the writ petition filed by the directors under Articles 226 & 227 of the Constitution of India praying to declare that the action of the Registrar of Companies disqualifying and blocking the DINs of the directors and preventing them from filing any document (e-forms) with the Ministry of Corporate through MCA portal through their DIB / DSC number 07590137 & 07590139, as unconstitutional and in violation of the fundamental rights of the petitioners as guaranteed by Article 19(1)(g) of the Constitution of India.

While delivering the judgement, the Honourable Karnataka High Court held that section 164 of the Companies Act 2013 is a reasonable restriction to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The Honourable High Court held thus in a Writ Petition preferred by the directors of a company, challenging their disqualification and blocking of DINs (Director Identification Numbers). A Single Bench of Justice who delivered the judgment observed, "This restriction of disqualification and practice of trade and profession as a director being imposed by section 164 and 167 of the Companies Act 2013, the reasons for the same have been expounded hereinabove, The Honourable Judge was of the considered opinion that section 164 and 167 are reasonable restrictions to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. Thus, the claim under this head of account by the petitioner is not sustainable."

Let us go through this case in threadbare so that one could understand the issues raised by the directors along with the occurrences that had happened, the related provisions under the Companies Act and the rationale behind the judgment by the Honourable High Court.

Details of the directors / company

M/s Vihaan Direct Selling (India) Private Limited was incorporated on 10th December 2011 under the provisions of the Companies Act 1956 and having its registered office at Level 11, Prestige Khoday Tower No.5, Rajbhavan Road, Bangalore in the state of Karnataka. The company falls under the jurisdiction of Registrar of Companies of Karnataka, and the office of the Registrar of Companies is situated at Bangalore. The company is having two directors on its board as on date as per the details available at the Ministry of Corporate Affairs portal.

Details of directors

Sr. No	Name	Designation	Date of appointment	Date of cessation
1	xxxxxxx	Director	12.08.2016	---
2	xxxxxxx	Director	12.08.2016	---

Facts of the case

a. One of the directors of the company of M/s Vihaan Direct Selling (India) Private Limited attempted to file the company's annual returns and statutory filings for the financial year 2017-18 and 2018-19. During such filing, a pop-up dialogue box on the official web portal of Ministry of Corporate Affairs displayed the message.

"the Directors disqualified under the provisions".

b. The director then took up the matter with the Registrar of Companies and requested him to activate the Director Identification Number ("DIN") of the directors to enable the company to comply with the statutory filings.

c. On 7th August 2018, the company was informed by the Registrar of Companies, Ministry of Corporate Affairs that an inspection of the books of account and other books of records and papers of the company would be carried out under section 206 (5) of the Companies Act 2013 and the company and directors were called upon to furnish certain information and documents in connection with the proposed inspection.

d. Then the inspection was carried out by the regulatory authorities.

e. Subsequent to the inspection, the Regulator i.e., the Regional Director had informed vide his letter dated 12th December 2018 to the company and its directors about certain irregularities and called upon the company and the directors to provide explanation/information along with documentary evidence in relation thereto.

Issue of show cause notice

Thereafter, the Registrar of Companies had issued a show-cause notice to the company and its directors on 21st May 2019 for which the company had replied on 4th June 2019.

Regulatory action therefore – winding up petition filed by the ROC with NCLT

Based on the reply received from the company the Registrar of Companies filed a petition for the winding up of the company before the National Company Law Tribunal on 7th June 2019.

Action taken by the company / directors – filing of writ petition at the High Court

From the winding up petition filed by the Registrar of Companies the company and its directors came to know about the director's disqualification from all the companies as directors. Thereafter the directors exchanged several correspondences with the regulatory authorities, and they did not yield any result. With the above background, the directors had filed the writing petition at the Honourable Karnataka High Court. The writ petition was filed by the directors under Articles 226 & 227 of the Constitution of India praying to declare that the action of the Registrar of Companies of Ministry of Corporate Affairs disqualifying and blocking the DIN's of the directors and preventing the directors from filing any document (e-forms) with the Ministry of Corporate Affairs through MCA portal through their DIN / DSC no. 07590137 & 07590139, as unconstitutional and in violation of the fundamental rights of the directors as guaranteed by Article 19(1)g) of the Constitution of India and etc.

Hearing of the writ petition at the Honourable Karnataka High Court

The writ petition came for the final hearing at the Honourable Karnataka High Court on 25th. July 2025 and during the hearing.

Arguments put forward by the learned Senior Counsel on behalf of directors.

During the hearing, the learned Senior Counsel appearing on behalf of the directors stated that: -

(a) The directors could not be disqualified as an interim measure from all companies, and the said disqualification causes immense harm and injury to the interests of the directors. The learned Senior Counsel stated that it was on account of such disqualification that the directors had been unable to file the returns and documents relating to the company, thereby resulting in further delay and violation.

(b) The learned Senior Counsel further stated that his submission was that not only had the directors been disqualified from the company i.e. M/s Vihaan Direct Selling (India) Private Limited as regards which allegations had been made, but also as regards any other company and thus the actions and/or activities of M/s Vihaan Direct Selling (India) Private Limited had come to an end and the directors not being directors in any other company the same had not adversely affected them.

(c) The learned Senior Counsel concluded his submissions by stating that even if there was a power for disqualification and exercising such power if any order is passed, the said order could only be enforced for a period of five years. In the present case, the order having been passed in the year 2018, the period of five years had expired in the year 2023, and as on today, there could not be any embargo on the petitioners exercising their directorship in any company, including M/s Vihaan Direct Selling (India) Private Limited.

Arguments put forward by the learned Senior Counsel on behalf ROC/RD & Government

The learned Senior Counsel who appeared on behalf of Union of India. RD and ROC stated that there had been serious allegations which had been made against M/s Vihaan Direct Selling (India) Private Limited and its directors, and necessary action had been taken. There were violations which have been alleged against the directors and in view of the dubious conduct of the company has also on account of various complaints which had been received alleging Ponzi scheme to have been conducted by the company, which had resulted in losses to several thousand depositors. It was, in this background that action was taken against the directors who had violated the various applicable provisions of the Companies Act.

The learned Senior Counsel further submitted that the period of five years having expired, the order had spent itself and there was no particular provision for extending the said order and the said order had come to an end, and the authorities would be taking necessary action in relation thereto.

The Honourable Court's enquiry and the response

The Honourable Court enquired as to whether any proceedings had been initiated against the directors and the company as regards to the allegations made in the objections filed in the present proceedings and the documents which had been produced. The learned Senior Counsel submitted that several actions had been taken and many of which were pending.

At this juncture, the learned Senior Counsel appearing for the directors and the learned Senior Counsel and the learned Additional Solicitor General, appearing for the Union of India / RD and ROC perused papers.

Points that had arisen for consideration of the Honourable High court

The following points had arisen for consideration of the Honourable Karnataka High Court after hearing the arguments from both sides: -

1. Whether under section 164 of the Companies Act 2013, a director could be disqualified from being a director in the company as regards which the allegations were made, as well as regarding any other company in which he or she holding the position of a director, for which no allegations were made?
2. Whether there was any power with the concerned authorities to extend a period of disqualification beyond a period of five years?
3. What order the Honourable Court would be delivering?

The Honourable Court answered the above points as under in its order.

Point No.1- the question.

Whether under section 164 of the Companies Act 2013, a director could be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made?

Answer

Section 164 of the Companies Act 2013 reproduced hereunder for easy reference; 164. Disqualifications for appointment of director. —

Companies Act 2013 Chapter XI – Appointment and qualifications of director Section 164. Disqualifications for appointment of director.	
Section	Provisions
164 (1)	A person shall not be eligible for appointment as a director of a company, if —
164(1) (a)	he is of unsound mind and stands so declared by a competent court;
164 (1) (b)	he is an undischarged insolvent;
164 (1) (c)	he has applied to be adjudicated as an insolvent, and his application is pending;
164(1) (d)	he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
164 (1) (e)	an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
164(1) (f)	he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

164 (1) (g)	he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
164(1) (h)	he has not complied with sub-section (3) of section 152.
164 (3)	A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in subsections (1) and (2). [Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

The Honourable High Court, stated that the sub-section (1) of section 164 deals with disqualification in general in as much as if any of the grounds under sub-section (1) of Section 164 are attracted, then a person cannot be appointed as a director; that is, this would apply to a situation where he has not already been appointed as a director. The Honourable High Court further stated that if the grounds listed under sub-section (1) of section 164 were to occur after a person has been appointed as a director, then from that date, such person would be disqualified from continuing as a director, and also from being appointed as a director in any other company.

The Honourable High Court stated that in the present case, the disqualification which is alleged against the petitioners is under sub-section (2) of section 164, an account of the directors having failed to repay the deposit accepted by the company or to pay interest thereon etc., and stated further that none of the ingredients of sub-section (1) of section 164 has been applied in the present case. It is clause (b) of sub-section (2) of section 164 which has been made applicable, read with clause (a) of sub-section (1) of section 167.

The Honourable High Court also stated in terms of sub-section (2) of section 164, if any of the grounds under sub-section (2) are attracted, no person who has or has been a director of a company shall be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. Further that the proviso would indicate that even if there is a default, no person would incur the disqualification for a period of six months from the date of his appointment. That is to say, if only there is a non-compliance with clause (a) and clause (b) of sub-section (2) of section 164 after a period of six months from the date of appointment of a director only then would the disqualification occur.

The Honourable High Court also referred the section 167 of the Companies Act 2013 as reproduced below for reference:-

**Companies Act 2013
Chapter XI – Appointment and qualifications of director
Section 167. Vacation of office of director.**

Section	Provisions
167 (1)	The office of a director shall become vacant in case—
167(1) (a)	he incurs any of the disqualifications specified in section 164:
Proviso	Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.
167 (1) (b)	he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
167 (1) (c)	he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
167 (1) (d)	he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
167(1) (e)	he becomes disqualified by an order of a court or the Tribunal;
167(1) (f)	he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Proviso	Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and
167(1) (f) (i)	for thirty days from the date of conviction or order of disqualification;
167(1) (f) (ii)	where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or.

167(1) (f) (iii)	where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of
167(1) (g)	he is removed in pursuance of the provisions of this Act;
167(1) (h)	he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
167(2)	If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 2 [five lakh rupees].
167(3)	Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.
167(4)	A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

The Honourable High Court stated that in terms of clause (a) of sub-section (1) of section 167, if a director incurs any disqualification specified in section 164, the office of the director becomes vacant. In terms of proviso to clause (a) of sub-section (1) of section 167, it is categorically stated that where a director incurs a disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies other than the company which is in default under that sub-section.

The Honourable High Court stated that in terms of clause (a) of sub-section (1) of section 167, if a director incurs any disqualification specified in section 164, the office of the director becomes vacant. In terms of proviso to clause (a) of sub-section (1) of section 167, it is categorically stated that where a director incurs a disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies other than the company which is in default under that sub-section.

The Honourable High Court stated that needless to say, if the default by a director is made in two or more companies attracting sub-section (2) of section 164 even then it is only in respect to the companies which are in default of sub-section (2) of section 164 that clause (a) of sub-section (1) of section 167 would be attracted and if there is no default by any other company where the same person is a director in that event the office of the director in that no defaulting company will become vacant.

The Honourable High Court stated with reference to the submissions made by the learned Senior Counsel for the directors that a director can only be disqualified in the company in default and not in a company in which he is not in default, cannot be sustained. The disqualification is not with reference to a company but with regard to an action not taken by the director coming under sub-section (2) of section 164 i.e., if the company has not filed financial statements or annual returns for a continuous period of 3 years or has failed to repay the deposits accepted by it or failed to pay interest thereon or failed to redeem any debentures on the date due, etc., which is a positive act required to be done by the company, which has not been so done.

The Honourable High Court spelled out that the vacation of office of the director under clause (a) of sub-section (1) of section 167 applies to the reasons provided both under sub-section (1) of section 164 and sub-section (2) of section 164.

However, the proviso restricts the vacation of the post of director only to the company in default. The Honourable High Court further spelled out that the intent of section 164 is to disqualify a director who is in default. The claim of the learned Senior Counsel that the same violates Article 19(1)(g) of the Constitution of India is therefore not sustainable. Since this disqualification has been incurred by a director on account of inaction by a director, unless it has been shown by a director, that the director has done everything possible at the hands of such director and for reasons not in the control of such director the annual returns could not be filed. For example, if the other director refuses to sign the balance sheets. In such a situation, provisions would have to be made to enable the filing of the financial statements or annual returns by a single director, so that such disqualification is not incurred by a director for reasons not in control of such director.

The Honourable High Court stated that insofar as clause (b) of sub-section (2) of section 164 are concerned, this is as regarding repayment of the deposits etc., as indicated supra. Insofar as these aspects are concerned, it is all the directors who would be jointly and severally responsible for such repayment and there cannot be any distinction made between one director and the other director. Thus, so long as any default is made to the requirement of clause (b) of sub-section (2) of section 164, such a director would be disqualified as a director of that company or from appointment in any other company for a period of 5 years. The Honourable High Court stated further that in terms of the proviso to clause (a) of sub-section (1) of section 167, it is only the office of the director in the company in default that there would be a vacation of the office of the director.

This is also for the reason that (i) if the offices are held to be vacant, a new director could be appointed, as also for the reason that (ii) the defaulting director would continue to be liable for the violation as envisaged under clause (b) of sub-section (2) of section 164. The Right to Trade and Business and practice profession under Article 19(1)(g) of the Constitution of India is not absolute but is subject to reasonable restrictions that may be imposed under law.

The Honourable High Court stated that this restriction of disqualification and practice of trade and profession as a director being imposed by section 164 and 167 of the Companies Act 2013, the reasons for the same have been expounded hereinabove, and the Honourable Judge was of the considered opinion that section 164 and 167 are reasonable restrictions to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. Thus, the claim under this head of account by the petitioner is not sustainable.

Conclusion by the Honourable High Court

With the foregoing discussion, the Honourable High Court answered the point no. 1 by holding that the under section 164 of the Companies Act 2013, a director can be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made.

Point No.2- the question.

Whether there is any power with the concerned authorities to extend a period of disqualification beyond a period of five years?

Answer

The Honourable High Court referred the section 164 which has been reproduced hereinabove and stated that in terms of clause (b) of sub-section (2) of section 164, it is seen that no person who has or has been a director of company of which the reasons as indicated in Clause (a) and (b) of sub-section (2) of section 164 are attracted, would be eligible to be reappointed as a director of that company or appointed in any other company for a period of 5 years from the date on which the said company fails to do so. The said Sub-section (2) of Section 164 does not provide for extension of the period of 5 years; the restriction can only be for a period of 5 years.

The Honourable High Court stated that in the present case, the disqualification of the petitioners having occurred in the year 2018, the said 5 years expired in the year 2023 and therefore cannot be continued thereafter. In that view of the matter, the Honourable Judge was holding that there is no power with the concerned authorities to extend a period of disqualification beyond a period of five years.

Point No.3- the question.

What is the order?

Answer

The Honourable High Court delivered its order stating that no ground being made out in the writ petition stands dismissed, with the observation that the disqualification of petitioners in the present case has come to end in the year 2023.

Conclusion

It is very clear from the above judgment of the Honourable Karnataka High Court that every.

Company and its directors are required to adhere by the provisions of the Companies Act 2013 and the restrictions, conditions imposed under the Companies Act 2013 are justifiable and within the fundamental rights guaranteed by the Constitution of our country. Companies have to ensure that the compliance management system is in place and strict adherence is called for with no recourse available other than based on the merit of each case and justifiable ground.

AN INSIGHT INTO INDUSTRY STANDARDS ON MINIMUM INFORMATION TO BE PROVIDED FOR RELATED PARTY TRANSACTIONS (RPT)

Mehta & Mehta organized a thought provoking event on 8th August 2025 in Delhi on the theme **“An Insight into Industry Standards on Minimum Information to be Provided for Related Party Transactions (RPTs).”** The programmed was conceptualized with the objective of creating awareness and promoting dialogue around the evolving regulatory expectations, best practices, and challenges concerning RPT disclosures, which continue to remain a critical area of corporate governance.

The deliberations commenced with an overview of Related Party Transactions and their growing significance in today's corporate environment, especially in light of stricter scrutiny by regulators and stakeholders. The discussions highlighted the regulatory framework applicable to RPTs and the specific disclosure requirements that have emerged through industry standards. Special emphasis was placed on the minimum information to be provided to Audit Committees and shareholders at the time of seeking approval, ensuring that decision-making is backed by clarity, transparency, and adequate data.

The sessions further explored the role of governing bodies including Boards and Committees in safeguarding the interests of stakeholders and ensuring that RPTs are not only compliant but also aligned with the principles of fairness and accountability. Experts also shared valuable insights on stakeholder perspectives, touching upon investor expectations and the importance of consistent disclosures in enhancing trust. At the same time, the event did not shy away from discussing the grey areas and practical challenges faced by companies, and strategies to navigate them effectively.

One of the most engaging segments of the event was the interactive panel discussion and Q&A, where industry experts, practitioners, and participants exchanged views on real-life scenarios. The dialogue helped bridge the gap between theory and practice, offering actionable takeaways for professionals involved in governance and compliance functions.

The event witnessed enthusiastic participation from a wide spectrum of organizations, including prominent companies such as ASK Automotives, Indifi Capital, India Shelter Housing Finance etc., alongside representatives from leading law firms, Chartered Accountants, bankers, and financial advisors. The diversity of the audience enriched the discussions, providing a holistic understanding of the subject from multiple professional and industry perspectives.

The key takeaway from the programmed was the recognition that standardized disclosures, robust governance practices, and active stakeholder engagement are indispensable for strengthening transparency and accountability in RPT

KNOWLEDGE SHARING EVENT

approvals and monitoring. The event reaffirmed that addressing these issues is not merely a matter of compliance but an essential step toward enhancing the credibility and sustainability of corporate governance structures.

Through this initiative, Mehta & Mehta continues its endeavor to create platforms that bring together corporates, professionals, and regulators for meaningful dialogue on pressing governance issues. The firm remains committed to fostering a culture of compliance and regulatory excellence, thereby contributing to the larger cause of building trust and resilience in the corporate ecosystem.

The event was successfully hosted by Mr. Nayan Handa, Partner – Delhi, whose leadership and efforts ensured meaningful discussions and valuable insights for all participants.



FAQS ON CSR

FAQs on Corporate Social Responsibility

As per Section 135 of the Companies Act, 2013, it is a mandatory requirement for Companies to spend at least 2% of the average net profits of the preceding three years towards 'CSR Expenditure' as per the CSR policy and annual action plan once it meets the criteria specified in sub-section 1 of section 135 of Companies Act, 2013 and Rule 3 of Companies (CSR Policy) Rules, 2014.

In this article, we have tried answering some frequently asked questions on section 135.

- **Section 135 is applicable to Foreign company?**

Yes, as section 135(1) of the Act and Rule 3 of Companies (CSR Policy) Rules, 2014 commences with the words "Every company...." thus the provisions apply to Foreign Company as well.

- **To check applicability of CSR obligation, need to check immediately preceding financial year only or three immediately preceding financial years?**

For checking the applicability of section 135, only immediately preceding financial year's net profit, net worth and turnover are required to be checked as per section 135 (1) of the act. While calculating the CSR obligation, net profits of the company made during the three immediately preceding financial years require to be checked as per Section 135 (5) of the act. Profits for this purpose shall be calculated in accordance with the provisions of section 198 of the Act

- **Ongoing project to be considered financial year wise or Calendar year wise?**

As per definition given under section 2 (41) of the Act, the term 'year' refers to financial year. Hence, ongoing projects to be considered financial year wise.

- **In case of ongoing project if any balance remains in unspent account, can it be used for any other project?**

No, it cannot be used for any other projects. As per section 135(6) of the Act, such unspent amount shall be spent by the company according to its Corporate Social Responsibility Policy within a period of three financial years from the date of transferring to Unspent Corporate Social Responsibility Account. Any amount remaining unspent after three financial years, shall be transferred to the Fund specified in Schedule VII within a period of thirty days from the date of completion of the third financial year.

- **Whether company can collaborate with another company for CSR activity and project?**

Yes, as per sub-rule 4 of Rule 4 of Companies (CSR Policy) Rules, 2014 a company may collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are able to report separately on such projects or programmes.

- **Can the company claim expenses incurred by implementing agencies for project implementation as administrative overheads?**

No, expenses incurred by implementing agencies for project implementation, cannot be claimed by company as administrative overheads.

As per definition given under rule 2(1)(b) of the Companies (CSR Policy) Rules, 2014, "Administrative Overheads" mean the expenses incurred by the company in the general management and administration of CSR functions in the company. It shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.

- **Whether profit arises from surplus of CSR activity form part of profit of the company?**

No, the surplus arising out of CSR activities shall be utilized only for CSR purposes.

As per sub-rule 2 of Rule 7 of Companies (CSR Policy) Rules, 2014, any surplus arising out of the CSR activities shall not form part of the business profit of a company. Surplus shall be ploughed back into the same project **or** shall be transferred to the Unspent CSR Account and spent according to the CSR policy and annual action plan of the company **or** to be transferred to a Fund specified in Schedule VII within a period of six months of the expiry of the financial year.

- **Do Company require to open a separate 'Unspent CSR Account' for each of the ongoing project?**

No, a company can open a single special account, called 'Unspent Corporate Social Responsibility Account', for a financial year. A company only requires opening a separate 'Unspent CSR Account' for each financial year. It is not required to open a separate account for each ongoing project.

- **Section 135 is applicable to the holding company, is it automatically applicable to its subsidiary company/ies or vice-versa?**

No, as per sub-section 1 of section 135 of Companies Act, 2013 and Rule 3 of Companies (CSR Policy) Rules, 2014, CSR Compliance is applicable to **every company** which fulfills the criteria specified. The compliance with CSR requirements is specific to each company.

Every company irrespective of whether it's a holding or subsidiary to another company requires to check for criteria of applicability of CSR obligation & comply with section 135 accordingly.

- **Which Penal Section is applicable for non-compliance by a small company?**

Sec 135 (7) has introduced monetary penalties for the **company and every officer of the company** who is in default for non-compliance with the provisions relating to undertaking of CSR expenditure and transfer to Unspent CSR Account/Schedule VII fund (as applicable). This section is applicable to all companies irrespective of type or structure of the company.

Further, readers are advised to go through,

-General Circular- FAQs on CSR issued by MCA dated 25th August, 2021

[Link](#)

-National CSR Exchange Portal- FAQs on CSR

[Link](#)

-FAQs on CSR by The Institute of Company Secretaries of India

[Link](#)

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