

WEEKLY CORPORATE UPDATES

Saturday 20th August, 2022

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

The Companies (Incorporation) Third Amendment Rules, 2022

Dated: 18th August, 2022

Ministry of Corporate Affairs vide its notification dated 18th August, 2022 has notified the Companies (Incorporation) Third Amendment, Rules 2022. Vide this notification, rule 25B shall be inserted after rule 25A in the Companies (Incorporation) Rules, 2014 pertaining to physical verification of the registered office of the Company by Registrar of Companies.

Important points:

- ROC shall prepare Physical Verification Report of the Registered Office of the company in the given format.*
- Need to attach Photograph of the Registered Office of the company to his report.*
- Copy of Agreement /ownership / rent agreement /NOC of the Registered Office of the company from owner /tenant / lessor*
- Self attested ID card of the person available, if any.*
- Independent witness of the locality. Assistance of the local police for such verification, if required.*

Related Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=qbGibr%252F9bA%252BJ3ugSGCuIXA%253D%253D&type=open>

Issue of FAQs on Company Forms (Director KYC, Charge & Deposit Forms) on MCAV3 portal

Dated: 16th August, 2022

Ministry of Corporate Affairs has issued FAQs on Company Forms (Director KYC, Charge & Deposit Forms) on MCAV3 portal. These forms include DIR-3 KYC Eform, DIR-3 KYC web, CHG-1, CHG-4, CHG-6, CHG-8, CHG-9, DPT-3, DPT-4.

Above forms will be rolled out on 31st August 2022 on MCA21 V3 Portal and will be available post log in.

Related Link: <https://www.mca.gov.in/Ministry/pdf/FAQs-Set-1-forms-20220817.pdf>

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SEBI UPDATES

NSE tracks insider trading rules compliance

Dated: 15th August, 2022

About a week ago, the country's largest bourse, National Stock Exchange (NSE) shared a compliance certificate format with many companies which have to give specific declaration on whether they have control over who can access unpublished price sensitive information (UPSI), if information shared are time-stamped to keep a track on who is receiving it and when, and whether there is chance of anyone tampering with the records. A move is on to scrutinise whether large and actively traded companies are falling in line with the rules to curb insider trading, one of the scourges of the Indian stock market.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/nse-tracks-insider-trading-rules-compliance/articleshow/93566101.cms>

Guidelines for overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs)

Circular No.: SEBI/HO/AFD-1/PoD/CIR/P/2022/108

Dated: 17th August, 2022

In terms of Regulation 12(ba) of erstwhile SEBI (Venture Capital Funds) Regulations 1996 and Regulation 15(1)(a) of SEBI (Alternative Investment Funds) Regulations, 2012, AIFs/VCFs may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time. SEBI vide this circular has issued Guidelines for overseas investment by AIFs /VCFs. It is specified that AIFs/VCFs shall file an application to SEBI for allocation of overseas investment limit in the format specified at Annexure A to this circular.

Related Link: <https://www.sebi.gov.in/legal/circulars/aug-2022/guidelines-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-62020.html>

Block Mechanism in demat account of clients undertaking sale transactions

Circular No.: SEBI/HO/MIRSD/DoP/P/CIR/2022/109

Dated: 18th August, 2022

Markets regulator SEBI made it mandatory for investors to block securities on their respective demat accounts for sale transactions. Currently, the facility is optional for investors.

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The block mechanism in the demat accounts of clients undertaking sale transactions would become mandatory from November 14. Under the mechanism, shares of a client intending to make a sale transaction will be blocked in the client's demat account in favour of the clearing corporation concerned.

In July, the regulator decided to introduce the concept of a block mechanism, whereby investors have an option to block securities in their respective demat accounts for sale transactions from August 1.

The option of an early pay-in method is also available. Under this option, shares are transferred from a client's demat account to the clearing corporation concerned's account. If the sale transaction is not executed under the early pay-in mechanism, then those shares are returned to the client's account and the process takes time and involves a cost.

After extensive consultation with depositories, clearing corporations and stock exchanges, and considering the benefits of the block mechanism, SEBI has now decided that the "facility of block mechanism shall be mandatory for all early pay-in transactions".

In case the sale transaction is not executed, shares will continue to remain in the client's demat account and will be unblocked at the end of the T (Trade) day. Blocking of shares will be on a 'time basis'.

SEBI said depositories and clearing corporations will have to put in place an appropriate system by participants or members to make available the block mechanism for clients in the securities market. Under the block mechanism, securities lying in the client's demat account will be blocked either by the client using a depository's online system or eDIS mandate or through the depository participant based on physical DIS (Delivery Instruction Slip) given by the client or Power of Attorney (PoA) holder. Depositories can block the securities in the client's demat account in respect of intra or inter-depository transfer instruction till pay-in day. Only after reviewing the client-level net delivery obligation obtained from clearing corporations can the blocked securities be transferred. Depositories will also provide clearing organisations with information on transfer orders so that clients can take advantage of the early pay-in benefit.

According to SEBI, if securities for sale are blocked in the depository system in favour of a clearing corporation, all margins would have deemed to have been collected and penalty for short or non-collection of margins, including other margins should not arise.

Related Link: https://www.sebi.gov.in/legal/circulars/aug-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions_62131.html

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Participation as Financial Information Providers in Account Aggregator framework

Circular No.: SEBI/HO/MRD/DCAP/P/CIR/2022/110

Dated: 19th August, 2022

The Securities and Exchange Board of India (Sebi) has asked depositories and asset management companies (through their registrar and transfer agents) to participate as financial information providers (FIPs) in the existing account aggregator framework.

The capital market regulator has made it mandatory for FIPs to “seek approval” of investors before sharing their information with the Reserve Bank of India (RBI)-approved account aggregators.

“The FIPs shall share the financial information pertaining to securities markets, through the account aggregator only on receipt of a valid consent artefact from the customer,” Sebi said.

FIPs in the securities markets should also verify the validity of investor’s consent, specified dates, and usage, as well as the credentials of account aggregators.

The FIPs should digitally sign the financial information and securely transmit it to the account aggregator after verification of the consent artefact. All responses of the FIPs in the securities markets should be in real time. “There also needs to be adequate safeguards built into IT systems of FIPs in the securities markets to ensure that it is protected against unauthorized access, alteration, destruction, disclosure, or dissemination of records and data,” the market regulator said.

Related Link: https://www.sebi.gov.in/legal/circulars/aug-2022/participation-as-financial-information-providers-in-account-aggregator-framework_62157.html

RBI UPDATES

Cabinet approves enhancement in the corpus of Emergency Credit Line Guarantee Scheme for increasing the limit of admissible guarantees

Dated: 17th August, 2022s

The Union Cabinet, chaired by the Prime Minister, Shri Narendra Modi has approved the enhancement in the limit of Emergency Credit Line Guarantee Scheme (ECLGS) by Rs 50,000 crore from Rs. 4.5 Lakh crore to Rs. 5 Lakh crore, with the additional amount being earmarked exclusively for enterprises in hospitality and related sectors. The increase has been done on account of the severe disruptions caused by COVID19 pandemic on hospitality and related enterprises.

Related Link: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1852529>

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RBI clears way for IDBI Bank EOI in September

Dated: 17th August, 2022

With the regulators willing to provide the required flexibility in norms, the government is set to float an Expression of Interest (EOI) for the strategic disinvestment of IDBI Bank next month. The Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) are understood to have agreed to provide a flexible glide path to reduce the promoter's (acquirer's) stake in the bank once the transaction is over. To make the deal attractive, the Government had urged the RBI to give the potential buyer some leeway in complying with the regulatory norms meant for private banks, including a time-bound reduction in promoter holding. The buyer may get 10-15 years to reduce stake in the bank to the desired level of 26%.

Related Link: <https://www.financialexpress.com/industry/banking-finance/rbi-clears-way-for-idbi-bank-eoi-in-september/2632451/>

IBC & NCLT UPDATES

Financial Creditor bank can't be directed to positively grant benefit of one-time settlement to corporate debtor: NCLAT

Dated: 16 Aug 2022

Although settlement had to be encouraged in IBC but no direction can be issued by adjudicating authority to financial creditor-bank to positively grant benefit of OTS to a corporate debtor.

Related Link: [Financial Creditor bank can't be directed to positively grant benefit of one-time settlement to corporate debtor: NCLAT - Taxmann](#)

IRP's failure to conduct CIRP even after upliftment of restraining order amounted to contravention of section 208: IBBI

Dated: 18 Aug 2022

Where 'M' who was appointed as IRP for CIRP of corporate debtor had incorrectly constituted CoC with 2 corporate guarantors whose guarantees were yet to be invoked and was, therefore, restrained from holding CoC meeting or putting any agenda to vote and despite of upliftment of said restrained order of Adjudicating Authority IRP failed to conduct CIRP, there was contravention of provisions of section 208 on part of IRP.

Related Link-[IRP's failure to conduct CIRP even after upliftment of restraining order amounted to contravention of section 208: IBBI - Taxmann](#)

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Director can't claim entitlement to participate in CoC meeting after his vacation from office of director: NCLAT

Dated: 18 Aug 2022

Where resolution plan approved by NCLT was challenged in other company appeals and said resolution plan had already been sent back to CoC for reconsideration, subsequent appeal challenging order of NCLT approving same resolution plan became infructuous.

Related Link: [Director can't claim entitlement to participate in CoC meeting after his vacation from office of director: NCLAT - Taxmann](#)

CIRP plea devoid of qualitative and quantitative details of both appellant and corporate debtor was to be dismissed: NCLAT

Dated: 20 Aug 2022

Where appellant filed an application under section 9 against corporate debtor, which was devoid of qualitative and quantitative details and both appellant and corporate debtor had been supplying materials mutually exclusive with one and another, appellant was not an operational creditor qua corporate debtor and, therefore, NCLT rightly dismissed said application.

Related Link: [CIRP plea devoid of qualitative and quantitative details of both appellant and corporate debtor was to be dismissed: NCLAT - Taxmann](#)

Supreme Court rules in favour of ARCIL in Tulip Star Hotels bankruptcy case

Dated: Aug 13, 2022

The Supreme Court has set aside the ruling of the National Company Law Appellate Tribunal (NCLAT) rejecting Asset Reconstruction Co (India) Ltd's claim in Tulip Star Hotels' insolvency case.

The appellate tribunal had accepted the hotel operator's claim that the ARC filed its case against the company under the Insolvency and Bankruptcy Code (IBC) after the limitation period of three years from the date of declaring the asset as non-performing. But the Supreme Court, in its order on August 1, noted the extensions sought by Tulip Star Hotels to pay the arrears and ruled that the entries of debt in the books of account and balance sheet of a company could be treated as an acknowledgement of the liability and considered while fixing the limitation period.

Related Link: [tulip star hotels: Supreme Court rules in favour of ARCIL in Tulip Star Hotels bankruptcy case - The Economic Times \(indiatimes.com\)](#)

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Whether a resolution plan which is already approved by the CoC, and which is pending before the Adjudicating Authority (AA) for approval can be withdrawn for reconsideration by the CoC on the discovery of new facts and events relating to the resolution applicant and whether the AA is empowered to send back the resolution plan, on such request, to the CoC – Asset Reconstruction Company (India) Ltd. Vs. Nivaya Resources Pvt. Ltd. – NCLT Ahmedabad Bench

Dated: August 17, 2022

The present application was filed by the Asset Reconstruction Company (India) Ltd., being the authorised representative of the CoC by passing the resolution with 96.95% for filing the present application. The parent company of Respondent No.1, i.e., Gulf Petrochem FCZ has been declared bankrupt and there is a freezing injunction on the promoters. The credit rating of the Respondent No.1 is in default as on June 04, 2021. The successful resolution applicant has defaulted in other CIRP of M/s. Allied Strips Ltd. and M/s. Tirupati Infraprojects Pvt. Ltd., wherein also he was the successful resolution applicant. In this background, the present application has been moved by the CoC/lenders, with 96.95% voting in its favour, for remanding back the resolution plan for reconsideration of the CoC.

The issue is whether a resolution plan which is already approved by the CoC, and which is pending before the Adjudicating Authority for approval can be withdrawn for reconsideration by the CoC on the discovery of new facts and events relating to the resolution applicant and whether the Adjudicating Authority is empowered to send back the resolution plan, on such request, to the CoC.

Related

link:[Asset+Reconstruction+Company+\(India\)+Ltd.+Vs.+Nivaya+Resources+Private+Ltd.+\(Formerly+Known+as+GP+Global+Energy+Pvt.+Ltd.\),+the+Successful+Resolution+Applicant+of+GPT+Steel+Indust+\(1\).pdf \(ibclaw.online\)](#)

A Banker's Certificate is not mandatorily required to trigger CIRP under Section 9 of the IBC, 2016 – M/s Quippo Infrastructure Ltd. Vs. M.R. Nirman Pvt. Ltd. – NCLAT New Delhi

Dated- August 16, 2022

NCLAT held that as mandated under Section 8 of the Code, was duly served upon the Respondent / Corporate Debtor, we are satisfied that the requirement under Section 8 of the code, is complete. Further, NCLAT referred the judgment

of Hon'ble Supreme Court in Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. [2017] ibclaw.in 14 SC and held that it is clear that a Banker's Certificate is not mandatorily required to trigger CIRP under Section 9 of the Code. It is significant to mention that this Tribunal has not gone into the merits of the matter with respect to debt or default, we only addressed to the issue of the service of Demand Notice on the Corporate Debtor and that a Banker's certificate is not essential to trigger CIRP under Section 9 of the Code.

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Related Link: <https://ibclaw.in/m-s-quippo-infrastructure-ltd-formerly-known-as-quippo-construction-equipment-ltd-vs-m-r-nirman-pvt-ltd-nclat-new-delhi/>

There is no provision in the Code, 2016, that enables the Creditors other than those who triggered the Insolvency Resolution Process, to be impleaded as Parties – Mr. Chinna Rao Vs. V. Venkatasivakumar Erstwhile Liquidator of M/s. The Jeypore Sugar Co. Ltd. – NCLAT Chennai

Dated: August 16, 2022

NCLAT held that it must be borne in mind that there is no provision in the Code, 2016, that enables the Creditors other than those who triggered the Insolvency Resolution Process, to be impleaded as Parties. In law, the Impleadment of Parties, is ultimately, within the ambit of exercise of discretion by a Tribunal/Authority, as the case may be. More importantly, no person, can be added, unless he is a necessary party. A necessary party means that a person is very much necessary to the Constitution of Suit/an Appeal in a given Proceeding before a Court of Law/Tribunal/Authority. In fact, whether a person has an enforceable legal right is to be looked into by a Tribunal in regard to the impleadment of parties. To array a person as a prospective / proposed Respondent(s) is not a Substantive Right, but undoubtedly, it is one of the procedure and the Tribunal is to exercise its judicial discretion, of course, in a subjective manner, diligently. It cannot be gainsaid that, an Individual will not be added as a Party, just because he will be affected by the Tribunal incidentally, when it passes an Order in a given proceedings, before it.

Related Link: [IBC Laws - There is no provision in the Code, 2016, that enables the Creditors other than those who triggered the Insolvency Resolution Process, to be impleaded as Parties - Mr. Chinna Rao Vs. V. Venkatasivakumar Erstwhile Liquidator of M/s. The Jeypore Sugar Co. Ltd. - NCLAT Chennai](#)

Thanking You,

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