

WEEKLY CORPORATE UPDATES

Saturday 10th September, 2022

(Curated & compiled by)

Team Indiacorp Law

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M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)

MCA UPDATES

Extension of tenure of the Company Law Committee

Dated: 5th September, 2022

In line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address the emerging issues having impact on the working of corporates in the country, the Company Law Committee was constituted vide MCA order dated 13.07.2018 for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

Thereafter, the tenure of the company law committee was time to time extended by the Government, this time also vide MCA order dated 5th September, 2022 the tenure of the Company Law Committee has been further extended for one year i.e. upto 16.09.2023.

Related Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=rhzCSk7hQy%252Ff3XOJ3BwBCw%253D%253D&type=open>

Amendment in the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process

Dated: 2nd September, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated 30th August, 2022 has notified the amendment in the notification no. S.O. 1911(E) dated 14th June, 2017. As per the amendment, an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013; or*
- “(b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 127(E), dated the 19th February, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 19th February, 2019 and as amended from time to time; or”*
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.*

Related Link: <https://egazette.nic.in/WriteReadData/2022/238571.pdf>

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SEBI UPDATES

SEBI gives in-principle approval to Helios Capital to start mutual fund biz

Dated: 5th September, 2022

Helios Capital has received capital markets regulator SEBI's in-principle approval to launch a mutual fund business. Helios Capital Management PTE Limited, which is the business of portfolio management services, applied for a mutual fund license with the SEBI in February 2021. The company has joined entities like Zerodha, Samco Securities and Bajaj Finserv that received SEBI's go-ahead to launch mutual fund operations. Besides, half a dozen companies are awaiting SEBI's nod to enter into the mutual fund space. A flurry of applications for a mutual fund license was seen after the market regulator allowed fintech firms to enter the space.

Related Link: https://www.business-standard.com/article/markets/sebi-gives-in-principle-approval-to-helios-capital-to-start-mutual-fund-biz-122090501108_1.html

Adani open offer for additional stake in NDTV starts October 17: JM Financial

Dated: 8th September, 2022

The Adani Group will launch its open offer for acquiring an additional 26 per cent stake in media firm New Delhi Television Ltd (NDTV) from October 17 to November 1, 2022, JM Financial, which is managing the offer, said in a draft letter of offer (DLOF). The open offer for acquiring up to 1.67 crore equity shares, for which a price of Rs 294 per share has been fixed, will amount to Rs 492.81 crore, if fully subscribed. The Adani Group, on August 23, unveiled a plan to acquire a majority stake in the news network, through the acquisition of VCPL, which holds a 99.99 per cent stake in RRPR Holding, a promoter entity of NDTV.

Related Link: https://www.business-standard.com/article/companies/adani-open-offer-for-additional-stake-in-ndtv-starts-oct-17-jm-financial-122090800392_1.html

RBI UPDATES

RBI seeks on-tap applications for second regulatory cohort

Press Release No.: 2022-2023/816

Dated: 5th September, 2022

Concerns:

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The Reserve Bank of India (RBI) on September 05, 2022 said that the second cohort on 'cross border payments' is now also open for 'on tap' application. The central bank had earlier selected four entities for the test phase of the second cohort. Cashfree Payments India, Fairex Solutions, Nearby Technologies and Open Financial Technologies completed the test phase of the cohort in July 2022. A regulatory sandbox is live testing of new products or services on a pilot basis with some relaxations for the limited purpose of the testing, after which the RBI invites an 'on tap' application based on the experience gained and the feedback received from stakeholders.

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54315

RBI announced 'On Tap' application facility for theme 'Retail Payments'

Press Release No.: 2022-2023/817

Dated: 5th September, 2022

The Reserve Bank had announced opening of the 'On Tap' application facility for the theme 'Retail Payments' under Regulatory Sandbox vide Press release dated October 08, 2021.

The two entities have been selected for the 'Test Phase':

1. HDFC Bank (in partnership with Crunchfish AB1)

The product 'Offline Retail Payments' provides capability for customer and merchants to be able to pay and receive payments in offline mode. The solution aims to boost adoption of digital payments in areas of no or low network by enabling transactions without the need to have a network connection.

2. Precision Biometric India Pvt. Ltd

The product 'InnaIT Key Solution for Banking' offers solution enabling biometric tokens which can be used for secure password less authentication and Additional Factor Authentication (AFA), instead of an OTP, for logging into internet/ mobile banking. The solution combines Public key infrastructure (PKI) and Biometric to enhance security and user experience in digital payments space

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54314

RBI issues Alert List of entities not authorised to deal in forex and to operate electronic trading platforms for forex transactions

Press Release No.: 2022-2023/835

Dated: 7th September, 2022

Concerns:

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The Reserve Bank of India (RBI), vide press release dated February 03, 2022, had cautioned the public not to undertake forex transactions on unauthorised electronic trading platforms (ETPs) or remit/deposit money for unauthorised forex transactions.

The RBI, however, continues to receive references seeking clarification on the authorisation status of some ETPs. It has, therefore, been decided to place on the RBI website an "Alert List" of entities which are neither authorised to deal in forex under the Foreign Exchange Management Act, 1999 (FEMA) nor authorised to operate electronic trading platforms for forex transactions. The Alert List is not exhaustive and is based on what was known to RBI at the time of this Press Release. An entity not appearing in the Alert List should not be assumed to be authorised by the RBI. The authorisation status of any person / ETP can be ascertained from the list of authorised persons and authorised ETPs, which are already made available in the RBI website.

The RBI reiterates that resident persons can undertake forex transactions only with authorised persons and for permitted purposes, in terms of the FEMA. While permitted forex transactions can be executed electronically, they should be undertaken only on ETPs authorised for the purpose by the RBI or on recognised stock exchanges viz., National Stock Exchange of India Ltd., BSE Ltd. and Metropolitan Stock Exchange of India Ltd.

Members of the public are once again cautioned not to undertake forex transactions on unauthorised ETPs or remit/deposit money for such unauthorised transactions. Resident persons undertaking forex transactions for purposes other than those permitted under the FEMA or on ETPs not authorised by the RBI shall render themselves liable for legal action under the FEMA.

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54333

Inclusive Credit: The Next Milestone (Remarks delivered by Shri M. Rajeshwar Rao, Deputy Governor, Reserve Bank of India – September 08, 2022 - at ASSOCHAM's 17th Annual Summit & Awards on Banking & Financial Sector Lending in Mumbai)

Dated: 8th September, 2022

Recently released digital lending norms are designed to end regulatory arbitrage and protect customers, Reserve Bank of India (RBI) Deputy Governor M Rajeshwar Rao said on Thursday.

Rao also added that unbridled engagement of third parties, misselling, data privacy breaches, unethical recovery practices and exorbitant interest rates led the RBI to regulate digital lending activities.

"The framework is designed to strike a balance between the need for an innovative and inclusive system while at the same time ensuring that the regulatory arbitrage is not exploited to the detriment to the customer's interest," Rao said at an event organized by industry grouping Assocham.

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RBI imposes monetary penalty on India bulls Commercial Credit Limited, New Delhi

Press Release No.: 2022-2023/853

Dated: 9th September, 2022

The Reserve Bank of India (RBI) has, by an order dated September 07, 2022, imposed a monetary penalty of ₹12.35 lakh (Rupees Twelve lakh and thirty-five thousand only) on Indiabulls Commercial Credit Limited, New Delhi (the company) for non-compliance with certain provisions of the “Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016”. This penalty has been imposed in exercise of powers vested in RBI under the provisions of clause (b) of sub-section (1) of section 58 G read with clause (aa) of sub-section (5) of section 58 B of the Reserve Bank of India Act, 1934.

This action is based on the deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the company with its customers.

Background

The statutory inspection of the company was conducted by RBI with reference to its financial position as on March 31, 2020 and examination of the Risk Assessment Report, Inspection Report, supervisory letter and all related correspondence pertaining to the same revealed, inter alia, the company’s failure to (i) allot Unique Customer Identification Code (UCIC) to its individual customers and (ii) carry out categorisation of customers based on its assessment and risk perception. In furtherance to the same, a notice was issued to the company advising it to show cause as to why penalty should not be imposed on it for failure to comply with the RBI directions, as stated therein.

After considering the company’s reply to the notice, examination of additional submissions made by it and oral submissions made during the personal hearing, RBI came to the conclusion that the charges of non-compliance with the aforesaid RBI directions were substantiated and warranted imposition of monetary penalty.

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54351

Directions under Section 35 A of the Banking Regulation Act, 1949 (As Applicable to Co-operative Societies) – Sikar Urban Co-operative Bank Ltd, Sikar, Rajasthan - Extension of Validity

Press Release No.: 2022-2023/859

Dated: 10th September, 2022

Concerns:

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Sikar Urban Co-operative Bank Ltd., Sikar, Rajasthan was placed under All-Inclusive Directions from close of business on November 09, 2018 for a period of six months subject to review, vide Directive dated October 26, 2018. The validity of the directions was last extended vide Directive dated June 07, 2022 for three months up to September 09, 2022, subject to review.

It is hereby notified for the information of the public that, the Reserve Bank of India, in exercise of powers vested in it under sub-section (1) of Section 35 A of Banking Regulation Act, 1949 (AACS) read with Section 56 of the Banking Regulation Act, 1949, hereby directs that the Directive dated October 26, 2018, issued to the above bank, the validity of which was last extended up to September 09, 2022, shall continue to apply to the bank for a further period of three months from September 10, 2022 to December 09, 2022, vide Directive dated September 07, 2022, subject to review.

All the other terms and conditions of the Directive under reference shall remain unchanged. A copy of the above Directive dated September 07, 2022 notifying the extension is displayed at the bank's premises for the perusal of public.

The aforesaid extension and/or modification by the Reserve Bank of India should not per-se be construed to imply that Reserve Bank of India is satisfied with the financial position of the bank.

Related Link: https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=54357

IBC & NCLT UPDATES

Only CoC is empowered to deal with replacement of RP, creditor can't prefer an application before AA for replacement

Dated: 05 Sep 2022

Where in term of section 27 only CoC is empowered to deal with 'replacement of RP', appellant-operational creditor was not eligible to prefer an application before Adjudicating Authority for replacement of RP.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000320931/only-coc-is-empowered-to-deal-with-replacement-of-rp-creditor-cant-prefer-an-application-before-aa-for-replacement-caselaws>

Resolution Plan can't be said to be IBC compliant unless resolution applicant provides additional information sought by RP

Dated: 05 Sep 2022

Concerns:

M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)

Unless resolution applicant is able to provide additional information falling under regulation 36A(9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as sought by Resolution Professional (RP), it cannot be said that resolution plan submitted by resolution applicant is in compliance with section 30(1).

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000320897/resolution-plan-cant-be-said-to-be-ibc-compliant-unless-resolution-applicant-provides-additional-information-sought-by-rp-caselaws>

Gujarat secured creditor under IBC for tax purposes: Supreme Court

Dated: Sep 06, 2022

The Supreme Court on Tuesday ruled Gujarat is a "secured creditor" for tax purposes, saying financial creditors cannot secure their own dues at the cost of statutory ones owed to a government authority in approving a resolution plan to revive a sick company under the Insolvency and Bankruptcy Code (IBC).

A bench comprising justices Indira Banerjee and A S Bopanna also set aside the orders of the tribunals by which the resolution plan to revive Rainbow Papers Limited, a private firm, was approved, on the ground that it did not consider the dues of over Rs 53.71 crore payable to the state government on account of VAT and Central Sales Tax (CST) under the Gujarat Value Added Tax (GVAT) Act.

Related Link:

<https://economictimes.indiatimes.com/news/india/gujarat-secured-creditor-under-ibc-for-tax-purposes-supreme-court/articleshow/94034971.cms>

Expression of OTS by corporate debtor amounts to an acknowledgement of debt, CIRP against guarantor was valid: NCLAT

Dated: 07 Sep 2022

Where account of principle borrower was declared as a NPA on 10-1-2014 but principle borrower vide its letters dated 19-2-2016 and 29-3-2016, expressed its willingness to pay all dues on basis of a One-Time Settlement (OTS), since liability of corporate guarantor was co-extensive with principle borrower, letters issued by principle borrower for one-time settlement was a clear acknowledgement of debt on part of corporate guarantor and, therefore.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000321267/expression-of-ots-by-corporate-debtor-amounts-to-an-acknowledgement-of-debt-cirp-against-guarantor-was-valid-nclat-caselaws>

CIRP can be initiated u/s 7 of IBC against a Corporate entity that has given a guarantee to secure the dues of a non-corporate entity: SC

Dated: 07 Sep 2022

Concerns:

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CIRP can be initiated u/s 7 of IBC against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000325898/cirp-can-be-initiated-us-7-of-ibc-against-a-corporate-entity-that-has-given-a-quarantee-to-secure-the-dues-of-a-non-corporate-entity-sc-caselaws>

Secured creditor' in IBC doesn't exclude govt bodies, says SC

Dated: Sep 08, 2022

The Supreme Court has said definition of secured creditor in Insolvency & Bankruptcy Code (IBC) does not exclude any government authority.

Legal experts say the judgement will set a precedent for more cases as until now tax dues were generally excluded from the secured creditor list. The two-judge bench comprising Justice Indira Banerjee and AS Boppana set aside the order passed by National Company Law Appellate Tribunal(NCLAT) in the case of Rainbow Papers vs Gujarat State tax department.

Related Link:

<https://economictimes.indiatimes.com/news/india/secured-creditor-in-ibc-doesnt-exclude-govt-bodies-says-sc/articleshow/94060235.cms>

Limitation is to be counted from date of preparation of certified copy and not from date of delivery of certified copy: NCLAT

Dated: 08 Sep 2022

Limitation is to be counted from date of preparation of certified copy and not from date of delivery of certified copy.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000325906/limitation-is-to-be-counted-from-date-of-preparation-of-certified-copy-and-not-from-date-of-delivery-of-certified-copy-nclat-caselaws>

State is a secured creditor for tax purpose under GVAT Act; Section 53 of IBC doesn't override Section 48 of GVAT Act : SC

Dated: 08 Sep 2022

State is a secured creditor under IBC for VAT under GVAT Act; Section 53 of IBC does not override section 48 of GVAT Act

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000325897/state-is-a-secured-creditor-for-tax-purpose-under-gvat-act-section-53-of-ibc-doesnt-override-section-48-of-gvat-act-sc-caselaws>

Concerns:

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Moratorium wouldn't come into play till adjudication of claim and counterclaims are carried out by Arbitral Tribunal: HC

Dated: 08 Sep 2022

Till adjudication of claim and counterclaim of parties is carried out by appropriate forum i.e. Arbitral Tribunal, section 14 would not come into play

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000325905/moratorium-wouldnt-come-into-play-till-adjudication-of-claim-and-counterclaims-are-carried-out-by-arbitral-tribunal-hc-caselaws>

Non-admission of claim due to non-availability of claimants for verification didn't violate rule 13(1) of CIRP norms: IBBI

Dated: 09 Sep 2022

Where 'P' who was appointed as IRP in CIRP of corporate debtor had not admitted certain claims and kept same under verification due to reason of non-availability of name of claimants in records of corporate debtor, claims under verification and consequent non-admission did not amount to violation of regulation 13(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000320888/non-admission-of-claim-due-to-non-availability-of-claimants-for-verification-didnt-violate-rule-131-of-cirp-norms-ibbi-caselaws>

Right of an operational creditor to invoke section 9 couldn't be taken away by an arbitration agreement: NCLAT

Dated: 09 Sep 2022

Where corporate debtor failed to make payment for material supplied by operational creditor, argument of corporate debtor that dispute was to be settled by arbitration under Swiss law as per agreement between parties was not sustainable as proceedings under Code have overriding effect and right of operational creditor to invoke section 9 could not be taken away by any agreement of arbitration

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000319623/right-of-an-operational-creditor-to-invoke-section-9-couldnt-be-taken-away-by-an-arbitration-agreement-nclat-caselaws>

CIRP plea based on non-payment of LTC and EL encashment was rightly rejected by NCLT: NCLAT

Dated: 09 Sep 2022

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Solicitors and Advocates

Section 5(21) includes any claim in respect of provision of goods and services including employment, however initiation of CIRP on ground that LTC and EL encashment had not been paid, which fell within ambit of service benefits,

could not be said to be intent and objective of Code and, therefore, there was no illegality in order passed by NCLT rejecting CIRP application based on non-payment of LTC and EL encashment etc.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000321519/cirp-plea-based-on-non-payment-of-ltc-and-el-encashment-was-rightly-rejected-by-nclt-nclat-caselaws>

**Thanking You,
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