

WEEKLY CORPORATE UPDATES

Saturday 3rd September, 2022

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

Ministry of Corporate Affairs: Important Update

Dated: 31st August, 2022

Stakeholders please note that 9 Company forms (DIR3-KYC Web, DIR3-KYC eform, CHG-1, CHG-4, CHG-6, CHG-8, CHG-9, DPT-3, DPT-4) are available in V3 portal for filing purposes.

Related Link: <https://www.mca.gov.in/content/mca/global/en/notifications-tender/news-updates/updates.html>

The Companies (Acceptance of Deposits) Amendment Rules, 2022

Notification No: G.S.R. 663(E)

Dated: 29th August, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated 29th August, 2022 has notified “the Companies (Acceptance of Deposits) Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette.

According to the amendment in rule 16 of the Companies (Acceptance of Deposits) Rules, 2014; every company to which these rules apply, shall file return of deposit in E Form DPT-3 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in E Form DPT-3. Also, the E Form DPT-3 and E Form DPT-4 are substituted.

Related Link: <https://egazette.nic.in/WriteReadData/2022/238474.pdf>

The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022

Notification No: G.S.R. 662(E)

Dated: 29th August, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated 29th August, 2022 has notified “the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette.

According to the amendment the E Form DIR-3-KYC and Form DIR-3-KYC-WEB are substituted.

Related Link: <https://egazette.nic.in/WriteReadData/2022/238447.pdf>

The Companies (Registration of Charges) Second Amendment Rules, 2022

Concerns:

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Notification No: G.S.R. 664(E)
Dated: 29th August, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated 29th August, 2022 has notified "the Companies (Registration of Charges) Second Amendment Rules, 2022" which shall come into force on the date of its publication in the Official Gazette.

According to the amendment rule 13 is inserted by stating that, signing of charge e-forms (i.e. E-Form No. CHG-1, CHG-4, CHG-8 and CHG-9) by insolvency professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar. Further, the E-Forms No. CHG-1, CHG-4, CHG-6, CHG-8 and CHG-9 are substituted.

Related Link: <https://egazette.nic.in/WriteReadData/2022/238470.pdf>

SEBI UPDATES

SEBI overhauls preferential allotment rules for REITs, InvITs

Dated: 29th August, 2022

SEBI overhauled the pricing norms for preferential allotment of units by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs). Under the new framework, the pricing formula for allotment of units under preferential issue would be the Volume-Weighted Average Price (VWAP) of weekly highs and lows for 90 trading days or 10 trading days, whichever is higher. At present, the pricing formula in a preferential allotment is the VWAP of the last two weeks or the last 26 weeks, whichever is higher. The preferential issue of units to "institutional investors" not exceeding five will have to be made at a price not less than the 10 trading days' VWAP of the related units quoted on a stock exchange preceding the relevant date, according to two separate circulars

Related Link: <https://www.moneycontrol.com/news/business/sebi-overhauls-preferential-allotment-rules-for-reits-invits-9102121.html>

SEBI bans 3 individuals from markets for unauthorised investment advisory

Order No.: WTM/AB/WRO/WRO/18783/2022-23
Dated: 31st August, 2022

Capital markets regulator SEBI has barred three individuals from the securities markets for providing unauthorised investment advisory services. The present proceedings emanate from a show cause notice dated July 31, 2021 issued by SEBI to RNS Global Capital and its proprietors' alleging that they were

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engaged in unauthorised investment advisory services. SEBI had come across a website which belonged to RNS Global Capital in the archived pages as the web page is not active. The amount of money to have been collected by the noticees was Rs 1.20 crore for the period October 2017 to July 2020. In its order, the regulator directed the noticees to refund within three months the money received from investors (jointly and severally) as fees in respect of their unregistered investment advisory activities.

Related Link: https://www.sebi.gov.in/enforcement/orders/aug-2022/final-order-in-the-matter-of-rns-global-capital_62525.html

Performance/return claimed by unregulated platforms offering algorithmic strategies for trading

Circular No.: SEBI/HO/MIRSD/DOP/P/CIR/2022/117

Dated: 02nd September, 2022

Capital markets regulator Sebi on Friday came out with guidelines for stock brokers, who provide services relating to algorithmic trading to investors, to prevent instances of mis-selling.

The guidelines came after the Securities and Exchange Board of India (Sebi) observed that certain stock brokers provide algorithmic trading facilities to investors through unregulated platforms.

The unregulated platforms are offering algorithmic trading services or strategies to investors for automated execution of trades. Such services and strategies are being marketed with "claims" of high returns on investment, Sebi said in a circular.

Further, "ratings" have been assigned to the strategies, which could lead to investors being lured by such claims. This may amount to mis-selling of such services and strategies to investors, it added.

Accordingly, Sebi has given certain responsibilities to stock brokers that provide algorithmic trading facilities to investors through such platforms.

Such stock brokers have been restricted from making any reference to the past or expected future return of the algorithm as well as associating with any platform that provides any reference to the past or expected future return of the algorithm, Sebi said.

"Stockbrokers who are directly/indirectly referring to any past or expected future return/performance of an algorithm or are associated with any platform providing such reference, shall remove the same from their website and/or disassociate themselves from the platforms providing such references, as the case may be, within seven days," it added.

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The framework, applicable with immediate effect, is aimed at preventing such acts and instances of mis-selling.

Earlier in June, the markets regulator had cautioned investors against dealing with such unregulated platforms offering algorithmic trading services and strategies.

Algorithmic trading or 'Algo' in market parlance refers to orders generated at a super-fast speed by the use of advanced mathematical models that involve automated execution of the trade, and it is mostly used by large institutional investors.

Related Link: https://www.sebi.gov.in/legal/circulars/sep-2022/performance-return-claimed-by-unregulated-platforms-offering-algorithmic-strategies-for-trading_62628.html

RBI UPDATES

597th Meeting of Central Board of the Reserve Bank of India

Press Release No.: 2022-2023/770

Dated: 26th August, 2022

The 597th meeting of the Central Board of Directors of Reserve Bank of India was held today at its Regional Office in Jaipur under the Chairmanship of Shri Shaktikanta Das, Governor.

The Board in its meeting reviewed the current economic situation, global and domestic challenges including the overall impact of current global geopolitical crises. The Board also discussed various areas of operations of the Reserve Bank including the functioning of the Local Boards and activities of select Central Office Departments.

Deputy Governors Shri Mahesh Kumar Jain, Dr. Michael Debabrata Patra, Shri M. Rajeshwar Rao, Shri T. Rabi Sankar and other Directors of the Central Board viz. Shri Satish K. Marathe, Shri S. Gurumurthy, Ms Revathy Iyer, Prof. Sachin Chaturvedi, Shri Anand Gopal Mahindra, Shri Venu Srinivasan, Shri Pankaj Ramanbhai Patel and Dr. Ravindra H. Dholakia attended the meeting. Shri Sanjay Malhotra, Secretary, Department of Financial Services also attended the meeting.

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54268

To check banking frauds, RBI mulls setting up of fraud registry

Dated: 30th August, 2022

As part of its efforts to strengthen customer protection, Reserve Bank of India (RBI) is considering setting up a fraud registry to create a database of fraudulent websites, phones and various modus operandi used

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for digital fraud. Such a database will help prevent these fraudsters from repeating the fraud as the websites or phone numbers would be blacklisted.

Related Link: <https://www.livemint.com/industry/banking/to-check-banking-frauds-rbi-mulls-setting-up-of-fraud-registry-11661833024967.html>

Debit, Credit card frauds on rise, ATM scams down: NCRB

Dated: 31st August, 2022

Fraudulent credit and debit card transactions surged for the second straight year in 2021, while ATM-related fraud has declined, a report released by the National Crime Records Bureau (NCRB) showed. According to the data, 3,432 cases of credit and debit card frauds were filed from across India in 2021, up nearly 20% from the year-earlier. In 2020, such frauds increased by over 70%. In just two years, credit and debit card-related frauds nearly doubled, it showed. Meanwhile, the number of bank frauds (3,062 cases) and ATM frauds (2,914) fell 20.8% and 1.5%, respectively.

Related Link: <https://www.livemint.com/industry/banking/debit-credit-card-frauds-on-rise-atm-scams-down-ncrb-11661885877307.html>

RBI issues new digital lending guidelines for banks, lenders to protect borrowers

Notification No.: RBI/2022-23/111

Dated: 02nd September, 2022

The Reserve Bank of India (RBI) on Friday announced the guidelines on digital lending. The central bank has given regulated entities (RE) till November 30th to put in place adequate systems and processes to ensure that 'existing digital loans' comply with fresh lending guidelines. The new norms are applicable to both 'existing customers availing fresh loans' and to 'new customers getting onboarded'. These have come into effect from today onward.

RBI released detailed guidelines on recommendations of the Working Group that were announced last month.

In a statement, RBI said, "it is reiterated that outsourcing arrangements entered by Regulated Entities (REs) with a Lending Service Provider (LSP)/ Digital Lending App (DLA) does not diminish the REs' obligations and they shall continue to conform to the extant guidelines on outsourcing."

As per the guidelines, all loan disbursements and repayments are required to be executed only between the bank accounts of the borrower and the RE without any pass-through/ pool account of the LSP or any third

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party. Meanwhile, an automatic increase in credit limit without explicit consent of the borrower is prohibited.

Also, RBI directed that any fees, charges, etc., payable to LSPs in the credit intermediation process shall be paid directly by RE and not by the borrower. Further, a standardized Key Fact Statement (KFS) must be provided to the borrower before executing the loan contract.

Additionally, a cooling-off/ look-up period during which the borrowers can exit digital loans by paying the principal and the proportionate APR without any penalty shall be provided as part of the loan contract.

"The REs are advised to ensure that the LSPs engaged by them and the DLAs (either of the RE or of the LSP engaged by the RE) comply with the guidelines contained in this circular," it added.

Further, RBI advised that the instructions contained in this circular shall be applicable to the 'existing customers availing fresh loans' and to 'new customers getting onboarded', from the date of this circular. However, in order to ensure a smooth transition, RBI said, "REs shall be given time till November 30, 2022, to put in place adequate systems and processes to ensure that 'existing digital loans' (sanctioned as on the date of the circular) are also in compliance with these guidelines in both letter and spirit."

The new guidelines on digital lending come after concerns primarily related to unbridled engagement of third parties, mis-selling, breach of data privacy, unfair business conduct, charging of exorbitant interest rates, and unethical recovery practices.

RBI has been encouraging innovation in the financial system, products, and credit delivery methods while ensuring their orderly growth, preserving financing stability, and ensuring the protection of depositors' and customers' interests.

Related Link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12382&Mode=0>

Digitalisation of Rural Finance in India – Pilot for Kisan Credit Card (KCC) Lending developed by the Reserve Bank Innovation Hub

Press Release No.: 2022-2023/807

Dated: 2nd September, 2022

1. Rural finance encompasses a range of financial services offered to rural customers, including farmers, at all income levels. In a country like India, rural credit is closely related to inclusive economic growth, as it caters to the requirements of agriculture and allied activities, ancillary industries, small businesses, etc. At present, the process for getting such finance requires customer to visit a bank branch in-person along with the proof of land ownership and other documents. Sometimes, the customer may be required to visit the bank branch multiple times. The Turn Around Time (TAT) from loan application to disbursement has also been rather high, ranging from two to four weeks.

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2. *Considering the challenges associated with rural finance in India, digitalisation of various aspects of rural finance is an important objective of RBI's Fintech initiatives. In this endeavour, a pilot project for end-to-end digitalisation of Kisan Credit Card (KCC) lending, developed by the Reserve Bank Innovation Hub (RBIH) in association with the RBI is being taken up. The pilot project would entail automation of various processes within banks and integration of their systems with the service providers. The proposed digitalisation of the KCC lending process will make it more efficient, reduce costs for borrowers and reduce TAT significantly.*
3. *The pilot will commence in September 2022 in select districts of Madhya Pradesh and Tamil Nadu with Union Bank of India and Federal Bank, respectively, as partner banks and with active cooperation of the state governments. Based on the learnings from the pilot, it is planned to expand the digitalisation of KCC lending to other districts in these two states and gradually across the country.*
4. *This pilot project on digitalisation of KCC lending is expected to play a pivotal role in facilitating credit flow to the unserved and underserved rural population by making the credit process faster and more efficient. When fully implemented, this is expected to transform the rural credit delivery system of the country.*

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54306

IBC & NCLT UPDATES

Liquidator's commercial wisdom is not open to judicial review by NCLT/NCLAT /Courts, rules SC

Dated: 29 Aug 2022

Liquidator's commercial wisdom is not open to judicial review by NCLT/NCLAT/Courts.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000325675/liquidators-commercial-wisdom-is-not-open-to-judicial-review-by-ncltnclat-courts-rules-sc-caselaws>

HC slams AO for completing assessment and refusing to stay proceedings till completion of CIRP

Dated: 29 Aug 2022

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Where in response to show cause notice issued, assessee had pointed out that proceedings were liable to be stayed since it had been admitted for Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC) and presently was under moratorium by orders of National Company Law Tribunal (NCLT), Assessing officer committed grave error in proceeding to complete assessment and refusing to stay proceedings till completion of CIRP.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000321730/hc-slams-ao-for-completing-assessment-and-refusing-to-stay-proceedings-till-completion-of-cirp-caselaws>

Once Bidder Accepts Corporate Debtor In Slump Sale, Can't Request For Conversion Of Sale Into Sale As A Going Concern: NCLT Ahmedabad

Dated: 29 Aug 2022

The National Company Law Tribunal ("NCLT"), Ahmedabad Bench, comprising of Shri Madan B Gosavi (Judicial Member) and Shri Kaushalendra Kumar Singh (Technical Member), while adjudicating a petition filed in State Bank of India & Anr. v Shirpur Power Pvt. Ltd., has held that once a successful bidder has accepted and purchased the Corporate Debtor in slump sale under IBC, the bidder cannot request to convert that sale into a sale of Corporate Debtor as a going concern.

Related Link

<https://www.livelaw.in/news-updates/nclt-ahmedabad-section-7-of-the-insolvency-and-bankruptcy-code-corporate-debtor-state-bank-of-india-207756>

Jalan-Kalrock to transfer Rs 130 crore rental earnings to Jet Airways' lenders

Dated: Aug 30, 2022

Jet Airways, led by the new management, has for the time being averted liquidation proceedings by agreeing to transfer to banks about ₹130 crore received from the lease-rentals of Air Serbia planes, said people aware of the development.

However, the Jalan-Kalrock Consortium, which has won the bid to acquire the company under the Insolvency and Bankruptcy Code (IBC).

Related Link:

<https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/jalan-kalrock-to-transfer-rs-130-crore-rental-earnings-to-jet-airways-lenders/articleshow/93863672.cms>

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Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation

Dated: Aug 30, 2022

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar."

Related Link:

<https://ibclaw.in/companies-registration-of-charges-second-amendment-rules-2022/>

Resolution Plan Can't Be Remanded Back To COC Over Hyper-Technical Grounds: NCLAT Delhi

Dated: 30 Aug 2022

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Justice M. Satyanarayana Muurthy (Judicial Member) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Piya Puri & Ors. v Mr. Dehashish Nanda & Ors., has held that remanding a resolution plan back to Committee of Creditors on the grounds of the procedural deviations raised by a dissenting minority in class of creditors, would render the CIRP a never ending process and is against the time bound resolution objective of the IBC. The Bench declined to remand back the revise Resolution Plan to CoC over hyper-technical grounds raised by minority dissenting creditors.

Related Link:

<https://www.livelaw.in/news-updates/nclat-delhi-section-7-of-the-insolvency-and-bankruptcy-code-resolution-plan-financial-creditor-corporate-insolvency-resolution-process-207835>

Financial creditor filing claim after 20 months delay couldn't be allowed to challenge approved resolution plan

Dated: 31 Aug 2022

Where public notice published by IRP was in compliance with statutory requirements however, financial creditor filed its claim after 20 months from last date of receiving claims, such financial creditor could not be allowed to challenge order of Adjudicating Authority approving resolution plan.

Related Link:

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<https://www.taxmann.com/research/ibc/top-story/10101000000321849/financial-creditor-filing-claim-after-20-months-delay-couldnt-be-allowed-to-challenge-approved-resolution-plan-caselaws>

Notice U/S 13(2) SARFAESI Act Not Sufficient For Instituting Legal Challenge, Adjudication Must Await Until S.13(4) Stage: Gujarat HC

Dated: 31 Aug 2022

The Gujarat High Court, while declining to exercise its writ jurisdiction at the stage of issuance of notice under Section 13(2) of the SARFAESI Act, has held that adjudication of matter would have to wait till the stage of Section 13(4) was reached. Thereafter, the aggrieved person can file a securitisation appeal under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal. Section 13(2) of the Act refers to the issuance notice to the borrower for discharging his liabilities within 60 days in case of default in payment of debt. While Section 13(4) pertains to declaring the accounts of the borrower as an NPA and thereafter, taking possession of secured assets and appointing a person to manage such assets.

Related Link:

<https://www.livelaw.in/news-updates/gujarat-high-court-sarfaesi-act-writ-jurisdiction-statutory-remedy-drt-207969>

RP didn't violate IBC by entering into settlement pact in good faith with workmen without distributing sales proceeds

Dated: 01 Sep 2022

Where settlement agreement between RP and workmen was entered into on advice of secured creditors of corporate debtors in good faith for early completion of liquidation process and RP did not distribute any amount of sale proceeds contrary to section 53, no act was done by RP in contravention of I&B Code.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000320940/rp-didnt-violate-ibc-by-entering-into-settlement-pact-in-good-faith-with-workmen-without-distributing-sales-proceeds-caselaws>

Operational creditors can't claim any priority u/s 53 over preceding categories for distribution of asset in liquidation

Dated: 01 Sep 2022

Section 53 provides for distribution of assets in liquidation and sets out order of priority of distribution of proceeds from sale of liquidation assets. Sixth category in such pecking order is section 53(1)(f), 'any remaining debts and dues'. Clause (f) is only provision in section 53 which confers rights on operational creditors to recover their dues.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000325734/operational-creditors-cant-claim-any-priority-us-53-over-preceding-categories-for-distribution-of-asset-in-liquidation-caselaws>

Concerns:

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

Corporate debtor engaged in financial services was out of ambit of 'corporate person', CIRP not maintainable: NCLT

Dated: 02 Sep 2022

Where corporate debtor was a person engaged in business of providing financial services in terms of registration granted to it by Reserve bank of India, in view of section 3(7), it did not come within meaning of corporate person to whom provisions of Code were applicable and, therefore, CIRP application filed against corporate debtor was not maintainable.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000319724/corporate-debtor-engaged-in-financial-services-was-out-of-ambit-of-corporate-person-cirp-not-maintainable-nclt-caselaws>

CIRP plea wasn't time-barred when debt was acknowledged on several occasions within 3 yrs from last acknowledgement

Dated: 02 Sep 2022

Where corporate debtor acknowledged debt on several occasions through copies of confirmation of accounts dated 1-4-2011, 1-4-2017 and 1-4-2018 and balance sheets beginning from financial year 31-3-2010 till 31-12-2019, as due and payable, application filed in April 2019 by financial creditor being within three years from last date of acknowledgement was well within period of limitation.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000319641/cirp-plea-wasnt-time-barred-when-debt-was-acknowledged-on-several-occasions-within-3-yrs-from-last-acknowledgement-caselaws>

The calculation of the acceptable net worth of the company for participant in Resolution Plan would be the one which has been calculated on the basis of Section 2(57) of the Companies Act, 2013 and not by any other methodology – NCLT New Delhi Bench Court-V

Dated: 02 Sep 2022

The Expression of Interest (EOI) filed by the Applicant Consortium has been declared as ineligible by the Resolution Professional (RP) and the same was confirmed by the CoC in terms of the eligibility criteria approved by the CoC and

provided under Form-G dated 19.01.2022. The contention of the RP is that the net worth submitted by the Applicant Company had not been calculated in accordance with the definition of net worth as provided under the Section 2(57) of the Companies Act, 2013 and that on the basis of calculations made as per the definition of net worth under Section 2(57) the net worth falls short of the minimum requirement of Rs. 25 Crore as specified in the eligibility conditions, thereby making the Applicant ineligible.

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Related Link:

<https://ibclaw.in/kataria-industries-pvt-ltd-vs-mr-hemant-sethi-rp-of-emkay-automobiles-ltd-nclt-new-delhi-bench-court-v/>

OTHER UPDATES

GST to be levied on cancellation of confirmed train ticket

Dated: 29th August, 2022

The GST will be calculated on cancellation charges for the class of travel under which the journey was to be undertaken, the Ministry said, adding that the rate will be the same as applicable for while booking tickets for that class. For cancelling bookings of a particular class, the GST rate will be the same as that applicable while booking seats/berths for that class, it added. For example, the rate is 5% for first-class or AC coaches, while cancellation fee for this category is ₹240 (per passenger). Therefore, the total cancellation cost will be ₹252 (₹12 tax+ ₹240) for first-class/AC compartments. However, there is no GST on other categories, including second sleeper class.

Related Link: <https://www.hindustantimes.com/business/cancelling-confirmed-train-ticket-will-now-invite-gst-finance-ministry-101661743087792.html>

Guidelines for launching of prosecution under the Central Goods & Services Tax Act, 2017

Instruction No.: 04/2022–23 GST Investigation

Dated: 01st September, 2022

Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:

- (i) Habitual evaders: Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.*
- (ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act*

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Related Link: <https://taxinformation.cbic.gov.in/view-pdf/1000439/ENG/Instructions>

**Thanking You,
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