

WEEKLY CORPORATE UPDATES

Saturday 01st October, 2022

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

Penalty for delay in transferring unspent CSR amount to a Fund specified in Schedule VII of the Companies Act, 2013

Dated: 28th September, 2022

In the matter of COMVIVA TECHNOLOGIES LIMITED, Registrar of Companies (power delegated u/s 454 (1) of the Companies Act, 2013) has issued an order dated 27.09.2022 imposing penalty on the Company and its officers in default for violation of Section 135(5) of the Companies Act, 2013 read with Rule 10 of the Companies (Corporate Social Responsibility Policy), Rules, 2014 for not transferring unspent CSR amount to fund specified in Schedule VII within a period of six months of the expiry of financial year.

RelatedLink:[https://www.mca.gov.in/bin/dms/getdocument?mds=qd9jv%252BkO7XOJaAXfqvzFxA%253D%253D&ty
pe=open](https://www.mca.gov.in/bin/dms/getdocument?mds=qd9jv%252BkO7XOJaAXfqvzFxA%253D%253D&type=open)

SEBI UPDATES

SEBI cautions investors against funds raised by unauthorised PMS providers

Press Release No.: 30/2022

Dated: 3rd October, 2022

Capital markets regulator SEBI cautioned investors against unauthorised money mobilisation by entities claiming to provide portfolio management services. Further, the regulator noted that these entities have been luring the public, with a promise of high returns, through pamphlets and social media platforms. It was observed that in such schemes, the entities have been mobilising money in relatively smaller amounts and promising assured returns, SEBI said in a statement. The advisory comes after the Securities and Exchange Board of India (SEBI) noted that some entities are collecting money from the public claiming to provide portfolio management services (PMS).

Related Link: https://www.sebi.gov.in/media/press-releases/oct-2022/sebi-cautions-public-against-unauthorized-money-mobilization-by-entities-claiming-to-provide-portfolio-management-services_63631.html

SEBI cancels certificate of registration granted to Brickwork Ratings

Dated: 6th October, 2022

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The Securities and Exchange Board of India (SEBI) cancelled the recognition certificate granted to Brickwork Ratings India, one of the seven registered credit rating agencies (CRAs) in the country, for “repeated lapses” and irregularities in “discharging its duties”. The SEBI directed Brickwork to wind down its operations within six months and intimate its clients about the same. During this period, Brickwork cannot onboard any new clients or take fresh mandates. Officials of ratings agencies said the cancellation of Brickwork’s licence could have ramifications for the banking industry.

Related Link: https://www.sebi.gov.in/enforcement/orders/oct-2022/order-in-the-matter-of-brickwork-ratings-private-limited_63749.html

Extension of timeline for entering the details of the existing outstanding non-convertible securities in the ‘Security and Covenant Monitoring’ system hosted by Depositories

Circular No.: SEBI/HO/DDHS/RACPOD1/CIR/P/2022/136

Dated: 3rd October, 2022

The Securities and Exchange Board of India (SEBI) on October 03, 2022 has issued Extension of timeline for entering the details of the existing outstanding non-convertible securities in the ‘Security and Covenant Monitoring’ system hosted by Depositories.

The following has been stated namely: -

1. SEBI vide Circular SEBI/HO/MIRSD/MIRSD_CRADT/CIR/P/2021/618 dated August 13, 2021, which specifies the manner of recording of charges by Issuers and manner of monitoring and other responsibilities of Debenture Trustees (DTs), Credit Rating Agencies, etc. for ‘Security and Covenant Monitoring’ using Distributed Ledger Technology (DLT).

2. Circular SEBI/HO/MIRSD/CRADT/CIR/P/2022/38 dated March 29, 2022, which specifies the Operating Guidelines of the said system using DLT, including roles and responsibilities of the various stakeholders involved.

- Extension of one month has been provided in the timeline of entering the legacy data, viz. details of the existing outstanding non-convertible securities.
- Issuers shall ensure that they enter the details into the DLT system on or before **October 31, 2022**; DTs shall verify the same by **December 31, 2022**.

Related Link: https://www.sebi.gov.in/legal/circulars/oct-2022/extension-of-timeline-for-entering-the-details-of-the-existing-outstanding-non-convertible-securities-in-the-security-and-covenant-monitoring-system-hosted-by-depositories_63648.html

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Execution of 'Demat Debit and Pledge Instruction' (DDPI) for transfer of securities towards deliveries / settlement obligations and pledging / re-pledging of securities - Clarification

Circular No.: SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2022/137

Dated: 6th October, 2022

The Securities and Exchange Board of India on 6th October 2022, has decided to widen the scope of DDPI to include Mutual Fund transactions being executed on Stock Exchange order entry platforms; and Tendering shares in open offers through Stock Exchange platforms. This circular shall be applicable from 18th November 2022.

In order to make the process more transparent and simpler, the following conditions shall be made part of a separate document viz. 'Demat Debit and Pledge Instruction' (DDPI).

- Transfer of securities held in the beneficial owner accounts of the client towards Stock Exchange related deliveries / settlement obligations arising out of trades executed by clients on the Stock Exchange through the same stock broker.*
- Pledging / re-pledging of securities in favour of trading member (TM) / clearing member (CM) for the purpose of meeting margin requirements of the clients in connection with the trades executed by the clients on the Stock Exchange.*
- Mutual Fund transactions being executed on stock exchange order entry platforms and which shall be in compliance with SEBI's earlier circular dated 4th October 2021 and 15th March 2022.*

"Securities transferred on the basis of the DDPI provided by the client shall be credited to client's TM pool account / CM pool account / demat account of clearing corporation, as the case may be. The DDPI provided by the client shall be registered in the demat account of the client by TM /CM. Stock Exchanges and Depositories shall ensure that stock broker/stock broker and depository participant providing DDPI facility, has enabled its clients to revoke / cancel the DDPI provided by them."

Related Link: https://www.sebi.gov.in/legal/circulars/oct-2022/execution-of-demat-debit-and-pledge-instruction-ddpi-for-transfer-of-securities-towards-deliveries-settlement-obligations-and-pledging-re-pledging-of-securities-clarification_63724.html

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RBI UPDATES

RBI plans to extensively use artificial intelligence, machine learning to improve regulatory supervision

Dated: 5th October, 2022

The Reserve Bank of India (RBI) is planning to extensively use advanced analytics, Artificial Intelligence (AI) and Machine Learning (ML) to analyse its huge database and improve regulatory supervision on banks and NBFCs. For this purpose, the central bank is also looking to hire external experts. While the RBI is already using AI and ML in supervisory processes, it now intends to upscale it to ensure that the benefits of advanced analytics can accrue to the Department of Supervision in the central bank.

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-plans-to-extensively-use-artificial-intelligence-machine-learning-to-improve-regulatory-supervision/articleshow/94659490.cms>

No charge for RuPay credit card use on UPI for transaction up to ₹2,000: NPCI

Dated: 6th October, 2022

The National Payments Corporation of India (NPCI) has said there will be no charge for RuPay credit card use on Unified Payments Interface (UPI) for transactions up to ₹2,000. RuPay credit card has been operational for the last four years, and all major banks are enabled and are issuing incremental cards for both commercial and retail segments.

Related Link: <https://www.livemint.com/industry/banking/no-charge-for-rupay-credit-card-use-on-upi-for-transaction-up-to-rs-2-000-npci-11664954850994.html>

The Reserve Bank introduces Internal Ombudsman mechanism for Credit Information Companies (CICs)

Press Release No.: 2022-2023/1003

Dated: 6th October, 2022

As announced in the 'Statement on Developmental and Regulatory Policies' issued as part of the Monetary Policy statement dated August 5, 2022, the Reserve Bank, in exercise of the powers conferred by sub section (1) of Section 11 of the Credit Information Companies (Regulation) Act, 2005 (the Act), being satisfied that it is necessary in the public interest to do so, directs all Credit Information Companies (CICs)

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holding a Certificate of Registration under sub-section (2) of Section 5 of the Act, to appoint Internal Ombudsman (IO) at the apex of their internal grievance redress mechanism by April 1, 2023.

2. The Direction covers, inter-alia, the appointment/tenure, role and responsibilities, procedural guidelines, and oversight mechanism for the IO. Under the mechanism, all complaints that are partly or wholly rejected by CICs will be reviewed by the IO before the final decision of the CIC is conveyed to the complainant. The IO will not entertain any complaints directly from the members of public.

3. The implementation of the IO mechanism will be monitored by the CIC's internal audit system, apart from regulatory oversight by RBI.

Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54502

RBI launches DAKSH - Reserve Bank's Advanced Supervisory Monitoring System

Press Release No.: 2022-2023/1005

Dated: 6th October, 2022

The Reserve Bank of India has been taking various initiatives in strengthening supervision, which among other initiatives include adoption of latest data and analytical tools as well as leveraging technology for implementing more efficient and automated work processes. In continuation of this effort, Shri Shaktikanta Das, Governor, today launched a new SupTech initiative named "□□□□ (DAKSH) - Reserve Bank's Advanced Supervisory Monitoring System", which is expected to make the Supervisory processes more robust.

DAKSH means 'efficient' & 'competent', reflecting the underlying capabilities of the application. DAKSH is a web-based end-to-end workflow application through which RBI shall monitor compliance requirements in a more focused manner with the objective of further improving the compliance culture in Supervised Entities (SEs) like Banks, NBFCs, etc. The application will also enable seamless communication, inspection planning and execution, cyber incident reporting and analysis, provision of various MIS reports etc., through a Platform which enables anytime-anywhere secure access.

Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54503

Issuance of Concept Note on Central Bank Digital Currency

Press Release No.: 2022-2023/1012

Dated: 7th October, 2022

The Reserve Bank of India has today released a Concept Note on Central Bank Digital Currency (CBDC) for India.

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The purpose behind the issue of this Concept Note is to create awareness about CBDCs in general and the planned features of the Digital Rupee (e₹), in particular. It explains the objectives, choices, benefits, and risks of issuing a CBDC in India. The Note also seeks to explain Reserve Bank's approach towards introduction of the CBDC.

The Concept Note also discusses key considerations such as technology and design choices, possible uses of Digital Rupee, issuance mechanisms, etc. It examines the implications of introduction of CBDC on the banking system, monetary policy, financial stability, and analyses privacy issues.

The Reserve Bank will soon commence pilot launches of e₹ for specific use cases. As the extent and scope of such pilot launches expand, RBI will continue to communicate about the specific features and benefits of e₹, from time to time.

Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54510

IBC & NCLT UPDATES

IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022 – IBBI Notification No. IBBI/2022-23/GN/REG100 dated 03.10.2022

Dated: 03 October 2022

The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022 that amended the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

The various amendments made by the newly notified regulations are:

- An Insolvency Professional entity recognized by the Board under regulation 13 of the IBBI (Insolvency Professionals) Regulations, 2016, shall not be enrolled as a professional member if it is not eligible to be registered as an insolvency professional with the Board*
- Agency shall now maintain register of its professional members containing the details of partners or directors also, where the professional member is an insolvency professional entity.*

Related Link: <https://ibclaw.in/ibbi-model-bye-laws-and-governing-board-of-insolvency-professional-agencies-amendment-regulations-2022-ibbi-notification-no-ibbi-2022-23-gn-reg100-dated-03-10-2022/>

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Personal Guarantor is not entitled to be included as Secured Creditor in the list of creditors prepared under Section 36 of IBC claiming right of subrogation under Section 140 of Contract Act – NCLAT New Delhi

Dated: 30 September, 2022

While adjudicating an application in the matter of **K.V. Jayaprakash Vs. State Bank of India [Company Appeal (AT) (Ins) No. 362 of 2022]**, the Hon'ble National Company Law Appellate Tribunal (NCLAT) New Delhi Bench held that the word secured creditor as defined under section 3(30) of IBC means a creditor in favour of whom security interest is created. Since, no security interest as defined under Section 3(31) was created in favor of the Appellant who is a personal guarantor, by the corporate debtor in any of the specified modes, hence, **the said personal guarantor would not fall within the definition of Secured Creditor as defined under Section 3(31) of IBC**. Thus, the said personal guarantor cannot claim to be a secured creditor in order to be included as a secured creditor in the list of creditors. However, by virtue of section 140 of the Indian Contract Act, a personal guarantor is entitled to recover the debt irrespective of sale of assets of corporate debtor in liquidation process in any of the recognized modes.

Related

Link: https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzLORFTEhJLzlwMjltMDktMzAvY291cnRzLzEvZGFpbHkvMTY2NDU2Mjc4MDU3NzY3MDM0NjYzMzcNjVjMDUyMTUucGRm

Resolution Professional has a scope to take action for fraudulent transaction covered under Section 43, 45, 50 and 66 of the IBC beyond the time-line stipulated under CIRP Regulation 35A – NCLAT New Delhi

Dated: 30 September, 2022

The Hon'ble National Company Law Appellate Tribunal (NCLAT) New Delhi bench in the matter of **Prasant Chandra Rath (Suspended Director of Corporate Debtor) Vs. Surya Kanta Satapathy (RP) [Company Appeal (AT) (Ins) No. 850 of 2022]** held that CIRP Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the insolvency commencement date (ICD) is only directory in nature. Thus, if there are sufficient and genuine reasons for the application under Section 66 to be considered by the Adjudicating Authority, even though it was filed beyond 135th day of ICD, the Adjudicating Authority cannot be said to have committed any error while accepting the same. Moreover, the application filed by the Resolution Professional cannot be rejected only on the ground of delay in filing beyond 135 days of ICD in view of explanation offered before the Adjudicating Authority justifying the delay.

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Resolution Professional is not under legal obligation to inform the fair, liquidation value of the Corporate Debtor to the Appellant/Operational Creditor, who is not a member of CoC – NCLAT New Delhi

Dated: 30 September, 2022

The National Company Law Appellate Tribunal (NCLAT) New Delhi bench while adjudicating an application filed in the matter of **Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) Vs. Salasar Steel and Power Ltd. [Company Appeal (AT) (Ins) No. 118 of 2022]**, held that as per Regulation 35(2) of the CIRP Regulations, 2016, it is mandatory for the Resolution Professional to disclose the fair value and the liquidation value to every member of the Committee of Creditors in electronic form. Moreover, RP is under no legal obligation to disclose the value to the non-members of CoC. Therefore, failure to provide fair value and liquidation value to the Appellant, who is not a member of the CoC, cannot be held as a ground to set aside the order impugned in the Appeal while exercising jurisdiction under Section 61 of IBC.

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CBIC Master Circular/NCLT Rule 112 does not restrict CIRP costs or RP/IRP fees and No exemption from bearing the expenses and fees of Resolution Professional and CIRP cost- NCLAT New Delhi

Dated: 30 September, 2022

While refusing to grant exemption from bearing the expenses and fees of Resolution Professional and CIRP cost, the Hon'ble National Company Law Appellate Tribunal (NCLAT) New Delhi bench in the matter of **The Commissioner Central Goods & Service Tax Vs. East India Transport Agency, [Company Appeal (AT) (Ins) 1119 of 2022]** observed that from a bare reading of the NCLT Rules, it is quite clear that the fees mentioned in the NCLT Rule 112 does not mention either CIRP costs or the fees to be paid to the IRP or RP and are only confined to fees payable on account of petition or appeal or application filed or references made for documents/orders before the NCLT. It was further observed that the contents of the Master Circular No. 1081/02/2022-CX dated 19.01.2022 on Recovery and Write-off of Arrears of Revenue does not refer as to how CIRP costs and IRP fees are to be handled.

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**Thanking You,
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