

WEEKLY CORPORATE UPDATES

Saturday 5th November, 2022

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

Government plans to deregister over 40,000 dormant companies

Dated: 4th November 2022

The corporate affairs ministry (MCA) plans to deregister over 40,000 dormant companies which did not start business activities even after six months since incorporation, the Economic Times reported on November 3, citing people aware of the matter.

The government's motive behind the move is to counter money laundering through the shell and dormant companies. Out of the 40,000 companies identified for the deregistration, more than 7,500 have been identified by the registrar of companies (RoC) in Delhi and Haryana alone, the report said.

According to the ministry, there are more than 23 lakh registered companies in India, of which approximately 14 lakh are active. As many as 800,000 companies have closed operations. The government had conducted a similar exercise after the demonetisation in 2016, as per the report.

The government had undertaken a similar exercise after the demonetization in 2016. "However, during that exercise, the companies which were dormant for over two years and didn't show any business operations were identified and struck off... In this case, we are taking action against those which haven't started any business six months from their incorporation," a senior government official told the business newspaper.

SEBI UPDATES

Using tech to crack down on insider trading: SEBI's Madhabi Puri Buch

Dated: 28 Oct 2022

The Securities and Exchange Board of India (SEBI) is working on various ways to crack down on serious offences such as front-running and insider trading using sophisticated data and technology. The market regulator has increased the use of data and analytics for surveillance and regular inspections, Chairperson Madhabi Puri Buch said at an event organised by IIM-Bengaluru. By application of simple logic and in-house software, SEBI is able to identify insider trading and front-running too, she said.

For details: https://www.business-standard.com/article/markets/sebideveloping-algos-to-spot-mis-selling-other-violationschairperson-122102800827_1.html

Panel allows refunds up to Rs 15,000 to PACL investors

Dated: 31 Oct 2022

A high-powered committee that is looking into refunds for PACL investors allowed payments to applicants having claims of up to Rs 15,000. The refund process of up to Rs 15,000 claims will be allowed from November 1, 2022, to

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January 31, 2023. SEBI has created an online portal to process investors' refunds. According to a public notice on SEBI's website, investors having claims up to Rs 15,000 can log in at www.sebipacrefund.co.in to apply for refunds, check their status and rectify deficiencies, if any, in their applications.

Related Link: <https://www.moneycontrol.com/news/business/panel-allows-refunds-up-to-rs-15000-topacl-investors-9422891.html>

SEBI issues guidelines to standardise CRAs' rating scales

Dated: 31 Oct 2022

Capital markets regulator SEBI came out with fresh guidelines in order to standardise the usage of rating scales used by Credit Rating Agencies (CRAs). Issuer rating or corporate credit rating indicates the degree of safety of the issuer or the rated entity with regard to timely servicing of all its debt obligations. Pursuant to the consultation with the CRAs, standardised symbols and their definitions have been devised for issuer rating or corporate credit rating, the Securities and Exchange Board of India (SEBI) said in a circular, adding that the new guidelines will come into force from January 1, 2023.

Related Link: <https://www.moneycontrol.com/news/economy-2/sebi-issues-guidelines-to-standardisecras-rating-scales-9421091.html>

SEBI's refund to Sahara investors reach Rs 138 crore since 2012

Dated: 02nd November 2022

SEBI has processed Rs 138 crore refunds to investors of two Sahara companies in a decade, while the amount deposited in specially-opened bank accounts for the repayment has risen to over Rs 24,000 crore. These disclosures have been made by the Securities and Exchange Board of India (SEBI) in its latest annual report. In the absence of claims from a majority of the bondholders of the two Sahara companies, which were asked to return the money to nearly 3 crore investors along with interest in August 2012 through a Supreme Court order, the total amount refunded by SEBI rose by just about Rs 9 crore during the last fiscal, 2021-22, while the balance in SEBI-Sahara refund accounts rose by Rs 1,515 crore during the year.

Related Link: https://www.business-standard.com/article/markets/sebi-srefund-to-sahara-investors-reach-rs-138-crore-since-2012-122110201415_1.html

The growing clout of finfluencers is putting SEBI regulations to test

Dated: 04th November 2022

With people increasingly turning to social media for tips and hacks, financial influencers – or finfluencers, as they are called – are gaining clout. Armed with millions of followers, they have the power to influence stock prices or boost a mutual fund (MF) offering. This has posed a regulatory dilemma for the Securities and Exchange Board of India (SEBI). While the market regulator cannot control every social media post, it realises the need for clearer norms to govern and increase the accountability of finfluencers. Sources said SEBI is considering ways through which such finfluencers

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can be brought under the regulatory net without trampling on any freedom of expression. At present, anyone doling out financial advice has to register as an investment adviser (IA) and comply with SEBI's IA regulations.

Related Link: https://www.business-standard.com/article/markets/the-growing-clout-of-finfluencers-isputting-sebi-regulations-to-test-122110300460_1.html

RBI UPDATES

Remove withdrawal restrictions on digital BSBD accounts payment

Dated: 30 Oct 2022

The Reserve Bank of India (RBI) needs to keep digital payments outside the purview of withdrawal restrictions on zero-balance Basic Savings Bank Deposit (BSBD) accounts and let the government allow a uniform fee of 0.3 per cent, in lieu of the Merchant Discount Rate (MDR), on ecommerce transactions, as per a report. The IIT Bombay report further said as much as Rs. 5,000 crore can be raised per annum through a 0.3 per cent fee on payments through all electronic modes at e-commerce platforms, which could be used to maintain and strengthen the UPI infrastructure.

Related Link: https://www.businessstandard.com/article/finance/remove-withdrawalrestrictions-on-digital-bsbd-accounts-payment-report122103000667_1.html

Reserve Bank of India imposes monetary penalty on Banda Urban Co-operative Bank Ltd., Banda, U.P

Dated: 31st Oct 2022

Press Release: 2022-2023/1112

The Reserve Bank of India (RBI) has imposed, by an order dated October 27, 2022, a monetary penalty of ₹2.00 lakh (Rupees Two Lakh only) on the Banda Urban Co-operative Bank Ltd., Banda, U.P (the bank) for contravention of the directions issued by RBI on "Exposure Norms and Statutory / Other Restrictions – UCBs." This penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47A(1)(c) read with Section 46(4)(i) and Section 56 of the Banking Regulation Act, 1949.

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

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54610

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RBI imposes monetary penalty on Nagar Sahakari Bank Ltd., Maharajganj, UP

Dated: 31st Oct 2022

Press Release: 2022-2023/1114

The Reserve Bank of India (RBI) has imposed, by an order dated October 27, 2022, a monetary penalty of ₹4.00 lakh (Rupees Four Lakh only) on Nagar Sahakari Bank Ltd., Maharajganj, UP (the bank) for non-compliance with directions issued under Supervisory Action Framework (SAF) by RBI. This penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47 A (1) (c) read with Section 46 (4) (i) and Section 56 of the Banking Regulation Act, 1949, taking into account the failure of the bank to adhere to the aforesaid directions issued by RBI.

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

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54612

Operationalisation of Central Bank Digital Currency-Wholesale (e₹-W) Pilot

Dated: 31st Oct 2022

Press Release: 2022-2023/1118

RBI vide Press Release dated October 7, 2022 had announced that the Reserve Bank will soon commence pilot launches of Digital Rupee (e₹) for specific use cases. Accordingly, the first pilot in the Digital Rupee - Wholesale segment (e₹-W) shall commence on November 1, 2022.

2. The use case for this pilot is settlement of secondary market transactions in government securities. Use of e₹-W is expected to make the inter-bank market more efficient. Settlement in central bank money would reduce transaction costs by pre-empting the need for settlement guarantee infrastructure or for collateral to mitigate settlement risk. Going forward, other wholesale transactions, and cross-border payments will be the focus of future pilots, based on the learnings from this pilot.

3. Nine banks, viz., State Bank of India, Bank of Baroda, Union Bank of India, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, Yes Bank, IDFC First Bank and HSBC have been identified for participation in the pilot.

4. The first pilot in Digital Rupee - Retail segment (e₹-R) is planned for launch within a month in select locations in closed user groups comprising customers and merchants. The details regarding operationalisation of e₹-R pilot shall be communicated in due course.

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54616

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RBI imposes monetary penalty on The Jammu and Kashmir State Co-operative Bank Limited, Srinagar, Jammu and Kashmir

Dated: 31st Oct 2022

Press Release: 2022-2023/1113

The Reserve Bank of India (RBI) has imposed, by an order dated October 28, 2022, a monetary penalty of ₹30.00 lakh (Rupees Thirty Lakh only) on The Jammu and Kashmir State Co-operative Bank Limited, Srinagar, Jammu and Kashmir (the bank) for non-compliance with RBI directions on 'Income Recognition, Assets Classification, Provisioning and Other Related Matters'. This penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47 A (1) (c) read with Section 46 (4) (i) and Section 56 of the Banking Regulation Act, 1949, taking into account the failure of the bank to adhere to the aforesaid directions issued by RBI.

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

Related Link: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54611

Operationalisation of Central Bank Digital Currency-Wholesale (e₹-W) Pilot

Dated: 31st Oct 2022

The Reserve Bank of India (RBI) vide Press Release dated October 7, 2022 had announced that the Reserve Bank will soon commence pilot launches of Digital Rupee (e₹) for specific use cases. Accordingly, the first pilot in the Digital Rupee - Wholesale segment (e₹-W) shall commence on November 1, 2022. Nine banks, viz., State Bank of India, Bank of Baroda, Union Bank of India, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, Yes Bank, IDFC First Bank and HSBC have been identified for participation in the pilot. The first pilot in Digital Rupee - Retail segment (e₹-R) is planned for launch within a month in select locations in closed user groups comprising customers and merchants. The details regarding operationalisation of e₹-R pilot shall be communicated in due course.

Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54616

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IBBI UPDATES

Whether the date of dishonouring of cheques is the date of default? – NCLAT New Delhi bench

Dated: 02th November, 2022

*Being aggrieved with the order dated 10.06.2022 passed by the Hon'ble NCLT Mumbai bench in CP No. 3863/IBC/MB/2019 wherein a section 7 application was admitted and corporate insolvency resolution process (CIRP) was initiated against the Corporate Debtor i.e. Varsha Corporation Limited, the present appeal **ShantilalJaverchand Jain Vs. Varsha Corporation Ltd Through Interim Resolution Professional Mr. Vinod Kumar Ambavat&Anr.** [Company Appeal (AT) (Ins.) No. 719 of 2022]has been filed by the Suspended Director of the Corporate Debtor challenging the order dated 10.06.2022.*

Inthe said appeal, the issues for considerationbefore the Hon'ble Appellate Tribunal were whether the loan advanced to the corporate debtor regarding which the promissory note has been executed is a financial debt and furtherwhether the date of dishonouring of cheques i.e. 16.12.2016 is the date of default.

While hearing the appeal, the Hon'ble Appellate Tribunal noted that no date of default was mentioned in the promissory note or any other document such loan agreement has been produced, being of the view that corporate debtor's letter dated 7.6.2016 clearly stated the existence of the loan and also the fact that on depositing the cheque with the bank of Respondent No. 2, the same will definitely be honoured. Therefore, the dishonouring of cheques will be taken as default for which the financial creditor can take legal action. Thus, it was held by the Appellate Tribunal that the date 16.12.2016 has been correctly considered as the date of default by the Adjudicating Authority, which the said cheques were dishonoured.

Related Link:

<https://cdn.ibclaw.online/insolvency/nclat/2022/Nov/Shantilal+Javerchand+Jain+Vs.+Varsha+Corporation+Ltd.%2C+Throug+its+IRP+Mr.+Vinod+Kumar+Ambavat+-+NCLAT+New+Delhi.pdf>

IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2022 (November 01, 2022)

In exercise of the powers conferred by sections 196, 203 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2022.

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(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), sub-regulation

(3) in regulation 7, shall be substituted by following, namely:-

“(3) The compliance officer shall submit to the Board, a compliance certificate annually in the format issued by the Board, verifying that the insolvency professional agency has complied with the provisions referred to in sub-regulation (1):

Provided that the annual compliance certificate shall also be signed by the managing director of the insolvency professional agency.”

3. In the principal regulations, in the Schedule-

(i) in clause 6, after sub-clause (2), the following sub-clause shall be inserted, namely:-

Related Link: <https://ibbi.gov.in/uploads/press/2022-11-01-220308-2ip9z-9001ac8ce8835b9ec6adbca4172d3f4a.pdf>

Amount of default which has been committed during Section 10A period cannot be clubbed in threshold limit of Rs. 1 Crore under Section 4 of IBC– NCLAT New Delhi

Dated: 31st October, 2022

*Being aggrieved by the order dated 17.08.2022 passed by the Hon'ble NCLT New Delhi, bench- IV wherein the section 9 application was rejected by the Adjudicating Authority as being barred by Section 10A of the Code, the Appellants filed an appeal **Plus Corporate Ventures Pvt. Ltd. Vs. Transnational Growth Fund Ltd.** [Company Appeal (AT) (Insolvency) No. 1270 of 2022] before the Hon'ble NCLAT New Delhi against the said order on the premise that the last payment was to be received by the Appellants on 30.04.2022 i.e. subsequent to the period as mentioned in Section 10A, thus it was open for the Appellants to file section 9 application for the entire amount of INR 3,37,50,000 /-.*

On considering the submissions of the Appellant and after having perused the record, the Hon'ble Appellate Tribunal held that when we look into the proviso to Section 10A, the expression is “provided that no Application shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period”, thus default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. Further, the Appellant's submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submission goes contrary to the statutory scheme delineated by Section 10A proviso. When Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Application as barred by Section 10A of the Code. In so far as the last two default on 31st March, 2021 and 30th April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.

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We thus are of the view that no error has been committed in rejecting the Application filed under Section 9 of the Code.

Related Link: <https://ibclaw.in/plus-corporate-ventures-pvt-ltd-vs-transnational-growth-fund-ltd-nclat-new-delhi/>

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