

WEEKLY CORPORATE UPDATES

Saturday 31th December, 2022

(Curated & compiled by)

Team Indiacorp Law

Headed by:

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2023

**Happy New Year! May the coming year be full of grand adventures and opportunities.
Life is short. Dream big and make the most of 2023**



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MCA UPDATES

Ministry of Corporate Affairs-Important Update

Dated: 28th December, 2022

The Ministry of Corporate Affairs is launching Second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2022. Following forms will be rolled-out on 09th January 2023: SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC34, INC-13, INC-31, INC-9 and URC-1. Click the below link to view list of 46 forms which will be rolled-out on 23rd January 2023. To facilitate implementation of these forms in V3 MCA21 portal, stakeholders are advised to note the following points:

- (1) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023.
- (2) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 46 forms which are planned for roll-out on 23rd January 2023.
- (3) All stakeholders are advised to ensure that there are no SRNs in pending payment and Resubmission status.
- (4) Offline payments for the above 56 forms in V2 using Pay later option would be stopped from 28th December 2022 12:00 AM. You are requested to make payments for these forms in V2 through online mode (Credit/Debit Card and Net Banking).
- (5) In view of the upcoming launch of 56 Company forms, V3 portal will not be available from 07th January 2023 12:00 AM to 08th Jan 2023 11:59 pm due to 10 company forms roll-out and from 21st January 2023 to 22nd January 2023 for 46 company forms roll-out.
- (6) V2 Portal for company filing will remain available for all the forms excluding above mentioned 56 forms. Stakeholders may plan accordingly.

RelatedLink: <https://www.mca.gov.in/content/dam/mca/configurations/newforms-20221226.pdf>

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Clarification of holding of Annual General Meeting through Video Conference or Other Audio-Visual Means

Dated: 28th December, 2022

General Circular No. 10/2022

In continuation to this Ministry's General Circular No. 20/2020 dated 05.05.2020 and General Circular No. 02/2022 dated 05.05.2022 and after due examination, it has been decided to allow the companies whose AGMs are due in the Year 2023, to conduct their AGMs on or before 30th Sep 2023, in accordance with the requirements laid down in Para 3 and Para 4 of the General circular No. 20/2020 dated 05.05.2020.

Related

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=qToca5ENxqPP52uV4iCRRQ%253D%253D&type=open>

Clarification on passing of Ordinary and special resolutions by the Companies under Companies Act 2013

Dated: 28th December, 2022

General Circular No. 11/2022

In continuation to this Ministry's General Circular No 14/2020 dated 08.04.2020 and General Circular No. 03/2022 dated 05.05.2022 and after due examination, it has been decided to allow companies to conduct their EGMs through Video Conference or Other Audio Visual Means or transact items through postal ballot in accordance with framework provided in the aforesaid Circulars upto 30th Sep 2023. All other requirements provided in the Circular shall remain unchanged.

RelatedLink: <https://www.mca.gov.in/bin/dms/getdocument?mds=BsO79Vm7GL2ypbwff239tA%253D%253D&type=open>

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SEBI UPDATES

Sebi proposes framework for index providers

Dated: 28th December, 2022

The Securities and Exchange Board of India (Sebi) on Wednesday proposed a regulatory framework for index providers.

The proposed framework would mandate index providers to adhere to International Organization of Securities Commissions (IOSCO) principles.

The proposed regulations would prescribe provisions to ensure eligibility criterion, compliance, disclosures, periodic audits, and penal action in case of non-compliance and incorrect disclosures.

At present, the benchmarks based on which products are traded on the Indian stock exchange platforms and indices tracked by the fund managers are owned and managed by entities which are generally either subsidiaries of stock exchanges or joint venture between an exchange and an index provider or any entity engaged in the activity of credit rating. Sebi had allowed the stock exchanges to introduce derivative products on foreign indices in January 2011.

RelatedLink:<https://economictimes.indiatimes.com/industry/banking/finance/banking/what-does-the-future-of-banking-in-india-look-like/articleshow/96571230.cms>

Sebi fines Reliance Commercial Finance

Dated: 22th December, 2022

India's capital-markets regulator has fined Anil Ambani-promoted Reliance Commercial Finance (RCFL) for violation of disclosure norms. The Securities and Exchange Board of India (Sebi) said it received four letters from debenture trustee Vistra ITCL providing information regarding various defaults by RCFL in the repayment of interest and principal amounts to debenture holders.

The first such default by the company was committed on October 13, 2019, Sebi said. The period of examination was from April 1, 2019 to March 31, 2020.

"I note that the notice (RCFL) was required to submit to the stock exchange on a half-yearly basis along with the half-yearly financial results, a statement indicating material deviations,

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if any, in the use of proceeds of issue of debt securities and non-convertible redeemable preference shares from the objects stated in the offer document," Sebi's adjudicating officer G Ramar said in his order.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-fines-reliance-commercial-finance/articleshow/96411512.cms>

Sebi orders attachment of bank, demat accounts of Sahara group firm, Subrata Roy, others

Dated: 26th December, 2022

Sebi on Monday ordered the attachment of bank and demat accounts of Sahara Group firm, its chief Subrata Roy and others to recover Rs 6.42 crore for violating regulatory norms in the issuance of optionally fully convertible debentures (OFCDs).

The recovery proceedings against five entities -- Sahara India Real Estate Corporation (now known as Sahara Commodity Services Corporation), Subrata Roy, Ashok Roy Choudhary, Ravi Shanker Dubey and Vandana Bharrgava -- for Rs 6.42 crore, includes interest, all costs, charges and expenses, the Securities and Exchange Board of India (Sebi) said in the attachment order.

In its notice, Sebi asked all banks, depositories and mutual funds not to allow any debit from accounts of Sahara India Real Estate Corp, Subrata Roy, Ashok Roy Choudhary, Dubey and Bharrgava. However, credits have been permitted.

Further, the market watchdog has directed all banks to attach all accounts, including lockers, of the defaulters.

The regulator, in its order in June, levied a fine totalling Rs 6 crore on Sahara India Real Estate Corp, Subrata Roy, Ashok Roy Choudhary, Dubey and Bharrgava.

The case relates to the issuance of OFCDs by Sahara India Real Estate Corporation and Sahara Housing

Investment Corporation during 2008-09. They raised money through the public issue of securities by issuing OFCDs without following the various procedures intended to protect the interest of the investors, in respect of public issues, prescribed under the norms, as per According to Sebi, the subscription towards the OFCDs was solicited by the two companies from the general public throughout the country, without adequately informing them about the risks involved in the instruments.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-orders-attachment-of-bank-demat-accounts-of-sahara-group-firm-subrata-roy-others/articleshow/96520810.cms>

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Sebi expands committees on cyber security and information systems

Dated: 26th December, 2022

The Securities and Exchange Board of India (Sebi) has expanded two of its committees--High Powered Steering Committee on Cyber Security (HPSC-CS) and Information Systems Security Committee (ISSC)--in a bid to strengthen cyber security frameworks and cyber resilience requirements.

The committee on cyber security has been expanded to eight members from six earlier . It will continue to be chaired by Navin Kumar Singh, DG at National Critical Information Infrastructure Protection Centre (NCIIPC). G Padmanabhan, ex-executive director, Reserve Bank of India, and Sushil Kumar Nehra, Additional Director, Cyber Security Division, MeitY are its new members.

The eight-member committee oversees and provides guidance on cyber security initiatives, and advises Sebi in developing and maintaining cyber security and cyber resilience requirements aligned with global best practices and industry standards in accordance with the need of Indian capital market structure. The panel has also been entrusted to periodically review the mandate and functioning of security operations centres, provide recommendations for cyber security audit, study major cyber-attack incidents, and identify gaps in the existing framework. It also works on identifying measures to improve business continuity and disaster recovery process in the Indian securities market.

Related Link: https://www.business-standard.com/article/markets/sebi-expands-committees-on-cyber-security-and-information-security-122122600854_1.html

RBI UPDATES

Bank fraud: CBI files FIR against Corporate Power

Dated: 23rd December, 2022

The CBI has filed an FIR against Corporate Power Limited and its directors for alleged bank fraud of ₹4,000 crore, officials said. The agency searched 16 locations on Thursday in multiple cities, including Nagpur, Mumbai, Ranchi, Kolkata, Durgapur, Ghaziabad, and Vishakhapatnam, they said. The Kolkata-based company had allegedly committed a bank fraud of ₹4037.87 crore involving a consortium of 20 banks.

RelatedLink:<https://www.thehindubusinessline.com/money-and-banking/bank-fraud-cbi-files-firagainst-corporate-power/article66296411.ece>

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P N Vasudevan to continue as Equitas Small Finance Bank MD, CEO

Dated: 27th December, 2022

After announcing earlier this year that he would step down from his post, P.N. Vasudevan, founder of Equitas said on December 23, 2022 that he decided to continue as Managing Director and Chief Executive Officer of Equitas Small Finance Bank. "Equitas Small Finance Bank is happy to announce that Mr. PN Vasudevan in response to the suggestions of the Board has decided to stay on as MD and CEO of the Bank," the lender informed exchanges.

RelatedLink:https://www.business-standard.com/article/finance/p-n-vasudevan-to-continue-asequitas-small-finance-bank-md-ceo-122122301010_1.html

Banks' GNPA's decline to 5% in Sept, but current situation can impact health: RBI report

Dated: 27th December, 2022

Indian banks' gross non-performing assets declined to 5.8%, but the present macroeconomic environment can impact lenders' health, the Reserve Bank said on Tuesday. The GNPA's, which touched a peak in FY18 following the asset quality review, have been declining sequentially to reach 5% in September, the RBI said in the 'Trends and Progress of Banking in India' report for FY22 released on Tuesday.

The number stood at 5.8% in March 2022, according to the report which also had a strong commitment by the RBI to be not complacent, given the present environment.

"Although presently the Indian banking sector remains robust and resilient with improved asset quality and strong capital buffers, the policymakers remain mindful of dynamically evolving macroeconomic conditions that may impinge on the health of regulated entities," the report said.

However, the restructured assets ratio increased by 1.1 percentage points for all the borrowers and by 0.5 percentage points for large borrowers, the report said, adding that the efforts to help individuals and small businesses with the loan recast scheme has been successful.

In what can be called as a divergent trend between the state-run lenders and the private lenders, the report said, the reduction in the stock of GNPA's was due to write-offs in the public sector banks in FY22, while in the case of private banks; up gradation of loans was the primary driver for asset quality improvements.

RelatedLink:<https://economictimes.indiatimes.com/markets/stocks/news/banks-gnpas-decline-to-5-in-sept-but-current-situation-can-impact-health-rbi-report/articleshow/96549202.cms>

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IBBI UPDATES

Can the Adjudicating Authority (NCLT) remove a Liquidator? – NCLAT Chennai bench

Dated: 20th December, 2022

Being aggrieved by the order dated 01.07.2022 passed by the Hon'ble NCLT Chennai bench, an appeal was filed by the erstwhile Liquidator of the Jeypore Sugar Company Ltd, wherein several issues were raised by the Appellant pertaining to whether the Appellant had valid Authorizations for Assignment (AFA) on the date of his appointment as the Liquidator of the corporate debtor and whether the Adjudicating Authority could remove the Liquidator.

While adjudicating the appeal, the Hon'ble Appellate Tribunal stated that Regulation 7A of IBBI (Insolvency Professional) Regulation 2016 makes it clear that no Insolvency Professional shall accept or undertake any assignment after 31.12.2019 unless he holds a valid 'AFA' on the date of acceptance or commencement of such assignment. In the present case, the Appellant was appointed as the Liquidator by the order dated 29.05.2020 and after carefully examining the records and the impugned order of Adjudicating Authority, it was made clear that the Appellant did not have the valid Authorizations for Assignment (AFA) on date of acceptance of the Liquidator.

As far the question as to whether the Adjudicating Authority can remove the Liquidator is concerned, the Hon'ble Appellate Tribunal further held that in absence of any specific provision in the Code explicitly stating the grounds for removing the liquidator, we may resort to Section 33 & 34 of the Code, 2016 and Section 276 of the Companies Act, 2013, which provides for the removal and replacement of liquidators on various grounds. Moreover, since the Adjudicating Authority, is vested with the power, to appoint a Liquidator, under Section 33 and 34 of the Code, 2016, it is by the virtue of the Section 16 of the General Clauses Act, 1897, that an Adjudicating Authority, also has the power to remove the Liquidator. Therefore, on a combined reading of the said provisions along with Section 33 and Section 34 of the Code, 2016, it is made clear that the Adjudicating Authority which had the power to appoint the Liquidator, will also have the powers to remove the Liquidator for reasons as it may find fit, just, valid and proper.

Related Link: <https://ibclaw.in/ca-v-venkata-sivakumar-vs-idbi-bank-ltd-nclat-chennai/>

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NCLT approves merger of Jindal Stainless and Jindal Stainless (Hisar)

Dated: 22nd December, 2022

The Hon'ble NCLT Chandigarh Bench while hearing the Composite Scheme of Arrangement has given its regulatory approval to Jindal Stainless for its amalgamation with Jindal Stainless (Hisar). Notably, the two companies were demerged in 2015 as part of a financial and operational restructuring exercise to bring down the cost of borrowing. The demerger was promoted by Jindal Stainless' over Rs 8,500 crore debt.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/nclt-approves-merger-of-jindal-stainless-and-jindal-stainless-hisar/articleshow/96457561.cms>

There is no obligation on the part of Taxation Department to lodge a claim in respect of statutory dues, which have been intimated to the corporate debtor and the said claim is also to be treated as a debt owed to a secured creditor under Section 53(1)(b)(ii) of IBC — NCLT Chandigarh bench

Dated: 23rd December, 2022

*In the matter of **Excise and Taxation Commissioner Vs. Hitesh Goel, Liquidator for Anandtex International Pvt. Ltd.**, the Excise and Taxation Commissioner, Haryana Sales Department through its Excise and Taxation Officer had filed an appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 against the decision dated 13.12.2021 of the respondent-liquidator, rejecting their claim and further sought condonation of delay in submitting the claim with the respondent-liquidator.*

In the present case, the company's account was classified as NPA in 2018 after it could not repay a loan of Rs 678 crore that was disbursed by the consortium of lenders comprising Union Bank of India, Bank of Maharashtra, Central Bank of India and Oriental Bank of Commerce for the 'Supernova' project in Noida, Uttar Pradesh.

Thus, taking into consideration the facts of the case, the Adjudicating Authority held that there is no obligation on the part of the Taxation Department to lodge a claim in respect of such statutory dues, which have been intimated to the corporate debtor. The said claim is also to be treated as a debt owed to a secured creditor under Section 53(1)(b)(ii) as security interest has been created by operation of law. Accordingly, the liquidator was directed to consider the claim of the Excise and Taxation Authorities on the lines of the above observations.

Related Link: <https://economictimes.indiatimes.com/industry/services/property/-cstruction/supreme-court-junks-supertech-plea-over-settlement-order/articleshow/96260913.cms?from=mdr>

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NCLAT New Delhi bench sets aside CCI order giving clean chit to DLF, remands matter to CCI for fresh consideration

Dated: 23rd December, 2022

*The Hon'ble NCLAT New Delhi bench while adjudicating an appeal filed in the matter **Amit Mittal v DLF Ltd. &Ors. [Competition Appeal (AT) No. 82 of 2018]**, has set aside order dated 31.08.2018 passed by fair trade regulator Competition Commission of India (CCI) giving a clean chit to DLF and its subsidiaries in allegations of abuse of the dominant position on the basis of a second/supplementary report submitted by the Director General (DG). The Hon'ble bench opined that under section 26 of the Competition Act, 2002, CCI has very limited jurisdiction to direct for further investigation. Further the bench held that CCI can only direct further investigation in a case of closure and not where DG has submitted report showing contravention of Competition Act 2002 by party(s).*

Related Link: <https://economictimes.indiatimes.com/industry/services/property/-/construction/nclat-sets-aside-cci-order-on-dlf-remanded-back-directing-to-examine/articleshow/96496564.cms>

An unregistered Partnership Firm cannot initiate Insolvency Proceedings under IBC – NCLT Kochi bench

Dated: 23rd December, 2022

*In the matter of **Bangalore Sales Corporation v Sark Spice Products Pvt. Ltd. [CP (IBC)/37/KOB/2022]** a section 9 petition was filed by a partnership firm i.e. The Bangalore Sales Corporation seeking to initiate corporate insolvency resolution process (CIRP) against M/s. Sark Spice Products Pvt. Ltd. in respect of due amount payable by the Corporate Debtor arising out of commercial contract, wherein the Hon'ble NCLT Kochi bench held that an unregistered Partnership firm cannot initiate insolvency proceedings under the Code. It was observed by the Tribunal that the status of the partnership firm was not specified as to whether the firm is registered with registrar of firm or not.*

Further, diving more into the issue of maintainability of the petition, the Hon'ble Tribunal observed that 69(2) of the Partnership Act 1932 bars the unregistered partnership firm or any of the partners of said unregistered firm to file any suit against any third parties. Also, that the word "court" is defined in section 3 of Indian Evidence Act 1872 which includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. Therefore, as per this definition, this Tribunal also comes under the purview of court and accordingly the proceedings before the Tribunal is a suit which attracts section 69(2) of Partnership Act 1932.

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OTHER UPDATES

Clarification to deal with difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19

Dated: 27th December, 2022

Circular No. 183/15/2022-GST

During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs. 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier.

RelatedLink: <https://taxinformation.cbic.gov.in/view-pdf/1003135/ENG/Circulars>

Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017

Dated: 27th December, 2022

Circular No. 185/17/2022-GST

The sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued. Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.

RelatedLink: <https://taxinformation.cbic.gov.in/view-pdf/1003137/ENG/Circulars>

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Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016

*Dated: 27th December, 2022
Circular No. 187/19/2022-GST*

As per Section 84 of CGST Act, if the Government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

RelatedLink: <https://taxinformation.cbic.gov.in/view-pdf/1003139/ENG/Circulars>

Prescribing manner of filing an application for refund by unregistered persons

*Dated: 27th December, 2022
Circular No. 188/20/2022-GST*

The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

RelatedLink: <https://taxinformation.cbic.gov.in/view-pdf/1003140/ENG/Circulars>

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