

WEEKLY CORPORATE UPDATES

Saturday 01st April, 2023

(Curated & compiled by)

Team Indiacorp Law

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HAPPY NEW

FINANCIAL

YEAR!

2023 -24

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MCA UPDATES

Important accounting and audit trail requirements from 01.04.2023

As per Ministry of Corporate Affairs (MCA) notifications No. G.S.R. 205(E) dated 24.03.2021, G.S.R. 247(E) dated 01.04.2021 and G.S.R. 235(E) dated 31.03.2022, every company which uses accounting software for maintaining its books of account shall use only such accounting software w.e.f. 01.04.2023 which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled .

Companies will have to ensure that all transactions are recorded systematically and chronologically and that the records are accurate, complete, and uptodate.

Related Link:<https://egazette.nic.in/WriteReadData/2022/234733.pdf>
<https://egazette.nic.in/WriteReadData/2021/226353.pdf>
<https://egazette.nic.in/WriteReadData/2021/226081.pdf>

Registrar of Companies raids Chennai-based audit firm which helped registering 1,500 companies using forged documents

Dated: 26th March, 2023

A search and seizure operation conducted by the Registrar of Companies (ROC) on Friday, in the registered office of Kanakkupillai.com, a popular audit and legal firm in Chennai, has resulted in the busting of a racket involved in forgery and creation of fake documents for incorporating over 1500 companies all over India, including the infamous Aarudhra Gold and their group of companies.

The search and seizure operations were conducted simultaneously at the registered office of Kanakkupillai.com and the residence of the chartered accountant, Smt. K. Kiruthiga, who is found to have signed and certified the fake incorporation forms used for registration of over 1500 companies via the web portal Kanakkupillai.com.

Kanakkupillai.com, in connivance with CA Kiruthiga, created fake address proofs and fabricated bank statements for getting the companies incorporated with the ROC. The same professional was also appointed as the statutory auditor for Aarudhra Gold and its group companies, which were recently in the news for defrauding the public an amount of over 2100 crore rupees.

During the raids, the ROC seized physical documents and various electronic gadgets, computers, etc. which were used for the creation of fabricated and forged documents. About 50 employees associated with the portal Kanakkupillai.com are also under the lens of the authorities. \

It is learned that the office of the ROC is stepping up its watch on the chartered accountants and audit firms filing such fake documents with MCA, and stringent action against these kinds of malpractices shall follow in the light of

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increasing economic offenses in the state. Fake companies incorporated are being rampantly abused by the promoters and directors for money laundering and other serious financial crimes after luring the public to invest/deposit in these fraud entities. The public is also advised to be cautious while investing their money in various schemes that promise unrealistic returns.

Related Link: <https://www.freepressjournal.in/business/registrar-of-companies-raids-chennai-based-audit-firm-which-helped-registering-1500-companies-using-forged-documents>

The Companies (Indian Accounting Standards)Amendment Rules, 2023

Dated: 31st March, 2023

Notification No: G.S.R. 242(E)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Indian Accounting Standards) Amendment Rules, 2023. As per the amended rules, a new para has been inserted in Ind AS 101, which states deferred tax related to assets and liabilities arising from a single transaction shall apply for annual reporting periods beginning on or after 01.04.2023. Various other amendments have also been notified. These rules shall be applicable from the financial year beginning on or after 01.04.2023.

Related Link: <https://egazette.nic.in/WriteReadData/2023/244871.pdf>

SEBI UPDATES

SEBI asks top 100 companies to confirm or deny market rumors from October 1

Dated:29th March, 2023

India's markets regulator on Wednesday asked that the top 100 companies listed on its stock exchanges confirm or deny market rumors that impact share prices, in a bid to bring more transparency and ensure timely disclosure of "material events".

The requirement will kick in from Oct.1, 2023 for top 100 companies by market capitalization, and from April 1, 2024 for the top 250, SEBI said in a press release following a board meeting.

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The regulator said that it intends to put in place quantitative benchmarks to determine whether an event is material but did not immediately say what those metrics would be.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-asks-top-100-companies-to-confirm-or-deny-market-rumours-from-october-1/articleshow/99093989.cms>

SEBI strengthens online dispute resolution mechanism in securities market

Dated: 29th March, 2023

The Securities and Exchange Board of India (SEBI) on Wednesday strengthened the dispute resolution mechanism in the securities market to empower the investors. The market regulator amended rules to operationalize Online Dispute Resolution (ODR) mechanism for investors across registered intermediaries / regulated entities.

The announcement on this was made by SEBI Chairperson Madhabi Puri Buch at a press conference in which key decisions related to ESG framework, mutual funds, Alternative Investment Funds and shareholder empowerment were also announced.

“Against the backdrop of increase in investor participation in the securities market in India, and emergence of technology aided dispute resolution frameworks, the Board approved the proposal to harness Online Dispute Resolution (ODR) mechanism,” a SEBI release said.

Among the measures the market watchdog extended the MII [Market Infrastructure Institution] administered conciliation and arbitration mechanism to registered intermediaries / regulated entities and their investors / clients. It also allowed conducting proceedings in a hybrid mode along with streamlining the dispute resolution process and adoption of other measures to strengthen enforcement of awards.

SEBI also expanded the capacity of the MII administered conciliation and arbitration mechanism with the aid of ODR institutions.

Among other key decisions, SEBI amended regulations governing Alternative Investment Funds (AIFs) with a view to standardise provisions for valuation of investments and dematerialisation of units of AIFs. The market regulator also made changes in rules governing certification requirements for key employees of Investment Manager, transactions with associates, and option to sell unliquidated investments to a new scheme of the AIF.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-strengthens-online-dispute-resolution-mechanism-in-securities-market/articleshow/99097189.cms>

SEBI greenlights backstop fund for corporate debt market

Dated: 29th March, 2023

SEBI has approved a fund to backstop the corporate debt market for buying ill-liquid and investment grade debt paper, it said on Wednesday. This will help instill confidence in investors on the corporate bond market and also enhance secondary market liquidity.

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In February, Reuters had reported that India is setting up a fund worth Rs 330 billion (\$4 billion) to provide liquidity to its corporate debt market during bouts of stress, to help stem panic selling and ease redemption pressures.

Finance Minister Nirmala Sitharaman announced last year that the government had taken up the SEBI's proposal for the fund, without giving details.

Corporate Debt Market Development Fund (CDMDF), based on a guarantee to be provided by National Credit Guarantee Trust Company (NCGTC), may raise funds to purchase corporate debt securities during market dislocation.

"Access to the fund for selling securities during market dislocation shall be to specified mutual fund schemes in proportion to the contribution made to the Fund at a mutual fund level," SEBI said.

SEBI has also decided that the period of compliance for Large Corporates to raise 25% of their incremental borrowings through the debt market be extended to a contiguous block of 3 years instead of the current 2 years.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-greenlights-backstop-fund-for-corporate-debt-market/articleshow/99094060.cms>

Quantitative threshold as proposed in SEBI consultation paper may lead to disclosure overload, warns expert

Dated: 30th March, 2023

While the Securities and Exchange Board of India (SEBI) has approved the regulatory framework on ESG (Environmental, Social and Governance) disclosures, ratings and investing, the fineprints of the amendments are yet to be released. If SEBI chooses to introduce the same thresholds as was originally proposed in the Consultation Paper of November 2022, it could potentially lead to overlord of disclosures by India Inc.

"The capital market regulator could either introduce 'quantitative thresholds' as they believe would be material or allow individual listed Indian Inc to individually decide their own 'quantitative thresholds' for disclosure purposes," Makarand Joshi, founder, MMJC and Associates said.

"If SEBI introduces the same thresholds as was originally proposed in the Consultation Paper of November 2022, it would change the fundamentals of disclosure of material information and may lead to overload of disclosure for India Inc," Joshi said.

MMJC and Associates is a Company Secretaries firm based out of Mumbai and provide services related to company formation and statutory compliances.

Joshi is of the view that the retail investors may have to spend significant time in going through these disclosures and understand its long term implications before making their investment decisions.

"One will have to wait for the fine prints of the amendment, to see how SEBI introduces the quantitative thresholds for determining 'materiality' of events / information," he further said.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/quantitative-threshold-as-proposed-in-SEBI-consultation-paper-may-lead-to-disclosure-overload-warns-expert/articleshow/99113425.cms>

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SEBI cancels registration of 3 brokers in NSEL case

Dated: 31th March, 2023

Markets regulator SEBI on Friday cancelled the registration of three brokerage houses for facilitating its clients to trade on the platform of the now defunct National Spot Exchange Ltd (NSEL) in illegal 'paired contracts'. The brokerage houses, whose registrations were cancelled, are Paterson Commodities, Blue Crest Commodities and Fair Intermediate Products.

In three separate orders, SEBI found that these entities have either participated or facilitated the trading in 'paired contracts' on the NSEL platform.

By providing such a facility, they exposed their clients to the risk involved in trading in a product that did not have regulatory approval. The acts by the brokers raised doubts about their competence to act as registered securities market intermediaries, the orders noted.

As per the order, Fair Intermediate Products started trading in the alleged paired contracts in 2012 after 3 years from the date on which NSEL launched these contracts in September 2009.

Accordingly, the regulator noted that these entities do not satisfy the "fit and proper person" criteria for holding the certificate of registration as brokers in the securities market and cancelled the registration of the brokerage houses.

In September 2009, NSEL (now defunct) introduced the concept of 'paired contracts' for trading, which allowed buying and selling in the same commodity through two different contracts at two different prices on the exchange platform.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-cancels-registration-of-3-brokers-in-nsel-case/articleshow/99148896.cms>

SEBI standardizes provisions for valuation of Alternative Investment Funds

Dated: 29th March, 2023

Securities and Exchange Board of India (SEBI) on Wednesday amended regulations governing Alternative Investment Funds (AIFs) with a view to standardize provisions for valuation of investments and dematerialization of units of AIFs.

The market regulator also made changes in rules governing certification requirements for key employees of Investment Manager, transactions with associates, and option to sell unliquidated investments to a new scheme of the AIF.

The announcement on this was made by SEBI Chairperson Madhabi Puri Buch in a press conference along with key decisions related to ESG framework, mutual funds and shareholder empowerment.

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Under the amendments the SEBI Board approved proposals to specify a framework for AIFs to carry out valuation of their investment portfolio. The new rules will also spell out eligibility criteria of the independent appraiser for valuing the investment portfolio of AIFs.

Under the new rules, valuation of investment portfolios of Category III AIFs in unlisted securities and listed debt securities will also be carried out by an independent valuer and responsibility will be cast on managers of AIFs for true and fair valuation.

For ease of monitoring and administration by stakeholders and for the purpose of investor protection against operational and fraud risk, the board approved mandating that all new schemes going forward and existing schemes of AIFs with corpus more than Rs 500 crore will dematerialize their units by October 31, 2023.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-standardises-provisions-for-valuation-of-alternative-investment-funds/articleshow/99096667.cms>

SEBI board meeting: Decoding the slew of changes

Dated: 30th March, 2023

SEBI, in its board meeting on Wednesday, approved a slew of measures to strengthen the securities market and to improve ease of doing business in India. I would think that the number of announcements emanating from this meeting, covering 17 items, has been the largest in recent times. These measures, coming amidst the backdrop of a global banking crisis and tough macro-economic conditions, will further strengthen the market and will have long-term positive impact. Some of the important measures to take note of include:

Funding of secondary market trading could be similar to that of the primary market:

SEBI has approved a framework of ASBA-like facility for secondary market trading. This will enhance safeguarding of funds of retail investors parked with stockbrokers/ clearing members. It will also allow investors to earn interest on blocked funds in their savings account. With this facility, there will be direct settlement with Clearing Corporation, without passing through pool accounts of intermediaries, thereby providing client level settlement visibility to clearing corporation and avoiding the risk of co-mingling of client's funds and securities. As of now, this facility will be optional for investors as well as stockbrokers. Once implemented fully, this initiative could take our markets one step closer to a real time settlement and will have a far-reaching impact on secondary market trading and risk management.

A major strategic move for mutual fund sponsorship:

The SEBI board also approved some welcome amendments to SEBI (Mutual Funds) Regulations, 1996. While strengthening the existing eligibility criteria for sponsors, it introduced an alternative route to enable a diverse set of entities, including Private Equity Funds, to become sponsors of MFs. The amendments also allow for "Self-sponsored AMCs" to continue the mutual fund business, allowing an exit route for the existing sponsor. This would give the original sponsor flexibility to voluntarily disassociate itself from the MF without needing to induct a new and eligible sponsor. This change will fulfill a pending demand by the Private Equity community to own Mutual Fund business in their own name. As we know, as per the recent change carried out by the insurance regulator, private equity can now

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own an insurance company as well. With this a private equity investor will be at par with other investors as far as ownership of insurance and mutual funds is concerned.

Disclosure requirements are further tightened:

SEBI also proposed several updates to the LODR Regulations. One of the key updates is regarding certain listed companies having to verify and confirm, deny, or clarify the market rumors. Earlier, the listed entities were required to provide specific and adequate replies to all rumor verification queries raised to them by stock exchange(s). While the purpose of the amendment was to ensure information symmetry, it might fuel more speculations in the market. This would further create greater debates in the corporates of confirming or denying any strategic decision at a nascent stage.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/SEBI-board-meeting-decoding-the-slew-of-changes/articleshow/99112241.cms>

SEBI takes 16 major decisions in board meet: Key takeaways for Dalal Street

Dated: 30th March, 2023

In its board meeting today, the Securities and Exchange Board of India (SEBI) took a slew of decisions aimed at safeguarding the interests of investors as well as strengthening the market infrastructure to deal with dislocations. While elaborating on the decisions taken by the regulator in a press conference, SEBI Chairperson Madhabi Puri Buch also responded to questions raised on the Adani Group issue.

Here are the major takeaways for Dalal Street from the announcements by SEBI:

Adani Issue

Buch said it would not be appropriate to comment on a single entity especially when the matter is subjudice, and that it will submit an investigation report on the issues surrounding the group to the Supreme Court.

Disclosure Norms

- * SEBI is introducing a quantitative threshold for determining 'materiality' of events or information.
- * Within 30 minutes of the board meeting, a listed entity must disclose "material information" from the meeting, and all the material information within 12 hours
- * With effect from October 1, 2023, the top 100 listed companies by market capitalization must provide clarification and confirmation on market rumours. For the top 250 listed entities, the rule will be applicable from April 1, 2024.
- * Periodic approval of shareholders required for any director serving on the board of a listed entity in order to do away with the practice of permanent board seats.
- * Companies must fill up the vacancy of directors, compliance officer, chief executive officer and chief financial officer within a period of 3 months from the date of such vacancy

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Mutual Funds

* SEBI to amend mutual fund regulations to provide clarity on the roles and responsibilities of Trustees and board of asset management companies.

* SEBI allows private equity funds as sponsors of mutual funds. This is aimed at giving greater flexibility to the industry and enabling a diverse set of entities to become sponsors of MFs

Corporate Debt Market

* SEBI to set up "Corporate Debt Market Development Fund" (CDMDF) to act as a "backstop" facility to purchase investment grade corporate debt securities in times of stress

* CDMDF, based on a guarantee to be provided by National Credit Guarantee Trust Company (NCGTC), may raise funds to purchase corporate debt securities during market dislocation.

* SEBI has also extended the period of compliance for Large Corporates to raise 25% of their incremental borrowings through the debt market to a contiguous block of 3 years instead of the current 2 years

* SEBI has extended the 'comply or explain' period for High Value Debt Listed Entities (HVDLEs) with respect to corporate governance norms till March 31, 2024

ESG disclosures, ratings, investments

* On Environment Social and Governance (ESG) disclosures, SEBI has mandated introduction of BRSR (Business Responsibility and Sustainability Report) Core to enhance the reliability of disclosures.

* The BRSR will contain a limited set of Key Performance Indicators (KPIs), for which listed entities will be required to obtain "reasonable assurance".

* ESG Rating Providers (ERPs) will be required to consider India/emerging market parameters in ESG ratings considering that emerging markets have a different set of environmental and social challenges

* ESG schemes will be required to invest at least 65% of AUM in listed entities, where assurance on BRSR Core is undertaken

Stock Broker Regulations

* Introduction of a framework to provide for an institutional mechanism for prevention and detection of fraud or market abuse by stock brokers

* The approved amendments will come into effect from October 1, 2023

Regulatory Framework for Index Providers

* SEBI to regulate Index Providers to foster transparency and accountability in governance and administration of financial benchmarks in the securities market

* Providers of all indices that are used in India, including MSCI, will fall under SEBI norms

Alternative Investment Funds

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* SEBI will provide guidance to Alternative Investment Funds (AIFs) towards a consistent and standardised approach for valuation of their investment portfolios

* To protect investors against operational risks and fraud, SEBI has mandated AIFs to dematerialise all units for all new schemes and existing schemes with a corpus of more than Rs 500 crore by October 31

* Existing schemes of AIFs with corpus less than Rs 500 crore shall dematerialise their units by April 30, 2024

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-takes-16-major-decisions-in-board-meet-key-takeaways-for-dalal-street/articleshow/99095396.cms>

RBI UPDATES

RBI's regulatory framework for UCBs to come into effect from April 1

The RBI has released a revised regulatory framework for the urban cooperative banks(UCBs) regarding their net worth and capital adequacy, which will come into effect from the 1st of April 2023.

The apex bank released a circular clarifying the minimum net worth of a bank which laid down the following pointers

- Tier 1 UCBs, which operate in single districts must reserve a minimum net worth of two crore rupees, whereas other UCBs of all tiers must have a minimum net worth of five crore rupees.
- Tier 1 UCBs are those which have deposits up to Rs 100 crores and operate in a single district or have branches in contiguous districts. Tier 2 UCBs on the other hand refer to those which have deposits of more than 100 crores rupees and up to 1000 crores rupees.
- Currently, if the UCBs do not meet the minimum net worth requirement, then they should achieve the target of two and five crore rupees(as applicable) in a phased manner. The deadline to achieve 50% of the applicable minimum net worth is on or before March 31, 2026, and the entire mentioned minimum net worth amount must be achieved by March 31, 2028.

Related Link: <https://bfsi.economictimes.indiatimes.com/news/policy/rbis-regulatory-framework-for-ucbs-to-come-into-effect-from-april-1/99112238>

Merchant transactions using PPI on UPI over Rs 2,000 will be charged at 1.1% from April 1

Dated: 28th March, 2023

From April 1, you will have to pay a 1.1 per cent charge on your unified payment interface (UPI) transactions above Rs 2,000, while using PPI.

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"Interchange at the rate of 1.1 per cent of the transaction value/amount (using prepaid payment instruments, or PPI) shall apply to payments made to all online merchants, large merchants and small offline merchants having transaction value/ amount greater than Rs 2,000," NPCI said in a recent circular.

The PPI issuer will have to pay 15 bps as a wallet loading service charge to the remitter bank for loading transaction value greater than Rs 2,000.

However, an interchange will not be applicable in terms of peer-to-peer (P2P) and peer-to-peer-merchant (P2PM) transactions between a bank account and a PPI wallet.

The customers may or may not be charged for the transactions, as in the case of credit cards, the merchant may bear the costs, which will be distributed to different payment stakeholders.

"These charges have been much awaited by payment providers because there were cost implications of providing the services for free. On the other hand, merchants with ticket items above Rs. 2000 will not be happy, and ultimately these charges will be passed to customers one way or another," said an industry expert who doesn't want to be quoted.

Relief to the payment ecosystem

The charges on UPI come after huge wrangling between the government and the Reserve Bank of India last year. The RBI had floated a discussion paper inviting comments on levying charges for payment instruments, on which the finance ministry had issued a swift clarification saying there was no such plan.

According to analysts, about 65-70 per cent of transactions are P2PM, which is currently exempt from the charge and on the rest of the transactions there opens an opportunity for various payment stakeholders to earn money.

Credit card companies stand to benefit as the risk of any cap on merchant discount rate charges is reduced.

Related Link: <https://bfsi.economictimes.indiatimes.com/news/fintech/merchant-transactions-on-upi-over-rs-2000-will-be-charged-at-1-1-from-april-1/99065673>

New Foreign Trade Policy 2023

Dated: 29th March, 2023

Union Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution and Textiles, Shri Piyush Goyal today launched the Foreign Trade Policy 2023 saying that it is dynamic and has been kept open ended to accommodate the emerging needs of the time. He stated that the policy had been under discussion for a long time and has been formulated after multiple stakeholder consultations. India's overall exports, including services and merchandise exports, has already crossed US\$ 750 Billion and is expected to cross US\$ 760 Billion this year, he said.

The Minister referred to the interaction that Prime Minister, Shri Narendra Modi with the exporters on 06th August, 2021 and encouraged them to increase exports and get more deeply involved in the global value chain. He lauded the

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vision and guidance of the Prime Minister who believed that given the size of the Indian economy and manufacturing & service sector base, the potential for the country to grow is manifold. He said that this vision is at the core of the policy.

The Minister noted that the remarkable achievement in the overall export figure of crossing US\$ 760 Billion in these challenging times across the world has been the result of enthusiasm and encouragement pumped in by the Prime Minister. He said that this achievement is in sync with the target set in the roadmap in 2021 after the interaction with the Prime Minister.

He stressed that every opportunity for export must be captured and utilised effectively. He also mentioned that in the next 5 months during India's G20 presidency there should be a massive concentrated outreach with the world both sector-wise and country-wise.

The release of the policy was also attended by Union Minister of State for Commerce & Industry, Smt. Anupriya Patel, Commerce Secretary, Shri Sunil Barthwal and Member Customs, Central Board of Indirect Taxes and Customs, Shri Rajiv Talwar. Director General of Foreign Trade, Shri Santosh Kumar Sarangi gave a detailed presentation on the policy.

Related Link: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1912572>

NCLT AND M & A UPDATES

No Escaping from Penal Liability by Citing Company's Dissolution

Dated: 29th March, 2023

On March 15, 2023, a three judge bench of the Supreme Court in the case of *Ajay Kumar Radheyshyam Goenka vs Tourism Finance Corporation of India Limited*[1] and other connected matters held that personal liability of a signatory/director of a company in a cheque dishonour case filed under the Negotiable Instruments Act, 1881 ("NI Act") cannot be absolved pending corporate insolvency resolution proceedings ("CIRP") against the company under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC").

Facts

In this case, one M/s Rainbow Papers Limited (Accused Company) of which the Appellant herein was the Promoter and Managing Director, sought a term loan of Rs. 30 crores from a public financial institution (Respondent herein). In order to satisfy its obligations under the Loan Agreement dated March 27, 2012, the Accused Company issued a post-dated cheque towards payment of one of the instalments, but the cheque was returned for the reason "Account Closed", upon presentation to the bankers of the Respondent.

On April 19, 2016, the Respondent issued a legal notice under Section 138 of the NI Act calling upon the Accused Company and the Appellant. Upon non-payment of the debt, the Respondent on May 16, 2016, filed a criminal complaint under Section 138, 141 and 142 of the NI Act read with Section 190 of the Code of Criminal Procedure, 1973 ("NIA Proceeding"). Sometime in 2017, one M/s Neeraj Paper Agencies Limited filed an application under Section 9 of the IBC for initiating a corporate insolvency resolution process against the Accused Company which was

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later admitted. Thereafter, the Resolution Applicant (Kushal Limited) filed a resolution plan dated May 26, 2018 which was approved by the National Company Law Tribunal, Ahmedabad Bench. During the course of the meeting of the Committee of Creditors, the Respondent was considered to be an unsecured financial creditor.

Related Link: <https://www.livelaw.in/law-firms/law-firm-articles-/penal-liability-dissolution-ibc-ni-act-cirp-nia-proceeding-pioneer-legal-225256>

Google to pay Rs 1,337 crore CCI penalty in 30 days: NCLAT

Dated: 29th March, 2023

Google has been directed by the National Company Law Appellate Tribunal (NCLAT) to deposit the Rs 1,337 crore penalty in 30 days that the Competition Commission of India (CCI) imposed on the tech giant, alleging abuse of dominant market position by Google in the Android ecosystem.

The NCLAT bench comprising Chairperson Justice Ashok Bhushan and Member Alok Shrivastava also made some modifications to the CCI order passed on October 20, 2022.

The body has held that Google forcing original equipment manufacturers (OEMs) to pre-install apps is an abuse of its dominant position. It has also held that there was no violation of the principles of natural justice, and the lack of a judicial member did not affect the CCI's decision.

However, the NCLAT has allowed marginal relief to Google by striking down four directions from the overall CCI order.

The NCLAT has struck down the CCI direction requiring Google to allow access to its Play Store API, the CCI direction requiring Google to allow the uninstallation of pre-installed apps, the CCI direction mandating Google to allow other app stores on the Play Store, and the CCI direction to Google requiring it to allow side-loading of apps by other app developers.

Related Link: <https://www.cnbtv18.com/business/nclat-upholds-rs-133776-crore-fine-imposed-on-google-by-competition-watchdog-16293881.htm>

NCLT orders initiating insolvency proceedings against Mantri Developers

Dated: 31th March, 2023

NCLT has directed initiating insolvency proceedings against Bengaluru-based real estate firm Mantri Developers admitting the plea filed by Indiabulls Housing Finance Ltd. A two-member bench has also suspended the board of Mantri Developers and appointed Ahsan Ahmad as the interim resolution professional for the company.

Indiabulls Housing Finance Ltd (IHFL) had moved the Bengaluru bench of the National Company Law Tribunal (NCLT) claiming a default of Rs 456.68 crore by Mantri Developers, part of the Mantri Group of Companies engaged in the real-estate business in Bengaluru, as on January 1, 2022.

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"In view of the facts and circumstances... the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs 1 crore, the petition is admitted in respect of respondent -- Mantri Developers Private Ltd -- under Section 7 of the I&B Code, 2016," said NCLT.

The NCLT bench consisting of Manoj Kumar Dubey and T Krishnavalli in its order delivered on March 28, 2023, also declared a moratorium under the Insolvency & Bankruptcy Code (IBC) protecting it from any suits, judgment, decree of court or sale and transfer of its assets during the CIRP.

IHFL had sanctioned five loans and aggregate disbursed loan amount of Rs 574.20 crore.

However, Mantri Developers failed to comply with the provisions of the Loan agreements. Accordingly, the financial creditor issued five separate notices on June 29, 2021, with respect to each loan account.

Related Link: <https://economictimes.indiatimes.com/industry/services/property/-/cstruction/nclt-orders-initiating-insolvency-proceedings-against-mantri-developers/articleshow/99145239.cms>

Dues payable to Government Authorities would come within the ambit of operational debt – State of Haryana through Additional Chief Secretary, Department of Industries Vs. Sanyam Goel, RP Haryana Telecom Ltd. – NCLT Chandigarh Bench

Dated: 30th March, 2023

I. Case Reference

Case Citation : (2023) ibclaw.in 114 NCLT

Case Name : State of Haryana through Additional Chief Secretary, Department of Industries Vs. Sanyam Goel, RP Haryana Telecom Ltd.

Corporate Debtor : M/s Haryana Telecom Ltd.

Application/Appeal No.: IA No.829/2020 In CP (IB) No.515/Chd/Chd/2019

Judgment Date : 22-Mar-23

Court/Bench NCLT Chandigarh Bench

Member (Judicial) : Shri Harnam Singh Thakur

Member (Technical) : Shri Subrata Kumar Dash

II. Brief about the decision

Facts of the case

In the instant matter, the applicant is seeking direction against the Interim Resolution Professional to treat the claim of the applicant as a financial creditor which has been inadvertently submitted as an operational creditor.

It is submitted that the applicant inadvertently submitted its claim in Form B, which is meant for operational creditors, whereas, being a financial creditor, the applicant was required to submit its claim in Form C. The applicant immediately, vide letter dated 22.09.2020, submitted the corrected claim in Form C along with the documents. The

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respondent, vide order dated 21.10.2020, rejected the claim of the applicant on the ground that there is no disbursement of the amount hence, there is no financial debt. Therefore, the applicant cannot be treated as a financial creditor.

It is submitted by the applicant that in the present case, initially, the liability was of tax which was converted into a loan. Further, the respondent has ignored the fact that a charge was created by the corporate debtor in favour of the Government of Haryana through GM District Industries Rohtak on 14.03.1997.

The applicant relied on the judgment of the Hon'ble Supreme Court in the matter of State Tax Officer vs Rainbow Papers (2022) ibclaw.in 107 SC, wherein it is held that the Government or the Government Authority can be a secured creditor. The applicant further relied on the judgment of the Hon'ble Supreme Court in the matter of Operator Marketing Private Limited vs. M/S Samtex Desinz Private Limited (2021) ibclaw.in 68 SC.

It is submitted by the respondent-Resolution Professional that, as per the legal opinion dated 09.10.2020, the applicant is considered an operational creditor. There is no provision under the Code which allows a claimant/creditor to subsequently file another claim to change the nature of the claim from the operational creditor to the financial creditor of the corporate debtor. Further, the claim of the applicant falls within the definition of operational debt as provided under Section 5 (21) of the Code. It is stated that the applicant has failed to place on record the necessary documents or prove that the applicant has "disbursed" debt to the corporate debtor against the consideration for the time value of money.

Decision of Adjudicating Authority

In the present case, the amount of debt of Rs. 18,68,12,656/- along with the interest at the rate of 18% per annum is being charged on the loan amount is never in question, and neither is the fact that this amount is due to the Government. The issue of the creation of mortgages in favour of the Government of Haryana is also not in dispute. Hence, the Resolution Professional is directed to treat this claim under section 53(1)(b)(ii) at par with the debts owed to a secured creditor, ranking equally with other specified debts in compliance of the ratios in the case of Rainbow Papers Limited (2022) ibclaw.in 107 SC.

The policy converts deferred sales tax into an interest-free loan of the State of Haryana, was meant to promote industries in the state and did not lay down any provision for charging of interest. Only in the case of ineligible industries the provision for a payout of interest is provided, and it did not apply to all the beneficiaries of the Scheme. It is, thus, clear that there is no consideration of time value for money in these transactions as the payment of interest is not an integral part of the Scheme.

We also note that the respondent-Resolution Professional, in an affidavit dated 10.02.2020 filed in IA No. 823/2022, dealing with the approval of the Resolution Plan, has admitted in Para 4 of the affidavit that the claim of the Department of Industries and Commerce, Rohtak, i.e. the applicant is amounting to Rs. 77,00,72,426/- and has further stated in para 10 that the Resolution Plan submitted by the Resolution Applicant be remanded back to the CoC of the corporate debtor for considering the distribution under the Resolution Plan in terms of the current judgment passed by the Hon'ble Supreme Court in the matter of State Tax Officer (1) vs. Rainbow Papers Limited (2022) ibclaw.in 107 SC.

In this context, a reference may be made to the decision of the Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited through Authorised Signatory (2021) ibclaw.in 54 SC held that dues payable to Government Authorities would come within the ambit of operational debt. Therefore, we are not inclined to accept the aforesaid contention of the applicant. Hence, the applicant's debt falls within the category of operational debt as defined under Section 5(21) of the Code.

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In the result, we are of the view that though the debt is payable to the Government Authorities, it is not a financial debt. To reiterate, the amounts payable to the applicant are an operational debt and to be treated at par with debts owed to a secured creditor under Section 53 as per the decision of the Hon'ble Supreme Court in the matter of State Tax Officer (1) vs. Rainbow Papers (2022) ibclaw.in 107 SC.

In the result, this application, i.e. IA No. 829/2020, is partly allowed with the aforesaid direction and disposed of accordingly. (p13-19)

Related Link: <https://ibclaw.in/state-of-haryana-through-additional-chief-secretary-department-of-industries-vs-sanyam-goel-rp-haryana-telecom-ltd-nclt-chandigarh-bench/>

Parties under an agreement cannot confer jurisdiction on any Court or Tribunal which has no inherent jurisdiction to try any particular case – Jagson Colorchem Ltd. Vs. Jayapushpam Investments and Trading Pvt. Ltd. – NCLT Mumbai Bench

Dated: 30th March, 2023

In the case of Jagson Colorchem Ltd. Vs. Jayapushpam Investments and Trading Pvt. Ltd., the NCLT Mumbai Bench has held that parties to an agreement cannot confer jurisdiction on any court or tribunal which has no inherent jurisdiction to try any particular case. The case involved a dispute between two parties arising out of a Share Purchase Agreement (SPA) entered into by them. The Respondent filed a petition before the High Court of Bombay, seeking enforcement of the SPA. However, the High Court found that it did not have jurisdiction to entertain the petition as the subject matter of the dispute was outside its territorial jurisdiction.

The Respondent subsequently filed a petition before the NCLT Mumbai Bench, claiming that the SPA provided for the jurisdiction of the NCLT in case of any dispute arising under it. However, the NCLT held that parties cannot confer jurisdiction on a court or tribunal which has no inherent jurisdiction to try a particular case. The NCLT further held that since the dispute did not relate to any matter falling within the ambit of the Companies Act, 2013, it did not have jurisdiction to entertain the petition. The NCLT accordingly dismissed the petition for want of jurisdiction.

The ruling by the NCLT Mumbai Bench clarifies the principle that parties cannot confer jurisdiction on a court or tribunal that does not have inherent jurisdiction to try a particular case. It underscores the importance of carefully considering the jurisdiction of a court or tribunal before entering into any agreement, and seeking legal advice when in doubt.

Related Link: <https://ibclaw.in/jagson-colorchem-ltd-vs-jayapushpam-investments-and-trading-pvt-ltd-nclt-mumbai-bench/>

Extension of compliance period – Fund raising by large corporates through issuance of debt securities to the extent of 25% of their incremental borrowings in a financial year

Concerns:

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

Dated: 30th March, 2023

The Securities and Exchange Board of India (SEBI) has extended the compliance period for large corporates to raise funds through the issuance of debt securities by 25% of their incremental borrowings in the financial year. This extension is expected to provide flexibility to the companies in raising funds through the debt market.

Related Link: <https://taxguru.in/sebi/extension-compliance-period-aefund-raising-large-corporates-issuance-debt-securities-extent-25-incremental-borrowings-financial-year.html>

Thanking You,

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