

WEEKLY CORPORATE UPDATES

Saturday 08th April, 2023

(Curated & compiled by)

Team Indiacorp Law

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SEBI UPDATES

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

Dated:01st April, 2023

The capital market regulator approved proposals to put an end to permanent board seats as well as to curb special rights for certain shareholders. Mutual funds will soon get a backstop facility for the purchase of corporate debt securities in times of stress, while private equity funds will be able to sponsor these asset managers. Also, a facility similar to the Application Supported by Blocked Amount (ASBA) for initial public offerings (IPOs) will be made available to investors for secondary market trading.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-greenlights-slew-of-reforms/articleshow/99103629.cms>

SEBI brings in advertisement code for investment advisers, research analysts

Dated:05th April, 2023

SEBI in 2013 and 2014 had first brought in regulations for code of conduct to be followed by IAs and RAs. The Securities and Exchange Board of India (SEBI) has barred investment advisers (IAs) and research analysts (RAs) from using extensive technical or legal terminology or promising guarantee of assured return to investors in their communications.

These compliances are part of SEBI's new advertisement code to further strengthen the conduct of IAs and RAs, while issuing any advertisement.

The capital markets regulator in 2013 and 2014 had first brought in regulations for code of conduct to be followed by IAs and RAs, respectively.

As per the new code, advertisements will include all forms of communications, issued by or on behalf of IA/RA, including pamphlets, research reports, newspaper or TV ads, mails, electronic messaging and social media platforms, etc.

Related Link: <https://www.moneycontrol.com/news/business/personal-finance/sebi-brings-in-advertisement-code-for-investment-advisers-research-analysts-10368331.html>

SEBI chief briefs SC panel on Adani-Hindenburg issue

Dated:05th April, 2023

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India's capital markets regulator on April 2 made a detailed presentation to the six-member committee set up by the Supreme Court following publication of the Hindenburg report on Adani Group on January 25, said people familiar with the matter.

The New Delhi briefing to the panel by Securities and Exchange Board of India (SEBI) chairperson Madhabi Puri Buch was her first, and an important one, said these people. Henceforth, she will not appear before the committee unless required.

Sebi will, however, continue to provide all requisite information to the six-member committee, which is simultaneously carrying out its own investigation in the case and will furnish its report to the Supreme Court, they said.

The presentation covered disclosures on related party transactions by both listed and privately held Adani Group companies. Other issues pertaining to the group - such as offshore companies, foreign portfolio investor holdings and minimum stock market floats - were also covered in the meeting.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-chief-briefs-sc-panel-on-adani-hindenburg-issue/articleshow/99253072.cms>

RBI UPDATES

RBI issued the Master Circular on Facility for Exchange of Notes and Coins

Dated: 04th April, 2023

The Reserve Bank of India (RBI) on April 03, 2023, issued the Master Circular on Facility for Exchange of Notes and Coins.

The following has been stated namely: -

• All branches of banks in all parts of the country are mandated to provide the following customer services, more actively and vigorously to the members of the public so that there is no need for them to approach RBI Regional Offices for this purpose:

1. Issuing fresh/good quality notes and coins of all denominations,
2. Exchanging soiled/mutilated/defective notes and
3. Accepting coins and notes either for transactions or exchanges.

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- All branches shall provide the above facilities to members of the public without any discrimination on all working days. The scheme of providing an exchange facility by a few select currency chest branches on one of the Sundays in a month will remain unchanged.
- The names and addresses of such bank branches shall be available with the respective banks.
- The availability of the above-mentioned facilities at the bank branches shall be given wide publicity for information of the public at large.

RBI notified regarding the APConnect - Online application for Full Fledged Money Changers and non-bank Authorized Dealers Category-II

Dated:07th April, 2023

The Reserve Bank of India (RBI) on April 06, 2023, was notified regarding the APConnect - Online application for Full Fledged Money Changers and non-bank Authorised Dealers Category II.

A software application called 'APConnect' has been developed for the processing of applications for licensing of FFMC, non-bank AD Cat-II, authorization as MTSS Agent, renewal of existing license/authorization, for seeking approval as per the extant instructions and for submission of various statements/returns by FFMCs and non-bank AD Cat II. The application can be accessed at '<https://apconnect.rbi.org.in/entity>'.

The following facilities/functionalities of the APConnect application are as stated:

- Registration and licensing of new companies as well as existing Authorised Persons (FFMC / non-bank AD Cat-II / NBFC eligible for AD Cat-II)
- Registration of New Branches
- Registration of Temporary Money Changing Facilities
- Registration of franchisees
- Authorisation as Indian Agents under MTSS
- Upgradation of FFMC to non-bank AD Cat-II
- Renewal of Licences
- Opening of Foreign Currency Accounts
- Opening of Nostro Accounts for eligible entities
- Voluntary Surrender of Licence

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- *Write-off of foreign currency notes*
- *Submission of Returns/Statements*

Existing FFMCs / non-bank AD Category-II shall register themselves on the APConnect application within three months from the date of issue of this circular.

Subsequent to registration on APConnect, requests for other facilities/approvals and submission of returns by the entities shall be done through the APConnect application.

Eligible entities, desirous of applying for fresh FFMC/ non-bank AD Category II/MTSS Agent license/authorization shall submit their application only through APConnect.

Related Link: <https://www.teamleasereqtech.com/updates/article/22883/rbi-notified-regarding-the-apconnect-online-application-for-full-fledg/>

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RBI notifies Master Direction on penal provisions in deficiencies in reporting of transactions/ balances at currency chests

Dated: 06th April, 2023

- **Reporting of Currency Chest Transactions:** The minimum amount of deposit into / withdrawal from currency chest will be ₹1,00,000 and thereafter, in multiples of ₹50,000.
- **Time limit for Reporting:** The currency chests should invariably report all transactions through CyM – CC portal on the same day by 7 pm.
- **Relaxation on account of strike in banks:** Relaxation in the reporting period on account of strike situation will be considered on case-to-case basis.
- **Delay in Reporting:** In the event of delay in reporting currency chest transactions, penal interest at the rate indicated in paragraph 4 of this circular shall be levied on the amount due from the chest holding bank for the period of delay. Penal interest shall be calculated on T+0 basis i.e. penal interest shall be levied in respect of transactions not reported by currency chests to the Issue Office on the same business day within the time limit prescribed above.
- **Wrong reporting:** Penal interest shall be levied in respect of cases of wrong reporting in the same manner till the date of receipt of corrected advice by Reserve Bank. As debits/credits to banks' current accounts are raised on the basis of the transactions reported by the currency chests, penal interest shall invariably be levied in all cases of wrong reporting by the currency chests. It is expected that currency chests would ensure the correctness of figures reported on the CyM – CC portal. Particular care shall be taken to ensure that remittances of fresh notes/re-issuable notes sent to the currency chests from RBI/press are not reported as 'deposit' transactions.
- **Inclusion of ineligible amounts in the currency chest balances:** Penal interest shall be levied in all cases where the bank has enjoyed 'ineligible' credit in its current account with Reserve Bank on account of wrong reporting / delayed reporting / non-reporting of transactions.
- **Penal measures for other deficiencies:** Penal measures for shortages in chest balances / remittances, shortages due to pilferage / frauds, counterfeit banknotes detected in chest balances / remittances shall be taken on the basis of prevailing "Scheme of Penalties".
- **Reporting of soiled note remittances to RBI–** Soiled note remittances to RBI shall not be shown as withdrawal by chest(s). In case such remittances to RBI are wrongly reported as 'withdrawal', a penalty of ₹50,000 shall be levied irrespective of the value of remittance and period of such wrong reporting.
- **Reporting of diversions in CyM – CC portal:** All currency chest diversions (both between chests of the same bank and between chests of different banks) have to be reported through 'Diversion Module' of CyM-CC Portal. The CC sending the diversion should initiate the diversion entry. The receiving CC should acknowledge the same. Diversions should not be reported as deposit/withdrawal. A penalty of ₹50,000 shall be levied for any such wrong reporting.
- **Delayed reporting where currency chests had "Net Deposit":** Penal interest at the prevailing rate for delayed reporting of the instances where the currency chest had reported "net deposit" shall not be charged. However, in order to ensure proper discipline in reporting currency chest transactions, a flat penalty of ₹50,000 shall be levied on the currency chests for delayed reporting, irrespective of the value of net deposit.
- **Rate of penal interest:** Penal interest shall be levied at the rate of 2% over the prevailing Bank Rate for the period of delayed reporting/wrong reporting/non-reporting /inclusion of ineligible amounts in chest balances.

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NCLT AND M & A UPDATES

No Scope for Condonation of Delay Beyond 15 Days, much Less 45 Days: NCLAT Delhi

Dated:01st April, 2023

The Appellant filed an appeal with the National Company Law Appellate Tribunal (NCLAT) after a delay of 45 days from the date of the impugned order, which was passed on 12.09.2022. The grounds for the delay were that the certified copy of the order was not received by the Appellant, and the Appellant was confined in jail since 12.09.2018 and was also unwell and admitted to the jail hospital. The Appellant sought condonation of the delay for four days.

Upon examining the relevant provisions of the Insolvency and Bankruptcy Code (IBC), the NCLAT referred to Section 61 of the Code, which deals with the right of appeal and the period of limitation for filing an appeal before the Appellate Authority. As per Section 61(2) of the Code, the period of limitation for filing an appeal is 30 days, which can be extended by another 15 days if the Appellant satisfies the Appellate Authority about the existence of sufficient cause for not filing the appeal in time.

The NCLAT also referred to the decision of the Hon'ble Supreme Court in the case of Mr V Nagarajan Vs. SKS Ispat and Power Ltd., wherein it was held that a litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. The Court further noted that a sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.

The NCLAT also referred to another decision of the Hon'ble Supreme Court in the case of National Spot Exchange Ltd. Vs. Mr. Anil Kohli, RP for Dunar Foods Ltd., wherein it was held that delay beyond 15 days in preferring an appeal is uncondonable, even in exercise of powers under Article 142 of the Constitution.

Based on the above, the NCLAT concluded that there is no scope for condonation of delay beyond the period of 15 days, much less 45 days, as there is no provision in the Code for the Tribunal to exercise its jurisdiction for condonation of delay beyond 15 days. Therefore, the application for condonation of delay was dismissed, and as a consequence, the appeal was also dismissed. No costs were awarded.

In conclusion, the NCLAT held that the delay of 45 days in filing the appeal cannot be condoned, as it exceeds the maximum period of 15 days allowed under the statutory provisions of the IBC. The decision of the NCLAT reaffirms the importance of adhering to the timelines prescribed under the IBC and upholding the objective of the legislation in the interest of the economic health of the nation.

Related Link: <https://ibclaw.in/diwakar-sharma-vs-anand-sonbhadra-rp-of-m-s-subhkamna-buildtech-pvt-ltd-anr-nclat-new-delhi/>

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The status of Financial Creditor cannot be accorded to a person who, in the garb of a lender comes in a Real Estate Project as a Speculative Investor and for mere recovery of monies files exorbitant claims – Mr. Rohit Prasad Vs. M/s S and N Lifestyle Infraventures Pvt. Ltd.

Dated: 07th April, 2023

In the case of Mr. Rohit Prasad Vs. M/s S and N Lifestyle Infraventures Pvt. Ltd., Mr. Rohit Prasad, the Applicant, has filed an application seeking to initiate Corporate Insolvency Resolution Process against M/s. S and N Lifestyle Infraventures Pvt. Ltd., the Respondent, under Section 7 of the Insolvency and Bankruptcy Code, 2016. The main issues in question are whether the agreement between the Applicant and the Respondent is a contingent or forward sale agreement, and whether the amount claimed by the Applicant constitutes a 'financial debt' under the code, and whether the Applicant falls under the category of 'financial creditor'.

The court has examined the terms and conditions of the agreement and concluded that it is a sale agreement with settled base return and profits, and the Applicant had invested as a 5% equity holder in the housing project. The court has interpreted the agreement strictly as per its terms and determined that it is not a loan agreement.

The court has also referred to the definitions of 'financial creditor' and 'financial debt' as per the code and observed that the debt claimed by the Applicant, which includes principle and interest, is a lucrative agreement situation. However, the court has noted that the Applicant has secured his interests in case of non-payment by the Respondent as per the terms of the agreement. Therefore, the court has concluded that the Applicant does not qualify as a financial creditor under the Insolvency and Bankruptcy Code, as he does not fall within the definition of a person to whom a financial debt is owed.

In summary, the court has determined that the agreement between the Applicant and the Respondent is a sale agreement and not a loan agreement, and the Applicant does not qualify as a financial creditor under the Insolvency and Bankruptcy Code.

Related Link: <https://ibclaw.in/mr-rohit-prasad-vs-m-s-s-and-n-lifestyle-infraventures-pvt-ltd-nclt-new-delhi-bench-court-v/>

NAREDCO urges UP government to adopt a favourable policy for settlement of land dues of builders

Dated: 08th April, 2023

The National Real Estate Development Council (NAREDCO) has urged the Uttar Pradesh government to adopt a developer friendly policy for settlement of land dues of builders.

"In the interest of completion of projects, giving delivery of approximately 2.50 lakh flats to home buyers and discharging the liability of land dues payable to the authorities, it is requested that a policy may be adopted on the lines of "Vivad Se Viswas" scheme of the central government or "Samadhan Se Vikas" scheme of the Haryana

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government,” NAREDCO-UP chairperson RK Arora has said in its letter to Manoj Kumar Singh, Infrastructure & Industrial Development Commissioner of Uttar Pradesh.

NAREDCO- UP represents real estate developers having projects mainly under Noida, Greater Noida and Yamuna Expressway Industrial Development Authorities, in Gautam Budh Nagar District.

“We submit that due to various reasons beyond the control of developers like land acquisition disputes between farmers and the authorities and the consequent litigation, stay orders from High Court and the Supreme Court, execution of projects got delayed. Further, the impact of COVID-19 and the lockdown imposed by the Government also delayed projects,” the industry body has said.

This has resulted in huge accumulation of land dues (principal, interest and penal interest) payable to the Noida, Greater Noida and Yamuna Expressway Authorities.

While the homebuyers are not getting the flats booked by them due to delay in construction, the authorities are also not facilitating issuance of completion certificates and sub-lease permission of the completed portion of these projects, as the authorities are demanding no dues certificate as a pre condition for processing the plan approval, plan revision, part completion and sub-lease permission which the developers are unable to obtain due to the accumulated land dues.

Besides, the project loans taken by the developers from banks and financial institutions have also become overdue and NPA for recovery of which the lenders are approaching NCLT under the Insolvency & Bankruptcy Code (Amendment) Act, 2021.

Related Link: <https://economictimes.indiatimes.com/industry/services/property/-/cstruction/naredco-urges-up-government-to-adopt-a-favourable-policy-for-settlement-of-land-dues-of-builders/articleshow/99247560.cms>

Lenders postpone Reliance Capital auction to April 11

Dated: 04th April, 2023

Lenders to Anil Ambani-promoted Reliance Capital Monday decided to delay until April 11 the proposed auction of the distressed financial services company, said two people aware of the development.

Besides Torrent Investments and Hinduja entity IndusInd International Holdings, Oaktree Capital have shown interest in participating in the auction process, the people said. This probably is one of the developments that prompted lenders to reschedule the auction.

Related Link: <https://economictimes.indiatimes.com/news/company/corporate-trends/lenders-postpone-reliance-capital-auction-to-april-11/articleshow/99222968.cms>

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NCLT approves Adani Ports and SEZ's takeover of Karaikal Port

National company law tribunal has approved Adani Ports and Special Economic Zone Limited's Rs. 1485 crore offer for Karaikal Port Limited which was made under the insolvency and bankruptcy code (IBC) process as per a court order the contents of which ET has reviewed.

Adani Ports and Special Economic Zone was pitted against Vedanta Limited, JSW Infra, a consortium of RKG Fund and Sagacious Capital and Jindal Power all of whom had submitted expressions of interest to acquire Karaikal Port.

ET had first reported on 2 December that Adani Port and Special Economic Zone had emerged as the winning bidder for Karaikal Port.

Adani Ports and Special Economic Zone confirmed the development in a stock exchange filing on Saturday.

"The acquisition of Karaikal Port is another milestone in consolidating our position as India's largest transport utility. With acquisition of Karaikal port APSEZ now operates 14 ports in India. APSEZ will spend further INR 850 crores over time to upgrade infrastructure in order to reduce the logistics cost for the customers. We are envisaging to double the capacity of the port in the next 5 years and also add container terminal to make it a multipurpose port", said Karan Adani, chief executive officer, Adani Ports and Special Economic Zone.

Related Link: <https://economictimes.indiatimes.com/industry/transportation/shipping/-/transport/nclt-approves-adani-ports-and-sezs-takeover-of-karaikal-port/articleshow/99184118.cms>

OTHER UPDATES

More than 92,000 entities recognized as startups since the launch of Startup India

Dated: 06th April, 2023

The Government of India announced the Startup India Initiative on January 16, 2016, with the objective of developing a robust ecosystem for fostering innovation, entrepreneurship, and encouraging private investments in the nation's startup ecosystem that would drive sustainable economic growth and generate large-scale employment opportunities.

The Department for Promotion of Industry and Internal Trade (DPIIT) has recognised companies as "startups" under the Startup India initiative in accordance with the eligibility requirements outlined in G.S.R. notification 127 (E) dated February 19, 2019.

As of February 28, 2023, DPIIT has recognized 92,683 entities as startups since the commencement of the Startup India initiative in 2016.

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In the last five years, the number of entities recognized as startups in the country by DPIIT is 8,635 in 2018 followed by 11,279 in 2019, 14,498 in 2020, and 20,046 in 2021 and 26,542 in 2022.

Related Link: <https://www.ibef.org/news/more-than-92-000-entities-recognized-as-startups-since-the-launch-of-startup-india>

**Thanking You,
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