

WEEKLY CORPORATE UPDATES

Saturday 24th June, 2023

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

Relaxation in paying additional fees in case of delay in filing DPT-3 for Financial Year ended on 31st March 2023 upto July 31st July 2023.

Dated: 21st June, 2023

Ministry of Corporate Affairs, vide its general circular no. 06/2023 dated 21st June, 2023 has granted an extension for filing Form DPT-3, which pertains to the return of deposits, by one month, i.e. upto 31st July 2023 without paying any additional fees. The above relaxation has been granted keeping in mind the transition of the MCA-21 portal from V2 to V3.

Related Link: <https://www.mca.gov.in/content/mca/global/en/notifications-tender/whats-new.html>

SEBI UPDATES

SEBI proposes standards format on trading preference for different exchanges

Dated: 21st June, 2023

New Delhi: Capital markets regulator Sebi on Wednesday prescribed a standard format for seeking the trading preference of clients for the same product in different exchanges. Currently, clients need to give separate authorization/letters in case they want to trade on different stock exchanges for a particular segment.

Based on the representations received and in consultation with stock exchanges, it has been decided to standardize the format of "Trading Preferences" to ensure that clients are permitted to access all the stock exchanges in which the stock brokers are registered for the same segment, the regulator said.

Under the new mechanism, all stock brokers are mandated to register their new clients on all the active stock exchanges after obtaining the trading preferences as per format.

The stock brokers will also provide a choice to their clients to opt out of such access by providing negative consent in this regard, and thereafter, the brokers will activate/deactivate the segments based on the preference of their clients.

Clients will be given a choice to opt out of such access by providing negative consent, and the stock brokers shall activate/deactivate the segments based on the preference of clients. The provisions of this circular will come into force from August 01, 2023, Sebi said.

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Further, the regulator also directed the exchanges to monitor the implementation and compliance of this circular through half-yearly internal audit and inspection of the stock brokers and communicate the same to the regulator through their monthly development report.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-proposes-standard-format-on-trading-preference-for-different-exchanges/articleshow/101171051.cms?from=mdr>

SEBI bars 7 entities from market for 3 years on Insider trading in Sharon Bio- Medicine shares

Dated: 22nd June, 2023

The Securities and Exchange Board of India (Sebi) has barred 7 entities from the securities market for three years for breaching insider trading regulations while dealing in shares of Sharon Bio-Medicine.

These 7 entities are Bharat Mohanlal Mehta, Lalita Bharat Mehta, Impressive Trading, Sovin Trading, Sunrath Trading, Sachin Sudam Choudhary, and Pankaj Kamlesh Chandola.

The regulator has directed Bharat Mohanlal Mehta, Lalita Bharat Mehta, Impressive Trading, Sovin Trading, and Sunrath Trading to disgorge the amounts equivalent to the losses unlawfully averted by them. "The noticees, through their trades in the scrip of Sharon while in possession of and on the basis of the UPSI (unpublished price sensitive information), have averted losses unlawfully," the regulator said.

Impressive trading averted losses to the tune of Rs 7.19 crore, Sovin Trading to the tune of Rs 6.48 crore, and Sunrath Trading to the tune of Rs 3.34 crore, according to the Sebi release. "The above mentioned losses averted by the noticees in an unlawful manner are liable to be disgorged, along with interest," the regulator said. The entities will be charged with a simple interest of 9% per annum for the period from February 16, 2015, till the date of actual payment, the regulator said.

Further, Sebi alleged in the show cause notice that Sovin Trading and Sunrath Trading have violated the provisions of prohibition of insider trading regulations. Insider trading adversely affects the interest of ordinary investors, as the persons making illegal gains on the basis of possessing unpublished sensitive information do so at the cost of investors who are not privy to such information.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-bars-7-entities-from-market-for-3-yrs-on-insider-trading-in-sharon-bio-medicine-shares/articleshow/101198353.cms>

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SEBI issues demand notices to 5 entities in Fortis Healthcare fund diversion case

Dated: 23rd June, 2023

New Delhi: Capital markets regulator Sebi has sent notices to five entities asking them to pay Rs 5.7 crore within 15 days in Fortis Healthcare's case of fund diversion and misrepresentations to conceal the fraud. In addition, the regulator warned of attachment of assets and accounts if they fail to make the payment within the stipulated time. The five entities that received notices are Saubhagya Buildcon, Zolton Properties, Tiger Developers, Torus Buildcon and Rosestar Marketing. The demand notices came after the entities failed to pay the fine imposed on them by the Securities and Exchange Board of India (SEBI) in May 2020.

In five notices issued on Thursday, Sebi directed them to pay Rs 5.7 crore, which includes interest and recovery cost, within 15 days. In the event of non-payment of dues, the regulator will recover the amount by attaching and selling their moveable and immovable properties. Besides, they will face attachment of their bank accounts. Also, the regulator takes the route of arrest and detention in prison to recover the amount.

Earlier this month, Sebi had issued demand notices to four entities in the same case. In May 2022, Sebi imposed penalties totalling Rs 38.75 crore on 32 entities, including these five entities in the case related to the diversion of funds of Fortis Healthcare Ltd (FHL) and misrepresentations to conceal the fraud. It levied a fine of Rs 1 crore each on the five entities. It also pointed out that Deloitte Haskins & Sells LLP, the statutory auditor of FHL, had refused to sign on the company's second-quarter results until the funds were accounted for. Subsequently, the regulator initiated an investigation into the matter to examine possible violations of the provisions of the PFUTP (Prohibition of Fraudulent and Unfair Trade Practices)

In its probe, Sebi found that a systematic scheme of fraud was devised by the erstwhile promoters of FHL to funnel the resources of a listed company behind the facade of investment through Inter-Corporate Deposits (ICDs) or short-term loans to various intermediate entities for the benefit of RHC Holding, an entity which was indirectly owned and directly controlled by the erstwhile promoters.

The funds aggregating to Rs 397 crore were diverted from FHL to RHC Holding, through a wholly-owned subsidiary of FHL -- Fortis Hospitals Ltd. The funds were allegedly routed through a network of entities.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-issues-demand-notices-to-5-entities-in-fortis-healthcare-fund-diversion-case/articleshow/101224265.cms>

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RBI UPDATES

Remit Funds to IFSCs for studies under LRS now

Dated: 24th June, 2023

Remittances by resident individuals to International Financial Services Centres for the purpose of 'studies abroad' may be facilitated by authorised persons under the Liberalised Remittance Scheme, the RBI said on Thursday. "It is directed that Authorised Persons may facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management Rules, 2000, for payment of fees to foreign universities or foreign institutions in IFSCs."

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/remit-funds-to-ifscs-for-studies-under-lrs-now/articleshow/101232424.cms?from=mdr>

UK grants equivalence to RBI authorised clearing houses

Dated: 23rd June, 2023

Mumbai: The United Kingdom Treasury has accorded equivalence to central counterparties authorised by the Reserve Bank of India, the first such decision after Brexit and one which marks a significant step in resolving a regulatory tussle between the domestic central bank and overseas authorities.

"HM (His Majesty's) Treasury has determined through its assessment that, on an outcomes basis, the RBI's regulatory framework, in relation to CCPs (central counterparty clearing houses) designated by the RBI as a Financial Market Infrastructure (FMI) is equivalent to that of the UK," official papers accessed by ET read.

"This is because the RBI requires CCPs it designates as an FMI to comply with the PFMI (Principles on Financial Market Infrastructures). Accordingly, HM Treasury has determined that the RBI's legal and supervisory framework, in relation to CCPs that the RBI has designated a FMI, meets the tests set out in paragraphs 6.2," the documents read.

"This equivalence decision is a significant and welcome step that underscores the support for UK banks such as Barclays operating in India, to be able to continue servicing clients for their risk management needs, and contributing to liquidity in the inter-bank foreign exchange and interest rate markets," Siddharth Bachhawat, MD, markets at Barclays Bank India, said

"It is notable that this is the first such CCP equivalence decision under UK regulations post-Brexit, highlighting the strategic India-UK partnership. The decision also acknowledges what the RBI has consistently noted - that Indian CCPs such as CCIL comply with international best practices," he said.

Emails sent to the CCIL, and the RBI did not receive replies till press time. A Bank of England spokesperson declined to comment on the matter.

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RBI Circular: Status of MIFOR as a Significant Benchmark

Dated: 23rd June, 2023

Circular issued by the Reserve Bank of India (RBI) on June 23, 2023 addresses the status of the Mumbai Interbank Forward Outright Rate (MIFOR) as a significant benchmark and provides important updates regarding its publication.

The circular refers to previous RBI circulars and highlights MIFOR as a significant benchmark administered by Financial Benchmarks India Pvt. Ltd. (FBIL). It further informs about the cessation of MIFOR publication after June 30, 2023, due to the non-representativeness of the US Dollar London Interbank Offered Rate (USD LIBOR) settings. The circular also mentions the approval granted to FBIL to cease the publication of MIFOR and provides an updated list of significant benchmarks administered by FBIL.

Conclusion: Effective from July 01, 2023, the updated list of significant benchmarks administered by FBIL will come into effect, with MIFOR no longer being considered a significant benchmark. Financial Benchmark Administrators are advised to take note of these changes as communicated by the Reserve Bank of India (RBI) through this circular.

RESERVE BANK OF INDIA

RBI/2023-24/46

FMRD.FMSD.03/03.07.25/2023-24 Dated: June 23, 2023

To

All the Financial Benchmark Administrators

Madam/Sir

Status of MIFOR as a Significant Benchmark

Please refer to the RBI circular dated January 01, 2020 and December 01, 2022, notifying, inter-alia, the financial benchmarks administered by Financial Benchmarks India Pvt. Ltd. (FBIL) viz., Mumbai Interbank Forward Outright Rate (MIFOR) and Modified Mumbai Interbank Forward Outright Rate (MMIFOR) as 'significant benchmark'.

2. In light of the cessation of the publication/non-representativeness of US Dollar London Interbank Offered Rate (USD LIBOR) settings after June 30, 2023, FBIL has been accorded approval to cease the publication of the MIFOR after June 30, 2023, in terms of provisions of the Financial Benchmark Administrators (Reserve Bank) Directions, 2019. Accordingly, the MIFOR administered by FBIL shall cease to be a 'significant benchmark' after June 30, 2023.

3. The updated list of 'significant benchmarks' administered by FBIL is given below:

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- (i) Overnight Mumbai Interbank Outright Rate (MIBOR)
- (ii) USD/INR Reference Rate
- (iii) Treasury Bill Rates
- (iv) Valuation of Government Securities
- (v) Valuation of State Development Loans (SDL)
- (vi) Modified Mumbai Interbank Forward Outright Rate (MMIFOR)

4. The updated list of 'significant benchmarks' shall come into effect from July 01, 2023.

Related Link: <https://taxguru.in/rbi/rbi-status-mifor-significant-benchmark.html#:~:text=Conclusion%3A%20Effective%20from%20July%202001,being%20considered%20a%20significant%20benchmark.>

NCLT AND M & A UPDATES

Mere Filing of S. 7 Application Under IBC Does Not Bar Application For Appointment Of Arbitrator: Bombay High Court

Dated: June 17th, 2023

After certain disputes arose between the applicant, Sunflag Iron & Steel Co. Ltd, and the respondent, M/s. J. Poonamchand & Sons, under an agreement, Sunflag invoked the arbitration clause. Sunflag filed an application under Section 11(6) of the A&C Act before the Bombay High Court seeking appointment of Arbitrator.

At the outset, the court remarked that unlike what is contemplated by Section 238 of the IBC, there is no provision in the A&C Act which gives an overriding effect to the provisions of the said Act. "However, it is equally trite that the A&C Act, is a special Statute, governing the field of Arbitration, and all other Statutes governing the filed earlier thereto, stood repealed in view of Section 85 of the A&C Act," the court added.

Perusing Sections 7 to 9 of the IBC, the bench remarked that the mere filing of a Section 7 application by itself, does not mean that the Adjudicating Authority has taken cognisance of the matter. The court said that this is because Section 7(4) of the IBC, casts a duty upon the Adjudicating Authority- within 14 days of the receipt of such application- to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

The Bombay High Court has ruled that mere filing of an application under Section 7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) is not enough to invoke the bar of Section 238 of the Code. Thus, the same would not bar the court from entertaining an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (A&C Act) for appointment of Arbitrator, the court said.

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Related Link: <https://www.livelaw.in/high-court/bombay-high-court/bombay-high-court-ruling-application-under-ibc-arbitration-conciliation-act-sunflag-iron-steel-vs-j-poonamchand-sons-230822>

NCLT Hyderabad Rejects Resolution Plan for Being Incompliant With Regulation 36B 4(A) Of CIRP Regulations

Dated: 17th June, 2023

M/s Asset Reconstruction Company (India) Ltd. ("Financial Creditor") filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Viceroy Hotels Limited ("Corporate Debtor").

The Bench observed that the sum payable by the RA under the Resolution Plan was within a timeline of 675 days. In terms of Regulation 36B (4A) of CIRP Regulations, the Performance Bank Guarantee shall cover the Plan Implementation Schedule, which was not the case. When the Resolution Professional was asked how the compliance of Regulation 36B (4A) would be ensured, the RA filed a Clarificatory Undertaking:

"SRA has proposed payment to all creditors in five tranches as per the approved resolution plan and the payments made under any prior tranches are liable to be forfeited if the SRA fails to make payments under the subsequent tranches as per the agreed terms and timelines given in the Resolution Plan". Accordingly it was held as under:

The Performance Bank Guarantee submitted by the Resolution Applicant was valid for 6 months period, whereas, the plan implementation schedule was spread over 675 days. The Bench held that the Performance Bank Guarantee must remain valid for the entire period of plan implementation schedule, which is a mandatory provision as per Regulation 36B 4(A) of CIRP Regulations. Since the resolution plan was found non-compliant of this mandatory provision as per Regulation 36B 4(A) of CIRP Regulations. Since the resolution plan was found non-compliant of this mandatory legal provision, the Bench rejected the plan on this basis alone.

Related Link: <https://www.livelaw.in/ibc-cases/nclt-hyderabad-bench-rejects-resolution-plan-vice-roy-hotels-230816>

MCA considering easing moratorium rules in IBC for certain sector

Dated: June 18th, 2023

The moratorium clause of the Insolvency and Bankruptcy Code (IBC) may be getting diluted for certain sectors, with the corporate affairs ministry considering exemption from this provision for aircraft leases. Moratorium for idle spectrum in the telecom sector can also be done away with by bringing a provision in the telecom bill, government sources said.

Section 14 of the IBC declares a moratorium on proceedings, transfer or disposal of any of the assets of the company from the date of commencement of its insolvency. Officials said that the corporate ministry has been asked to reconsider its position in the matter of the aviation sector - to do away with the moratorium on leased aircrafts. The

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move would be in line with the Cape Town Convention bill which the civil aviation ministry had first introduced in 2018.

Related Link: https://www.business-standard.com/companies/news/mca-considering-easing-moratorium-rules-in-ibc-for-certain-sectors-123061800479_1.html

Govt starts interministerial discussions on the upcoming IBC Amendment Bill

Dated: 19th June, 2023

The government has started interministerial discussions on the upcoming Insolvency and Bankruptcy (IBC) amendment Bill, which proposes an overhaul of the law. The Bill proposes a separate framework for real estate insolvency with certain exemptions. The draft Bill has also inserted an enabling clause to allow the government to increase the ambit of prepackaged insolvency for larger companies in the future. However, the prepackaged scheme for insolvency is not being opened up for larger companies just yet. The voting threshold for initiating the pre-packaged insolvency is also being lowered from 61 per cent to 51 per cent of the unrelated financial creditors. The Bill takes off from the discussion paper floated by the corporate affairs ministry (MCA) in January.

For real estate insolvency, the draft Bill has made a provision for homebuyers to transfer ownership and possession of a plot, apartment, or building to the allottees with the consent of the committee of creditors. It has also been suggested to allow project-wise insolvency in certain real estate insolvencies instead of initiating insolvency for the entire company. Some of the other changes that were proposed by the ministry in its discussion paper include giving more power to the adjudicating authority and mandating the admission of insolvency applications filed by financial creditors.

The government has proposed a state-of-the art e-platform to provide a case management system, automated processes to file applications, delivery of notices, enabling interaction of insolvency professionals with stakeholders, storage of records of corporate debtors undergoing the process, and incentivising participation of other market players in the IBC ecosystem.

Related Link: https://www.business-standard.com/economy/news/govt-begins-inter-ministerial-discussions-on-upcoming-ibc-amendment-bill-123061900716_1.html

Interest compounding pulling down recovery in IBC cases

Dated: June 20th, 2023

In the recently-concluded resolution of JBF Petrochemicals where GAIL (India) emerged as the winning bidder with a ₹2,015-crore offer, banks took a 64% haircut on their total dues of ₹5,628 crore. However, when compared to the principal of ₹4,000 crore, the haircut was much smaller as banks managed to recover over 50% of their principal.

The data is important in the context of falling recoveries in bankruptcy cases. Latest data from the Insolvency and Bankruptcy Board of India (IBBI) showed that financial creditors' recovery from defaulters was down to 36% of admitted claims in FY23 from 54% seen in FY18 and FY19 - the first two years after the law came into force.

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Bankers said the recovery rates do not give a complete picture. "Some accounts have been NPA for many years with interest charged inflated to a degree where recovery could never have been 100%.

Bankers say the total claims by financial creditors in any account also include penal interest and other dues which inflate the outstanding. "Banks have to take into account all dues so with penal interest, bank guarantee dues are also added. In infrastructure cases it also includes interest during construction which are exempt from payment but taken as due in case of a default," said a senior banker.

Hence, the addition of penal interest and other charges in stressed accounts have brought down recovery ratios even though recovery of the principal amount has been high.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/interest-compounding-pulling-down-recovery-in-ibc-cases/articleshow/101119215.cms>

Banks against code of conduct for committee of creditors

Dated: June 23rd, 2023

Banks have opposed the code of conduct for the committee of creditors (CoC) proposed by the insolvency and bankruptcy regulator saying such a framework would restrict their ability to come up with out of the box solutions. "There are various factors at play during the resolution process. We have seen in many cases that there are dynamic situations that require innovative solutions," a senior banking executive said on condition of anonymity, adding that any framework that binds the banks and restricts their ability to negotiate is not desirable. The Insolvency and Bankruptcy Board of India (IBBI) has sought comments from stakeholders on the proposed code of conduct that is expected to improve transparency in the working of the CoC and make participating members accountable for their actions during the process.

Stating that the thirty-second report of the parliamentary standing committee on finance has also recommended the same, it said "there is an urgent need to have a professional code of conduct for CoC, which will define and circumscribe their decisions, as these have larger implications for the efficacy of the code". The regulator is now holding stakeholder consultations to finalise the contours of the proposed framework. The government is keen to fast-track the resolution process under the IBC and various options are under examination.

Experts say the resolution process under the IBC often gets prolonged as bankers are wary about how their decisions, especially with regard to haircuts, will be evaluated in the future.

"The end objective was to promote an ecosystem where banks can cut their credit losses and resolve the same in an amicable manner, and transparency will go a long way in achieving our larger goals,"

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banks-against-code-of-conduct-for-committee-of-creditors/articleshow/101200149.cms?from=mdr>

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OTHERS

CBIC Extends Due Date for Filing GSTR-1, GSTR-3B, GSTR-7 in Manipur

Dated: June 21st, 2023

The Central Board of Indirect Taxes and Customs (CBIC) has extended the due date of filing of GSTR-1, GSTR-3B, and GSTR-7 for the months of April and May 2023 for taxpayers whose principal place of business is in the State of Manipur till June 30, 2023.

The notification will be effective from May 31, 2023.

Form GSTR-1 is a monthly/quarterly Statement of Outward Supplies to be furnished by all normal and casual registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.

Form GSTR-3B is a simplified summary return and the purpose of the return is for taxpayers to declare their summary GST liabilities for a particular tax period and discharge these liabilities.

Form GSTR-7 is a return that is required to be filed by the persons who deduct tax at the time of making/crediting payment to suppliers towards the inward supplies received.

Notification No. 14/2023, 15/2023, 16/2023

Related Link: <https://www.livelaw.in/tax-cases/cbic-due-date-filing-gstr-1-gstr-3b-gstr-7-manipur-231041>

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