

WEEKLY CORPORATE UPDATES

Saturday 15th July, 2023

(Curated & compiled by)

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MCA UPDATES

MCA approves withdrawal of another 7,338 prosecutions pending before various courts under Special Arrears Clearance Drive-II towards promoting Ease of Doing Business and decriminalisation of compoundable offences under Companies Act, 2013

Dated: 14th July, 2023

In firm commitment towards its objective of promoting Ease of Doing Business and in furtherance of decriminalisation of compoundable offences under the Companies Act, 2013, the Central Government through the Ministry of Corporate Affairs (MCA) has taken a decision under its Special Arrears Clearance Drive-II to withdraw another 7,338 prosecutions, which have remained pending before various courts.

This would be a significant decrease of 21.86% in the pending prosecutions being pursued by the Central Government. The Government's "Action Plan for Special Arrears Clearance Drives" for reducing the number of pending litigations had previously resulted in withdrawal of 14,247 prosecutions during the Special Drive-I in the year 2017.

The cases being withdrawn under the Special Drive-II are corollary to the amendment brought out by the Government vide the Companies (Amendment) Act, 2020 for decriminalization of offences under the Companies Act, 2013 to facilitate the smooth functioning of businesses as well as minimize lengthy litigations before courts.

Related Link: <https://pib.gov.in/PressReleasePage.aspx?PRID=1939587>

The MCA department has shared the general circular no.07/2023 for the deactivation of the old user IDs in the V-2 portal

Dated: 12th July, 2023

Many members are unable to create user ID in the new MCA21 V3 portal due to an existing ID about which either they do not have any knowledge or they do not remember that such an ID has been or was created in existing V2 portal. It has been decided that all such members may approach the respective institutes with their respective credentials and the institute shall make recommendations for merging multiple existing user IDs with the ID created in V3 portal or for deactivation of the old user IDs in V2, to enable desirous members to create a new ID in V3 portal. The necessary changes in the user ID in V3 portal in such cases shall be done based on recommendations forwarded by President or Vice President of the institute of ddegov@mca.gov.in

Relevant Link: <https://blog.saqinfotech.com/company-law-updates-mca>

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SEBI UPDATES

SEBI says tightened FPI regulations, but tax havens pose a global challenge

Dated: 11th July, 2023

SEBI has said that despite tightening norms to lift the veil around the 'opaque structure' of Foreign Portfolio Investors (FPIs), the regulator has faced a wall since entities actually controlling FPIs are in jurisdictions which leave ambiguity around entities that have economic interest in FPIs, but no ostensible control. An expert committee appointed by the Supreme Court had in May had said that the difficulties experienced by SEBI in identifying holders of economic interest were at least partly because of the repeal, in 2019, of the 2014 provisions on "opaque structures". The expert committee was set up to investigate if there was violation of the minimum public shareholding norms and if there was a failure to disclose transactions with related parties. In its affidavit submitted in the Supreme Court, SEBI said that with the regulatory changes governing FPIs in 2018 and 2019, it had tightened the disclosure requirement for beneficial owners (BOs) of FPIs.

Related Link: <https://indianexpress.com/article/business/sebi-saystightened-fpi-regulations-but-tax-havens-pose-a-globalchallenge-8825112/>

SEBI puts in place regulatory framework for value chain ESG disclosures for listed entities

Dated: 12th July, 2023

Markets watchdog SEBI came out with a regulatory framework for listed entities on ESG disclosures on supply chain and assurance. ESG refers to Environment, Social and Governance. In a bid to address the need for ESG disclosure assurance, SEBI has introduced BRSR Core, a sub-set of the BRSR (Business Responsibility and Sustainability Report), comprising nine Key Performance Indicators (KPIs) for several E, S and G factors that need to be assured. Under the framework, large listed companies will have to make disclosures and obtain assurance as per 'BRSR Core' for their value chain. Keeping in view the relevance to the Indian market context, few new KPIs have been identified for assurance such as job creation in small towns, openness of business and gross wages paid to women. Further, for better global comparability, intensity ratios based on revenue adjusted for purchasing power parity have been included.

Related Link: <https://www.moneycontrol.com/news/business/sebi-putsin-place-regulatory-framework-for-value-chain-esqdisclosures-for-listed-entities-10948501.html>

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SEBI's new disclosure norms for listed cos to take effect from Saturday

Dated: 14th July, 2023

SEBI has asked companies to disclose agreements entered into by shareholders, promoters, related parties, directors, key managerial personnel, and employees of the listed entity or of its subsidiary, which can impact the management and control of such firms to stock exchanges, according to PTI.

The compliance burden on listed companies is set to increase from Saturday as capital markets regulator SEBI has put in place a stricter timeline for disclosure of material events or information by them. Under this, the Securities and Exchange Board of India (SEBI) has given 12 to 24 hours for disclosures.

Besides, timelines have been fixed at 24 hours from the occurrence of the event in case the information is not emanating from within the listed entity. This included a revision in rating, fraud, or defaults by a listed entity, its promoter, or directors; restructuring about loans from banks, one-time settlement with a bank, and winding-up petition filed by any party/creditor. The outcome of meetings of the board of directors needs to be made within 30 minutes from the closure of such meetings. Earlier, the regulator amended LODR rules after the SEBI board approved a proposal in this regard.

Related Link: <https://www.cnbc18.com/market/sebis-new-disclosure-norms-for-listed-cos-to-take-effect-from-saturday-17223451.htm>

RBI UPDATES

RBI: CBDC QR Code to be interoperable with UPI by July-end

Dated: 11th July, 2023

The Reserve Bank of India (RBI) will implement interoperability between central bank digital currency (CBDC) and United Payments Interface (UPI) by the end of this month, Deputy Governor T Rabi Sankar said on Tuesday at an Indian Banks' Association conference.

The customers would be able to use a single QR code to pay through UPI and CBDC. Thirteen banks have placed the system, and the central bank aims to reach 1 million transactions through CBDC per day by the end of the current calendar year, Rabi Sankar said. At present, banks process 5,000-10,000 transactions per day.

"We decided that a user of CBDC should not be unable to do transactions because a merchant doesn't have CBDC, so we decided that we will do interoperability," Rabi Sankar said. "If a merchant has a CBDC account then the money will go to the CBDC account, and if the merchant doesn't have a CBDC account, then it goes to the UPI account of the merchant."

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"Under the interoperability program, 13 banks have already placed the system we want to encourage more banks as we should at least have top 20-25 banks under the plan," Shankar said. "1 million transactions a day is not a big number, as more than 30 crore transactions are made through UPI in a day," he said.

Related Link: https://www.business-standard.com/economy/news/cbdc-qr-code-interoperable-with-upi-by-july-end-rbi-s-t-rabi-sankar-123071100990_1.html

RBI may work on 'top-up' loans for home buyers in stuck projects

Dated: 11th July, 2023

The Reserve Bank of India (RBI) could look at providing a "special dispensation" to enable banks to extend additional finance to customers with restructured home loan accounts in a bid to help complete stuck housing projects, people aware of the development said.

In a June 19 meeting of a committee, set up under G20 sherpa Amitabh Kant to examine issues relating to "legacy stalled projects" in real estate, lenders sought the special regulatory dispensation to release extra funds through existing individual home loan accounts that are either restructured or revived, while maintaining the asset classification as 'standard', a person who attended the meeting told ET.

"The RBI representative present in the meeting has assured that the banking regulator will consider the special dispensation, and they are considering it. It's likely to inform (the panel) about its decision soon," he added.

The meeting was also attended by Insolvency and Bankruptcy Board of India chairman Ravi Mittal, financial services secretary Vivek Joshi, senior officials of the ministries of finance and housing and urban affairs, RBI representative and chief executive officers (CEO) of Noida Authority, the Indian Banks' Association (IBA) and SBICAP Ventures, among others.

Officials had earlier said the government was considering a multi-pronged approach-including through the Real Estate Regulatory Authority, and Swamih (Special Window for Affordable and Mid-Income Housing) Fund for last-mile financing, besides the IBC-to resolve stress in housing projects to ensure faster delivery of homes to buyers. This approach also includes an innovative IBC mechanism for housing.

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-may-work-ontop-up-loans-for-home-buyers-in-stuck-projects/articleshow/101677466.cms>

RBI cancels licence of 2 co-op banks

Dated: 11th July, 2023

The RBI on Tuesday cancelled the licence of two cooperative banks -- Sri Sharada Mahila Co-operative Bank, Tumkur, Karnataka and Harihareshwar Sahakari Bank, Wai, Satara -- as the lenders do not have adequate capital and earning

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prospects. Harihareshwar Sahakari Bank ceases to carry on banking business, with effect from the close of business on July 11, 2023, the Reserve Bank of India (RBI) said in a statement.

Consequent to the cancellation of their licences, the banks have been prohibited from conducting the business of 'banking' which includes, acceptance of deposits and repayment of deposits, among other things.

While cancelling the licence, the RBI said cooperative banks do not have adequate capital and earning prospects. Also, the banks with their present financial position would be unable to pay their present depositors in full, it added. As on March 8, 2023, DICGC has already paid Rs 57.24 crore of the total insured deposits of the bank.

As on June 12, 2023, DICGC has already paid Rs 15.06 crore of the total insured deposits to the depositors of Sri Sharada Mahila Co-operative Bank.

The Commissioner for Co-operation and Registrar of Cooperative Societies, Maharashtra has also been requested to issue an order for winding up the bank and appoint a liquidator for the bank, the RBI added.

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-cancels-licence-of-2-co-op-banks/articleshow/101674617.cms>

NCLT AND M & A UPDATES

Whether CIRP can be initiated solely on the on the basis of the amount of interest when the entire principal amount of debt has been paid by the Corporate Debtor during the pendency of CIRP application? – M/s. Rashtriya Polymers & Solvents Vs. M/s. Kanodia Technoplast Ltd. – NCLT New Delhi Bench Court-IV

Dated: 12th July, 2023

In the matter of M/s. Rashtriya Polymers & Solvents Vs. M/s. Kanodia Technoplast Ltd. [Company Petition No.(IB)-656(ND)/2021] a section 9 petition was filed by M/s Rashtriya Polymers & Solvents (Applicant / Operational Creditor) to initiate CIRP in respect of M/s Kanodia Technoplast Ltd. (Corporate Debtor), for a default amounting to Rs.2,76,14,749/- which included the Principal Amount of Rs. 1,70,68,121/- along with interest at the rate of 24% p.a. amounting to Rs.1,05,46,628/-.

Interestingly, the Corporate Debtor during the pendency of the section 9 application had paid the entire principal amount of Rs.1,78,68,122 crore as claimed by the Operational Creditor through RTGS on 02.03.2023. However, the Counsel for the Operational Creditor argued that the payment of Rs.1,78,68,122/- crores through RTGS was made without the consent of the Applicant and termed it as a dishonest conduct of the Corporate Debtor to reduce the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016.

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Considering the facts of the case, the Hon'ble NCLT Delhi bench held that if the operational debt, as defined in Section 5(21), is fully paid off by the time the case is admitted, excluding any accrued interest, the interest amount alone cannot qualify to meet the criteria for an operational debt that would warrant initiating the Corporate Insolvency Resolution Process (CIRP). When the principal amount is acknowledged to have been paid, the Operational Debt ceases to be in existence and consequently the application filed under section 9 becomes invalid.

Therefore, the bench deemed proper to dismiss the present application filed under section 9 of the IBC as not maintainable since the Principal amount had entirely been paid during the pendency of the application and the issue was only regarding the interest outstanding.

Related Link: <https://ibbi.gov.in/uploads/order/e7bf3bcea8e8e0edc4942831148eec29.pdf>

NCLT admits Go Airlines' Plea to admit vendor Blue Mushroom Infozone under CIRP

Dated: 13th July, 2023

A bankruptcy court has allowed Go Airlines (India) Ltd's application to admit one of its vendors Blue Mushroom Infozone under the CIRP.

The tribunal has also appointed Dipti Amit Thite as the Interim Resolution Professional. The carrier had approached the Mumbai bench of NCLT in 2018 after its vendor defaulted on its dues of over ₹60 lakh.

It is successfully proved the debt and default in this case," said the bench presided by judicial member Kuldip Kumar Kareer and technical member Shyam Babu Gautam.

Related Link: <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/nclt-admits-go-airlines-plea-to-admit-vendor-blue-mushroom-infozone-under-cirp/articleshow/101708037.cms>

Joint application u/s 7 of IBC by two Financial Creditors to meet threshold limit of Rs. 1 crore as per Section 4 of IBC

Dated: 12th July, 2023

In the matter of **Hi-Tech Designs Pvt. Ltd. Vs. Sri Sai Car Sales Pvt. Ltd.** [Company Petition No. C.P. (IB)/278(KB)2022], a Section 7 petition was filed jointly by Hi-Tech Designs Pvt Ltd (Financial Creditor No. 1) and S. K. Finserve Pvt. Ltd. (Financial Creditor No. 2) seeking to initiate CIRP against Sri Sai Car Sales Pvt. Ltd. (Corporate Debtor). The total outstanding debt of the Corporate Debtor towards the combined financial creditors, included Financial Creditor No. 1 with a balance of Rs. 87,17,049/- and Financial Creditor No. 2 with a balance of Rs. 73,15,327/- amounting to a total of Rs. 1,60,32,376/- together with interest. Both the Financial Creditors had made separate transactions to provide financial accommodation and/or loan to the Corporate Debtor.

The Hon'ble NCLT Kolkata bench took note of the fact that although the individual financial debts owed by the Corporate Debtor to each respective Financial Creditor did not exceed the threshold limit of Rs. One Crore, but the total debt amount claimed to be in default collectively surpassed the financial threshold of Rs. One Crore.

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Accordingly, while relying on the judgment laid down in the case of Vishnu Oil Mill Pvt. Ltd. v. Union of India, reported in (2022) it was made clear that Section 7 of the Code (as amended through the Gazette Notification dated 05.06.2020), allows for no other interpretation than the fact that a group of financial creditors can converge and join hands to touch the financial limit of Rs. 1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC. Thus, considering the facts presented in the petition, the evidence submitted, and the preceding discussions, the Hon'ble Tribunal had no reservations in accepting the petition for admission.

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/1908134046942022/04/Order-Challenge/04_order-Challenge_004_1689232729211721867164afa559c737f.pdf

NCLT rejects CIRP application filed u/s 7 of IBC against Religare Enterprises since the Corporate Debtor is registered under Reserve Bank of India, Act, 1934 as NBFC

Dated: 11th July, 2023

In the case **Ligare Aviation Ltd. Vs. Religare Enterprises Ltd.** [CP (IB) No. 187(PB)/2023] the Hon'ble NCLT Principal Bench dismissed a Section 7 application filed by Ligare Aviation Ltd against Religare Enterprises (Corporate Debtor) who is the corporate guarantor of the principal borrower Auriga Marketing Services Pvt. Ltd., on the ground that the Corporate Debtor is a financial service provider and is excluded from the definition of Corporate person as defined Section 3(7) of IBC, 2016, thus insolvency proceeding cannot be initiated against the Corporate Debtor.

Related Link: <https://ibbi.gov.in/uploads/order/a770b22e8039fd3564510e434e33d963.pdf>

OTHERS

Now, GSTN can seek info from ED on any case

Dated: 09th July, 2023

The Union finance ministry, through a gazette on Friday, empowered the Goods and Services Tax Network (GSTN) under the Prevention of Money Laundering Act (PMLA) to formally seek from the Enforcement Directorate information relating to any case the latter may be investigating or information in its possession. The GSTN is the 25th agency to get such a legal mandate after 24 other enforcement and intelligence agencies. The GSTN runs its own Business Intelligence and Fraud Analytics (BIFA) tool which started in 2019. This is intended to provide intelligence inputs to state and central GST authorities with advanced analytics to detect frauds in the administration of GST. Now, it is legally binding on the ED to share information with the GSTN where it finds implication of tax administration and money laundering related to the implementation of GST.

The amendments introduced the definition of PEPs under the PMLA to meet the requirements of the Financial Action Task Force (FATF), a Paris-based inter-governmental body that sets standards and monitors effective implementation

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of measures adopted by each country in combating money laundering and terrorist financing. "PEPs are individuals who have been entrusted with prominent public functions by a foreign country, including the heads of states or governments, judicial or military officers, senior executives of state-owned corporations," according to notification.

Related Link: <https://economictimes.indiatimes.com/industry/telecom/bharat-6g-alliance-launched-to-collaborate-next-gen-wireless-technology/articleshow/101477792.cms?from=mdr>

Thanking You,

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