

WEEKLY CORPORATE UPDATES

Saturday 05th August, 2023

(Curated & compiled by)

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MCA UPDATES

IICA organizes colloquium on "Cross-Sectoral Collaboration: The Imperative for Regulatory Convergence" for FOIR Central sector regulators

Dated: 02nd August, 2023

The Forum of India Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) concluded a colloquium for the Central sector regulators on the theme "Cross-Sectoral Collaboration: The Imperative for Regulatory Convergence." The colloquium, held on August 1-2, 2023 at Agra brought together esteemed Chairpersons and Members of FOIR member bodies fostering meaningful and effective conversations about the potential for convergence in regulatory efforts. The event focused on sector-specific discussions among Central sector regulators, aiming to address the complex interdependencies and interconnectedness between different sectors.

The FOIR Centre at IICA provides capacity building, education, research and advocacy support to FOIR Secretariat for academic upgradation and intellectual development for members and officials of FOIR member organizations.

Related Link: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1945074>

MCA-Important Update

Dated: 01st August, 2023

The Ministry of Corporate Affairs (MCA) vide issuing important update dated August 01, 2023 has informed the stakeholders about the below mentioned matters:

- The Ministry of Corporate Affairs is launching Refund form on V3 portal effective on 04th August 2023. Refund form on V2 portal will continue for availing refund for forms filed in V2.*
- Stakeholders are informed that Beta Version of View Public Documents [VPD] service in V3 shall be launched on 16th August 2023 for V3 documents (only for Testing purposes between 7:00 pm to 10:00 pm daily). Existing V2 VPD Service shall remain available for the stakeholders.*
- Approval for incorporation of 82,628 companies and LLPs has been given during April - July 2023 compared to 73,875 during April- July 2022.*

Relevant Link: <https://www.mca.gov.in/content/mca/global/en/home.html>

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SEBI UPDATES

Audit of firm-level performance data of Portfolio Managers

Dated: 02nd August, 2023

SEBI had prescribed that Portfolio Managers are required to audit firm-level performance data on an annual basis as per its Master Circular dated March 20, 2023. In order to have uniformity, it has been decided that Association of Portfolio Managers in India ('APMI'), in consultation with SEBI, shall specify standardized Terms of Reference ('ToR') for aforesaid audit of firm-level performance data. The standard ToR specified by APMI shall be applicable with effect from October 01, 2023, and shall be mandatorily followed by all Portfolio Managers for the purpose of annual audit of firm-level performance data. Further provided that the Portfolio Managers shall submit the confirmation of compliance with the requirement of annual audit of firm-level performance data in line with the standard ToR specified by APMI, to SEBI within 60 days from the end of each financial year.

Related Link: https://www.sebi.gov.in/legal/circulars/aug-2023/audit-of-firm-level-performance-data-of-portfolio-managers_74900.html

Consultation Paper on collating and defining use cases of Financial Information Users in the Account Aggregator Framework in Securities Markets

Dated: 01st August, 2023

SEBI invited public comments on proposal of collating and defining use cases of Financial Information Users in the Account Aggregator framework in securities markets. An Account Aggregator (AA) is a type of RBI regulated entity (with an NBFC-AA license) that helps an individual securely and digitally access and share information from one financial institution they have an account with to any other regulated financial institution in the AA network. Data cannot be shared without the consent of the individual. Comments are sought in improving the safeguards within the AA framework especially to curb misuse of the financial information in frauds, misappropriation, mis-selling or unsolicited crosssell/upsell, etc. The comments/ suggestions may be provided in the prescribed format till August 31, 2023.

Related Link: https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-collating-and-defining-use-cases-of-financial-information-users-in-the-account-aggregator-framework-in-securities-markets_74811.html

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SEBI clarifies on format for seeking clients' trading preferences

Dated: 01st August, 2023

SEBI clarified that new format for seeking clients' trading references prescribed by it last month will not be applicable to members registered exclusively with commodity derivatives exchanges. Such members will use the format as prescribed by erstwhile Forward Markets Commission (FMC) in February 2015, SEBI said in a circular. Under the format, the member must specify the names of the exchanges where the member has membership, date of consent for trading on the concerned exchange and signature of the client.

Related Link: <https://www.financialexpress.com/market/sebi-clarifies-on-format-for-seeking-clients-trading-preferences/3195823/>

Online Resolution of Disputes in the Indian Securities Market

Dated: 31st July, 2023

Disputes between Investors/Clients and listed companies or any of the specified intermediaries / regulated entities in securities market arising out of latter's activities in the securities market, will be resolved in accordance with this circular and by harnessing online conciliation and/or online arbitration as specified in this circular. It is provided that an investor/client shall first take up his/her/their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting all available options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, he/she/they can initiate dispute resolution through the ODR Portal.

Related Link: <https://www.sebi.gov.in/legal/circulars/jul-2023/online-resolution-of-disputes-in-the-indian-securities-market-74794.html>

RBI UPDATES

No RBI communication yet on CEO succession: Kotak Mahindra Bank

Dated: 01st August, 2023

Kotak Mahindra Bank (KMB), India's third-largest private lender by market value, has denied that the banking regulator has suggested it hire an external candidate to succeed founder-CEO and richest Asian banker Uday Kotak, who is set to give up executive responsibilities at the end of this year.

The ₹3.7-lakh-crore bank, among the four large lenders that make up India's top fifteen companies by market capitalization, also denied a report that the RBI had directed it to reduce its stake in insurance ventures. "We would

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like to state that there is no communication, formal or informal, from the RBI to Kotak Mahindra Bank or its board members on CEO succession," said a spokesperson at the bank. "Further, the bank holds all regulatory approvals including from RBI for its stake in its insurance subsidiaries and has not received any formal or informal communication to the contrary."

The bank's statement was in response to a Bloomberg report that said the central bank is nudging Mumbai-based Kotak Mahindra Bank to select someone outside the lender's ranks to lead the bank after its founder gives up an executive responsibility at the end of the mandated tenure.

The regulator is also reviewing whether stakes the banking group holds in two wholly-owned insurance units pose any risks to the firm's stability, the report quoted unnamed people as saying. Uday Kotak's tenure as CEO of the bank will come to an end on December 31. He has led the bank since its inception after converting the NBFC he founded in 1985 into a full-fledged commercial bank in 2003.

Relevant Link: <https://economictimes.indiatimes.com/markets/stocks/news/no-rbi-communication-yet-on-ceo-succession-kotak-mahindra-bank/articleshow/102292886.cms>

Rupee drops, but confidence on RBI largely caps losses

Dated: 03rd August, 2023

The Indian rupee declined on Thursday on risk aversion, but losses were kept in check on belief that the Reserve Bank of India would sell dollars. The rupee was at 82.68 to the U.S. dollar by 09:52 a.m. IST, down from 82.5825 in the previous session. The rupee is now in the "radar zone" that has previously prompted RBI to come in and we reckon RBI "will surely" step in and sell dollars, Amit Pabari, managing director at FX advisory firm CR Forex said. "We expect that the USD/INR pair should top near the 82.70-90 zone and make a reversal towards 82.20-82.00 levels again."

The rupee and other Asian currencies struggled on risk off fuelled by ratings agency Fitch downgrading the U.S. credit rating. Indian equities also extended losses, following the selloff on U.S. equities. The up move on U.S. yields further dented demand for Asian currencies and boosted the dollar. The 10-year U.S. yield reached 4.12% on Wednesday, highest in just under four months. Apart from the U.S. credit downgrade, the jump in U.S. private payrolls pushed yields higher. U.S. private payrolls rose by 324,000 jobs last month, the ADP National Employment report showed on Wednesday, well above the 189,000 reading economists polled by Reuters had forecast.

"Already nervous about upside surprises in Friday's U.S. nonfarm payrolls, U.S. bond investors did not like the ADP Employment Survey," DBS Research said in a note. The Thai baht paced losses on Asian currencies, down 0.7%. The dollar index rose to 102.68.

Relevant Link: <https://www.financialexpress.com/market/rupee-drops-but-confidence-on-rbi-largely-caps-losses/3197698/>

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RBI notified regarding the status of the Withdrawal of ₹ 2000 Denomination Banknotes

Dated: 01st August, 2023

The Reserve Bank of India (RBI) on August 1, 2023, issued a notification regarding the status of the Withdrawal of ₹2000 Denomination Banknotes vide Press Release 2023-2024/257 dated May 19, 2023.

The members of the public are requested to utilize the next two months to deposit and/or exchange the ₹2000 banknotes held with them to avoid any rush in the last few days before September 30, 2023.

[Press Release: 2023-2024/682]

Relevant Link: <https://www.teamleasereqtech.com/updates/article/25365/rbi-notified-regarding-the-status-of-the-withdrawal-of-2000-denominati/>

RBI likely to maintain status quo on interest rates: Experts

Dated: 02nd August, 2023

With inflation inching up, experts feel that the Reserve Bank of India is likely to maintain the status quo on key interest rates. The six-member Monetary Policy Committee, headed by RBI Governor Shaktikanta Das, will hold the meeting from August 8 to 10. Prof N R Bhanumurthy, Vice Chancellor, Dr B.R. Ambedkar School of Economics University, Bengaluru told PTI, "Though the consumer inflation is inching up mostly fuelled by food inflation, the demand for credit remains healthy ... I do not think the RBI will spoil the party. It will probably go in for a status quo on interest rates." Bhanumurthy, formerly of the National Institute for Public Finance and Policy, a think tank funded by the Union finance ministry, said that his belief was that the RBI would study the nature of inflation and its trajectory and take a call in the October monetary policy review.

"International factors lead me to believe that the CPI which may be around 5.5 per cent is impacted by a seasonal variation and if we cut that out it may come down to nearer 4-4.5 per cent," the economist said. Bandhan Bank's chief economist Siddhartha Sanyal said curiosity around the next MPC meeting has certainly increased. "After a spell of rate hikes during the large part of the last financial year, the MPC maintained the status quo on rates in April and June.

The country's retail inflation based on Consumer Price Index (CPI) rose to a three-month high of 4.81 per cent in June, mainly on account of hardening prices of food. The inflation, however, remains within the RBI's comfort level of below 6 per cent. Also, the external sector balance improved materially in recent months and the rupee stayed resilient, Sanyal said. "Overall, one expects the RBI to stay cautious and be emphatic in its strong vigil on inflation", he stated.

Relevant Link: <https://www.financialexpress.com/industry/banking-finance/rbi-likely-to-maintain-status-quo-on-interest-rates-experts/3197243/>

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NCLT AND M & A UPDATES

Go Airlines | NCLT Issues Notice on Application filed by RP seeking refund of cancelled ticket amount to Passengers

Dated: 24th July, 2023

The National Company Law Tribunal (“NCLT”), New Delhi Bench, comprising of Shri Mahendra Khandelwal (President) and Shri Rahul Bhatnagar (Technical Member), while adjudicating a petition filed by Go Airlines (India) Limited, has issued notice in an application filed by the Resolution Professional of Go Airlines, seeking permission to make refund to the passengers whose tickets were cancelled. The notice has been issued to the respondents namely, Committee of Creditors (“CoC”) and the Insolvency and Bankruptcy Board of India (“IBBI”), to enter appearance and file their reply.

Background Facts

M/s Go Airlines (India) Limited (“Corporate Debtor/Go Airlines”) is engaged in the business of Airlines and is the third largest airline operator in India.

Go Airlines filed a petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“IBC”), voluntarily seeking initiation of the Corporate Insolvency Resolution Process (“CIRP”) against itself. On 10.05.2023, the NCLT admitted the petition and initiated CIRP against Go Airlines.

Prior to CIRP initiation, Go Airlines was constrained to cancel 4,118 flights with 77,500 passengers in a span of thirty days as its flights were grounded. No refund was made to the passengers at that point of time.

In a hearing held on 25.07.2023, the NCLT had permitted Go Airlines to resume flight operations. Thereafter, an application was filed by Resolution Professional of Go Airlines, seeking permission to make refund to those passengers of Go Airlines whose tickets were cancelled.

The NCLT has issued notice to the Insolvency and Bankruptcy Board of India (“IBBI”) and the Committee of Creditors (“CoC”) of Go Airlines, to enter appearance and file their reply to the said application. The Resolution Professional has been granted liberty to take up the issue of refund with the CoC in the meanwhile.

Related Link: https://www.livelaw.in/pdf_upload/go-air-nclt-1-484523.pdf

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Can NCLT initiate insolvency u/s 95 against a personal guarantor even in the case when CIRP is pending against the Corporate Debtor?

Dated: 1st August 2023

*In the matter of **Mahendra Kumar Agarwal Vs. PTC India Financial Services Ltd.** [Company Appeal (AT) (CH) (INS.) No. 8 of 2023] The personal guarantor of M/s Gati Infrastructure Bhamsey Power Pvt. Ltd. Filed an instant petition stating that the insolvency process was initiated even when the CIRP was pending against the Corporate Debtor.*

Questions regarding sections 60 and 179 of the IBC 2016 were brought to light in the matter.

The counsel on behalf of the respondent submitted that only initiation of insolvency proceedings is required and not the admission of the same.

The Hon'ble NCLAT Chennai Bench concluded that Adjudication Authority has jurisdiction to initiate insolvency proceedings of the personal guarantor even when CIRP proceeding is pending against the Corporate Debtor.

Related Link: <https://ibclaw.in/mahendra-kumar-agarwal-personal-guarantor-of-gati-infrastructure-bhamsey-power-pvt-ltd-vs-ptc-india-financial-services-ltd-nclat-chennai/?print-posts=pdf>

Multiple demand notices u/s 8 of IBC are beyond the ambit of IBC: M/s. Ultratech Cement Ltd. Vs. M/s. Universal Journeys India Pvt. Ltd. – NCLT New Delhi Bench Court-III

Dated: 04th August, 2023

It held that, applicant issued multiple demand notices to the respondent which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016.

Related Link: [2579_2019_33_1501_22942_Judgement_17-Jul-2020.pdf \(sci.gov.in\)](#)

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“Commercial Wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review by Adjudicating Authority” – NCLAT New Delhi Bench.

Dated: 3rd August, 2023

The Hon'ble NCLAT New Delhi Bench in the Matter of Anil Kumar v/s Jayesh Sanghrajaka RP[Company Appeal (AT)(Insolvency) No. 513 of 2023 & IA No.1666 of 2023] dismissed the appeal filed by the Suspended Director of the Corporate Debtor challenging the CoC decisions for approval of resolution plan.

The Hon'ble NCLAT New Delhi Bench held that the decision as to whether the Corporate Debtor is to be revived or not by acceptance of the resolution plan is essentially a business decision and is under the ambit of CoC's powers. And that the Commercial wisdom of the CoC in approving the resolution plan is not to be interfered by any Adjudicating Authority.

Related Link:

<https://cdn.ibclaw.online/insolvency/nclat/2023/Anil+Kumar%2C+Suspended+Director%2C+SK+Elite+Industries+India+Ltd.+Vs.+Jayesh+Sanghrajaka%2C+RP%2C+SK+Elite+Industries+India+Ltd.+--+03.08.2023+NCLAT+New+Delhi.pdf>

OTHER UPDATES

New Income Tax Rule 6ABBB (Form 3AF) for Amortization of External Preliminary Expenditure u/s 35D

Dated: 02nd August, 2023

In the Income Tax Rules 1962, a new Rule 6ABBB has been added related to form of statement to be furnished regarding preliminary expenses incurred under section 35D.

The rule provides the following:

- (1) The statement containing particulars of preliminary expenditure u/s Section 35D(2)(a) to be furnished in Form No. 3AF for each previous year.
- (2) Form No. 3AF shall be furnished one month prior to the due date for furnishing the return of income u/s section 139(1).
- 3) Form No. 3AF, shall be furnished electronically, —
 - (i) Under digital signature, if the return of income is required to be furnished under digital signature;
 - (ii) Through electronic verification code in a case not covered under clause (i).
- (4) The Form 3AF after e-filing shall be forwarded by the Department to the Assessing Officer.

Related Link: <https://egazette.gov.in/WriteReadData/2023/247765.pdf>

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Thanking You,

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