

WEEKLY CORPORATE UPDATES

Saturday 19th August, 2023

(Curated & compiled by)

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MCA UPDATES

Ministry of Corporate Affairs-Important update

Dated: 16th August, 2023

Stakeholders please note that VPD V3 Beta version is available under Document Services from 7pm to 10pm. It is for testing purposes only and forms prior to May 2023 are available for download.

Relevant Link:

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

SEBI UPDATES

SEBI's SMART ODR platform opens to all market participants to register

Dated: 16th August, 2023

All market participants can now open an account on the SMART Online Dispute Resolution (ODR) platform, which went live earlier this month.

Smart ODR can be accessed through the URL <https://smartodr.in/login>. This is the regulator's attempt to combine online conciliation and online arbitration for resolution of disputes in the securities market.

When the platform first went live on August 4, trading members and listed companies were invited to enrol themselves through a six-step procedure. With the latest circular dated August 16, the exchanges have informed that all market participants can now register for the platform's services and get their accounts verified.

Market Participants have been advised to complete the entire registration procedures within the timelines as prescribed in the Securities and Exchange Board of India (SEBI) circular dated July 31, 2023.

Related Link: <https://www.moneycontrol.com/news/business/markets/sebis-smart-odr-platform-open-to-all-market-participants-to-register-11204231.html>

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New whole time members of SEBI appointed by Govt.

Dated: 16th August, 2023

The government has appointed Kamlesh Chandra Varshney and Amarjeet Singh as whole time members to the board of markets regulator SEBI.

Varshney is a joint secretary at the Department of Revenue and Singh is an executive director at the Securities and Exchange Board of India (SEBI), according to a government notification.

Both the appointments are for a period of three years from the date of assumption of taking charge or until further orders, whichever is earlier, the notification, dated August 12, said.

Currently, SEBI's board, chaired by Madhabi Puri Buch, has two whole time members and four part time members.

Related Link: <https://legal.economictimes.indiatimes.com/news/regulators/govt-appoints-two-whole-time-members-to-sebi-board/102778886>

SEBI to focus on tech; plans Geotagging solution to boost enforcement activities

Dated: 13th August, 2023

Capital markets regulator SEBI is betting big on technology, as it plans to implement a Geotagging solution in the current financial year to strengthen the process of its enforcement activities. While focusing on technology, SEBI said it plans to undertake various projects to boost its information technology (IT) capacity and build a "fault-tolerant" architecture.

The move is aimed at further enhancing its technological and cybersecurity capability, and to better serve its stakeholders.

"In the coming year, SEBI plans to implement a Geotagging Solution to strengthen the process of its enforcement activities," the regulator said in its annual report for 2022-23.

Geotagging is the process of adding geographical information usually in the form of latitude and longitude coordinates to various media such as photos, videos, etc.

The project intends to implement geotagging technology-based mobile application solutions, which help the market regulator to take necessary photos or videos at the location with details such as location, date, and time for conducting site visits, surveys, and training programs.

"The Geotagging Solution is expected to be operationalized in 2023-24," the Securities and Exchange Board of India (SEBI) said.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-to-focus-on-tech-plans-geotagging-solution-to-boost-enforcement-activities/articleshow/102692722.cms?from=mdr>

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RBI UPDATES

RBI to pilot public tech platform to aid lenders

Dated: 15th August, 2023

The Reserve Bank of India (RBI) on Monday announced the development of a public technology platform, aimed at providing digital information to lenders to assist the flow of frictionless credit.

"The public tech platform would enable the delivery of frictionless credit by facilitating seamless flow of required digital information to lenders," RBI said in a statement.

"The end-to-end digital platform will have an open architecture, open application programming interfaces (APIs) and standards, to which all financial sector players can connect seamlessly in a 'plug and play' model." The RBI noted that with rapid progress in digitalisation, India has embraced the concept of digital public infrastructure which encourages banks, NBFCs, fintechs and startups to create and provide innovative solutions in payments, credit, and other financial activities.

"The platform is intended to be rolled out as a pilot project in a calibrated fashion, both in terms of access to information providers and use cases," the central bank said.

Relevant Link: <https://economictimes.indiatimes.com/markets/stocks/news/rbi-to-pilot-public-tech-platform-to-aid-lenders/articleshow/102739311.cms>

RBI launched UDGAM- Centralized Web Portal for searching Unclaimed Deposits

Dated: 17th August, 2023

Press Release: 2023-2024/765

The Reserve Bank of India (RBI) on August 17, 2023, issued a Press release regarding the launch of UDGAM - Centralised Web Portal for searching Unclaimed Deposits

The following has been stated namely: -

- The RBI has launched the [UDGAM portal](#) for use by members of the public to facilitate and in order to make it easier for them to search their unclaimed deposits across multiple banks in one place.*
- The launch of the web portal will aid users to identify their unclaimed deposits/ accounts and enable them to either claim the deposit amount or make their deposit accounts operative at their respective banks*

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- It states that the Reserve Bank Information Technology Pvt Ltd (ReBIT), Indian Financial Technology & Allied Services (IFTAS) and participating banks have collaborated on developing the portal.
- It States that the users would be able to access the details of their unclaimed deposits in respect of seven banks namely: -
 1. State Bank of India
 2. Punjab National Bank
 3. Central Bank of India
 4. Dhanlaxmi Bank Ltd.
 5. South Indian Bank Ltd.
 6. DBS Bank India Ltd.
 7. Citibank N.A.
- The search facility for remaining banks on the portal would be made available in a phased manner by October 15, 2023.

Related Link: <https://www.teamleaseregtech.com/updates/article/25825/rbi-launched-udgam-centralised-web-portal-for-searching-unclaimed-depo/>

RBI issued instructions for Fair Lending Practice- Penal Charges in Loan Accounts

Dated: 18th August, 2023

The Reserve Bank of India (RBI) on August 18, 2023, issued a notification regarding the Fair Lending Practice - Penal Charges in Loan Accounts

These instructions shall come into effect from **January 01, 2024**

These instructions shall, not apply to Credit Cards, External Commercial Borrowings, Trade Credits, and Structured Obligations which are covered under product-specific directions.

The following instructions are issued namely: -

- (i) It states that Penalty charged, for non-compliance of material terms and conditions of the loan contract by the borrower shall be treated as 'penal charges' and shall not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances. There shall be no capitalization of penal charges i.e., no further interest computed on such charges and this will not affect the normal procedures for compounding of interest in the loan account.
- (ii) it states that The REs shall not introduce any additional component to the rate of interest and ensure compliance with these guidelines in both letter and spirit.
- (iii) The REs shall formulate a Board approved policy on penal charges or similar charges on loans, by whatever name called.
- (iv) The quantum of penal charges shall be reasonable and commensurate with the non-compliance of material terms and conditions of the loan contract without being discriminatory within a particular loan/product category.

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(v) *The penal charges in case of loans sanctioned to ‘individual borrowers, for purposes other than business’, shall not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance of material terms and conditions.*

(vi) *The quantum and reason for penal charges shall be clearly disclosed by REs to the customers in the loan agreement and most important terms & conditions / Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under Interest rates and Service Charges.*

(vii) *Whenever reminders for non-compliance of material terms and conditions of the loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefor shall also be communicated.*

(viii) *The REs may carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/ renewed from the effective date. In the case of existing loans, the switch over to the new penal charges regime shall be ensured on the next review or renewal date or six months from the effective date of this circular, whichever is earlier.*

[Notification No. RBI/2023-24/53 DoR.MCS.REC.28/01.01.001/2023-24]

Relevant Link: <https://www.teamleasereqtech.com/updates/article/25841/rbi-issued-instructions-for-fair-lending-practice-penal-charges-in-loa/>

NCLT AND M & A UPDATES

Café Coffee Day takes a sigh of relief as NCLAT Chennai puts a stay order on company’s insolvency process

Dated: 11th August, 2023

*In the matter of **Malavika Hedge(Suspended Dir, CCD Global Ltd.) vs. Indusind Bank Ltd.**[Company Appeal(AT)(CH) (ins) No.235/2023 in CP(IB) No. 132/BB/2022]. The Hon’ble NLCAT Chennai passed an interim order and halted the insolvency procedure for CCD owned by Coffee Day Global Ltd. The Tribunal further directed IRP and Indusind bank to file a reply within two weeks. The insolvency procedure was initiated against the company vide order from NCLT Bengaluru Bench, by a Financial Creditor of the company claiming dues of Rs. 94Crore.*

Related Link:https://nclat.nic.in/display-board/view_order

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Bank Cannot initiate CIRP against Builder if default is by Home Buyer as a Borrower- NCLT New Delhi

Dated: 16th August, 2023

In the matter of South India Bank Ltd. Vs Magic Info Solutions Pvt. Ltd. [(IB)- 136(ND)/2023] wherein an application under section 7 of IBC for initiating CIRP against Corporate Debtor was filed before the Hon'ble NCLT Delhi Bench, a tripartite agreement was executed between the mentioned parties and Principal Borrowers/Home Buyers, although the Corporate Debtor failed to execute and register the sale of deed to home owners as per the agreement. The homebuyer in response vouched for revocation of Provisional allotment. Corporate Debtor emailed the Applicant Bank proposing a new repayment schedule.

The Hon'ble NCLT stated that the debt as per the facts of the case cannot be considered as Financial Debt. The tribunal further noted that the principal creditors are the Home Buyers and dismissed the Application.

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102022732023/04/Order-Challenge/04_order-Challenge_004_1691990664122282645164d9ba8887d9e.pdf

Is the Resolution Professional obligated to execute Registered Sale Deeds for applicants with pre-CIRP admission 'agreements of sale'? – NCLT Hyderabad Bench

Dated: 14th August, 2023

Facts

In the Palapala Ankamma Rao Vs. Punjab National Bank case, a company with name 'NCS Sugars Ltd.' took a loan from a bank consortium, with PNB having security over 229 acres of land. The company asked PNB to allow selling the land to repay debts. Applicant agreed and paid 10% to PNB. The land release was approved in January. The applicant and the company made sale agreements, with an 8-week extension for final payment. Later, due to a legal process, the Applicant informed the Interim Resolution Professional (IRP) that they're ready to pay, but got no response. The buyers now want to be part of the legal case and complete the land purchase. They filed an application for this purpose.

Decision by the Authority

The Adjudicating Authority held that, the Interim Resolution Professional (IRP) must safeguard Corporate Debtor's (CD) assets and preserve their value as per IBC Sections 18 and 20. The ownership of property isn't transferred through an "Agreement to Sell" and requires a conveyance deed. The property remains CD's until a Registered Sale

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Deed is executed. The Tribunal's moratorium order and the fact that the CD's management was suspended after CIRP's admission support this stance. The Financial Creditor's letter extending payment terms post-CIRP was considered irrelevant. The plea for execution of sale deeds was rejected, highlighting IRP's fiduciary duty to all stakeholders. Consequently, the plea was dismissed and applicants were directed to seek return of their payment from the financial creditor.

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/3607130000462023/04/Order-Challenge/04_order-Challenge_004_1691401113190572576864d0bb99d28eb.pdf

Court cannot reduce rate of interest awarded in an arbitration award and is powerless to modify award and can only set aside partially or wholly - Supreme Court

Dated: 11th August, 2023

In the matter of M/s. Larsen Air Conditioning and Refrigeration Company Vs. Union of India & Ors., the appellant has challenged the judgment of the Allahabad High Court regarding the modification of an arbitral award in a contract dispute with the Union of India. The appellant won tender but faced disputes, leading to arbitration where a compound interest rate of 18% per annum was awarded.

The High Court partly allowed the appeal, reducing the interest rate to 9% simple interest per annum. The appellant argues the High Court's modification was erroneous, citing the statutory interest rate of 18% under section 31(7)(b) of the Arbitration and Conciliation Act and contractual clauses.

The Additional Solicitor General representing the respondent-state contends the High Court's decision was justifiable, considering various legal aspects. The Supreme Court analyzed section 31(7)(b) and past case law, emphasizing the limited scope of court interference under section 34 and the omission of modification power in the Act.

The Supreme Court concludes the High Court exceeded jurisdiction, setting aside its judgment and reinstating the original 18% interest rate as awarded by the arbitrator.

Related Link: https://main.sci.gov.in/supremecourt/2019/35835/35835_2019_8_1501_46026_Judgement_11-Aug-2023.pdf

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Whether the change of name of a Company with the approval of RoC would amount to transfer of assets of the Company attracting imposition of Stamp Duty and Registration Fee? – Himachal Pradesh High Court

Dated: 17th August, 2023

Facts of the case

The case of *Groupe SEB India Pvt. Ltd. and Another Vs. State of Himachal Pradesh and others*, the petitioner changed its name to "Maharaja Whiteline Industries Pvt. Ltd." and then subsequently, the name was changed to "Groupe SEB India Pvt. Ltd.". The petitioner aggrieved by the stamp duty and registration fee approach the Hon'ble High court.

The main question arose from the case is whether changing the name of a company, with the approval of the Registrar of Companies, constitutes a transfer of assets that attracts the imposition of stamp duty and registration fee.

Decision of the Himachal Pradesh High Court,

The Hon'ble court held that the change of name in the revenue records due to the approval of the Registrar of Companies does not equate to a transfer of assets, specifically highlighting that change of name from "MWIL" to "MWIPL" was merely an addition of the word "private" and the shareholding remained the same. It also acknowledged that the change of name from "MWIPL" to "GSIPL" was a result of a special resolution under the Companies Act, and that this change did not imply a transfer of assets.

Related Case:

<https://cdn.ibclaw.online/insolvency/hc/2023/Groupe+SEB+India+Pvt.+Ltd.+and+another+Vs.+State+of+Himachal+Pradesh+and+others+-+03.08.2023+Himachal+Pradesh+High+Court.pdf>

There is no concept of dissenting homebuyers within Creditors in class – – NCLT Mumbai Bench

Dated: 11th August, 2023

Decision

In the case of *Mrs. Taruna Suhas Saraph Vs. Mr. Dyaneshwar Chaudhari*, The Hon'ble NCLT observed and held that, 'The objections raised by individual homebuyers are not significant, as they are part of a minority within the larger group of homebuyers. The principle is that when a majority of homebuyers vote in favor of a Resolution Plan,

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individual objections from within that group hold no weight, based on a Supreme Court ruling (Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC(India) Ltd. and Ors.). This means that dissenting minority homebuyers cannot oppose the Plan as if they represent all dissatisfied homebuyers. They can't claim to be dissenting financial creditors in this context.'

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138070052021/04/Order-Challenge/04_order-Challenge_004_1691752754195556182564d61932dd3fd.pdf

An Operational Creditor is not entitled for interest in the absence of any written contract between the parties – NCLT Mumbai Bench

Dated: 10th August, 2023

Observation of the Hon'ble Bench

In the case of Timex Bond Industries Pvt. Ltd. Vs. Deist Industries Pvt. Ltd., the Hon'ble Court observed that, the operational creditor had attempted to claim interest despite established legal precedents. It's noteworthy that, according to the law, an operational creditor cannot charge interest, especially when there is no written contract supporting such a claim. While the findings of criminal courts don't bind civil proceedings, the observations of civil proceedings hold weight in criminal cases. The Hon'ble NCLAT has consistently ruled that interest can't be demanded by an Operational Creditor without a written contract. Notably, there's no provision for interest payment in case of payment delays by the Corporate Debtor. Thus, it's evident that the Operational Creditor's claim for interest lacks validity on both fronts.

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138033302019/04/Order-Challenge/04_order-Challenge_004_1691751856125000017664d615b02b00c.pdf

Reconstitution of NCLT Benches

Dated: 10th August, 2023

As per the order from the Ministry of Corporate Affairs dated August 16, 2023, requires the benches to be reorganized due to changes in members. This reconstitution is made in accordance with the powers granted by Section 419 of the Companies Act 2013, as per the direction of the Hon'ble President of the National Company Law Tribunal.

Related Link: [Re-constituted of Bench at NCLT, Mumbai Court No. III & V- order dated 6.12.2022.pdf](#)

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Thanking You,

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