

WEEKLY CORPORATE UPDATES

Saturday 23rd September, 2023

(Curated & compiled by)

Team Indiacorp Law

Headed by:

Adv.(CS) Alok Kumar Kuchhal. Com, LL.B., FCS, Insolvency Professional

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MCA UPDATES

Stakeholders, please note excel file download and upload functionality has been enabled in Form 11 LLP in which all the existing data of the Partners and Designated Partners of the LLP will get pre-filled.

Dated: 23rd September, 2023

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

PAS-2 has to be filed as a separate webform on V3 portal and not as part of GNL-2

Dated: 23rd September, 2023

Stakeholders, please note that PAS-2 has to be filed as an independent form in V3 and not as one of the purposes of GNL-2

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

SEBI UPDATES

SEBI notifies rule for listing non-convertible debt securities

Dated: 21st September, 2023

SEBI has amended rules under which listed entities with outstanding non-convertible debt securities will be required to list subsequent issuance of such securities on stock exchanges. This will come into effect from January 1, 2024, the Securities and Exchange Board of India (SEBI) said in a notification uploaded on its website on Thursday.

The move is aimed at facilitating transparency in price discovery of non-convertible debt securities, providing better disclosures to investors and the market, and avoiding ISIN-level confusion and possible mis-selling of unlisted bonds.

In its notification, Sebi said certain types of issuances have been exempted from the applicability of this requirement.

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Those included capital gains tax debt securities issued under Section 54EC of the Income Tax Act, 1961; those Non-Convertible Debts (NCDs) where parties have agreed to hold the securities till maturity and accordingly will be unencumbered; and NCDs issued following an order of any court or tribunal or regulatory requirement as stipulated by a financial sector regulator -- SEBI, RBI, IRDA, PFRDA or IBBI.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-notifies-rule-for-listing-non-convertible-debt-securities/articleshow/103846048.cms>

SEBI approves relaxing borrowing norms for large corporates in debt market

Dated: 21st September, 2023

Market regulator SEBI has approved a proposal to provide flexibility to large corporations to meet their financing needs from debt market.

The decision was taken at the board meeting, which was held earlier on Thursday.

A higher monetary threshold has been specified for defining large corporations, thereby reducing the number of such entities.

Further, a removal of penalty has also been approved on large cap companies which are not able to raise a certain percentage of incremental borrowing from the debt market.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-approves-relaxing-borrowing-norms-for-large-caps-in-debt-market/articleshow/103844084.cms>

SEBI empanels 34 entities to conduct forensic probe of mutual funds, AMCs, trustees

Dated: 22nd September, 2023

SEBI has empanelled 34 entities, including Ernst & Young LLP, Deloitte Touche Tohmatsu India LLP and Grant Thornton Bharat LLP to conduct forensic investigation of mutual funds, their asset management companies (AMCs) and trustees. KPMG Assurance and Consulting Services LLP, Chokshi & Chokshi LLP, Nangia & Co LLP and Pipara & Co LLP are among the other empanelled entities, the Securities and Exchange Board of India (SEBI) said in a latest update.

The period of empanelment is from September 20, 2023 to September 19, 2026, it added.

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These 34 entities have been empanelled after evaluation of all the applications in response to Expression of Interest (Eoi) invited by the capital markets regulator in February.

The entities are required to undertake acquisition, extraction and analysis of digital evidence from mobile, computers, tablets, hard drives and USB drives. Also, they need to prepare and submit a report mentioning the findings and conclusions of the analysis.

In July, SEBI increased the role and accountability of the mutual fund trustees in a bid to safeguard unitholders' interest amid the growing scale of the mutual fund industry.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-empanels-34-entities-to-conduct-forensic-probe-of-mutual-funds-amcs-trustees/articleshow/103865802.cms>

Sebi issues guidelines for handling complaints received via SCORES platform

Dated: 21st September, 2023

Capital markets regulator SEBI on Thursday came out with a framework for handling complaints received through SCORES platform for registered entities and for monitoring such grievances by designated bodies.

The new guidelines will come into force from December 4, the Securities and Exchange Board of India (SEBI) said in a circular.

SCORES is a grievance redressal system that was launched in June 2011. Investors can lodge their complaints online with SEBI, pertaining to the securities market, against companies, intermediaries and market infrastructure institutions.

Under the guidelines, all entities including companies that received complaints of investors through SCORES, will have to resolve them within 21 calendar days of receipt of such grievances.

The complaint lodged on SCORES against any entity will be automatically forwarded to the concerned entity through SCORES for resolution and submission of ATR (Action Taken Report).

Further, the complaint against the entity will be simultaneously forwarded through SCORES to the relevant designated body.

Related Link: https://www.business-standard.com/markets/news/sebi-issues-guidelines-for-handling-complaints-received-via-scores-platform-123092100778_1.html

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RBI UPDATES

RBI proposes changes in wilful defaulter norms

Dated: 21st September, 2023

The Reserve Bank on Thursday proposed tighter norms for treatment of wilful defaulters under which banks and other lenders will be required to examine all accounts with outstanding amount of Rs 25 lakh and more to see if the borrower is deliberately not repaying the loan. The central bank has issued a 'Draft Master Direction on Treatment of Wilful Defaulters and Large Defaulters' on which comments have been invited till October 31.

According to Reserve Bank of India (RBI), the draft Master Direction expands the scope for regulated entities which can classify borrowers as wilful defaulters and broadens the definition of wilful default.

It also refines the identification process and mandates a review and finalisation on wilful default aspects within six months of an account being classified as a non-performing asset, as per the central bank.

Further, the draft mentions about the treatment of wilful default loans sold to Assets Reconstruction Companies (ARCs) and their status under the Insolvency and Bankruptcy Code.

Wilful default by a borrower would be deemed to have occurred when the borrower defaults in meeting payment/repayment obligations despite the capacity to honour the loan repayment obligations, as per the draft.

Related Link: <https://economictimes.indiatimes.com/news/economy/policy/rbi-proposes-changes-in-wilful-defaulter-norms/articleshow/103842121.cms?from=mdr>

India's Banking Liquidity Deficit Jumps to Over 4-Year High at Rs 1.46 Lakh Crore

Dated: 20th September, 2023

India's banking liquidity deficit has jumped to over a four-year high at Rs 1.46 lakh crore on Wednesday, September 20, on account of outflows related to advance tax payments and preparation for goods and services tax (GST) collection, which is a quarterly phenomenon, Reuters reported.

According to the report, this is the highest single day shortfall since April 23, 2019. And banking system liquidity had slipped into deficit for the first time this fiscal in August.

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This also comes after the Reserve Bank of India (RBI) ordered banks to set aside 10% of their incremental deposits – as incremental cash reserve ratio (ICRR) – received between May 19 and July 28.

Liquidity deficit

In simple terms, liquidity means how much cash is readily available, or how quickly you can get your hands on your cash. For instance, a five-year fixed deposit's liquidity is lower than a savings account. But you can take cash out whenever you need from your savings account.

Liquidity in the banking system means how much cash is readily available with the banks to meet their short-term business and financial needs.

On any given day, if the banking system is a net borrower from the RBI under Liquidity Adjustment Facility (LAF), the system liquidity can be said to be in deficit. In contrast, on any given day, if the banking system is a net lender to the RBI, the system liquidity can be said to be in surplus.

Related Link: <https://thewire.in/banking/indias-banking-liquidity-deficit-jumps-to-over-4-year-high-at-rs-1-46-lakh-crore>

RBI extends tenure of HDFC Bank MD Sashidhar Jagdishan by 3 years

Dated: 19th September, 2023

The country's biggest private sector lender HDFC Bank on Tuesday said the Reserve Bank has approved the re-appointment of its managing director Sashidhar Jagdishan for a period of three years with effect from October 27.

Jagdishan was appointed the MD and CEO of the bank in 2020 in place of Aditya Puri, the founder CEO of the bank.

The RBI vide its communication dated September 18, 2023, " has approved the re-appointment of Sashidhar Jagdishan as the managing director and chief executive officer of the bank for a period of 3 years with effect from October 27, 2023 to October 26, 2026," the bank said in a regulatory filing.

The board of the bank will be convened in due course to give effect to the above-mentioned appointment, it said.

Jagdishan's extension comes months after the merger of parent HDFC Ltd with HDFC Bank, creating the second-biggest bank in the country after State Bank of India.

Related Link: <https://timesofindia.indiatimes.com/business/india-business/rbi-extends-tenure-of-hdfc-bank-md-sashidhar-jagdishan-by-3-years/articleshow/103788607.cms?from=mdr>

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NCLT AND M & A UPDATES

What factors are to be considered while compounding the offence is punishable only with the fine — NCLT Hyderabad Bench

Publication Date: 20th September, 2023

Judgement Date: 05th September, 2023

In the matter of IVRCL Patalganga Truck Terminals Pvt. Ltd. Vs. The Registrar of Companies, The Hon'ble NCLT of the Hyderabad Bench observes and held that, 'The section 441(1) of the Companies Act, 2013 makes it clear that the Tribunal has power to compound any offence. However, Regional Directors or officers authorized by the Central Government can only compound offenses with fines under Rs. 25.0 lakhs. Importantly, these rules apply solely to non-imprisonment offenses. Additionally, Section 99 sets a limit of one lakh rupees for fines imposed on the company and defaulting officers. To handle an offense correctly, several factors should be considered: the severity of the wrongdoing, financial conditions, the situation surrounding the offense, its duration, nature, impact on shareholders, and the company's market value. These factors help make a fair and well-informed decision on how to deal with the offense.'

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/3607130016012023/04/Order-Challenge/04_order-Challange_004_169398206369237570764f81d6f881ff.pdf

The Tribunal has all the powers to compound all the offences irrespective of any pecuniary limit – NCLT Mumbai Bench

Publication Date: 20th September, 2023

Judgement Date: 05th September, 2023

In the matter of SHCIL Services Ltd. Vs. Registrar of Companies, Mumbai, 'The Hon'ble NCLT of Mumbai held that 'There is no as such restriction has been put on the power of the Tribunal which is the primary authority for the compounding of the offences. While the other authorities like the Regional Director and Officer of the Central Government exist, they are limited by the severity of the punishment. In contrast, the Tribunal can handle all offenses, regardless of the fines involved. Therefore, the current petition can be resolved by the Tribunal.'

Related Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138006832018/04/Order-Challenge/04_order-Challange_004_169390855991989299264f6fe4f9be3f.pdf

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IBBI Amends 'Model Bye Laws of Insolvency Professional Agencies Regulations' w.e.f. 18th September 2023

Dated: 20th September, 2023

In exercise of the powers conferred by sections 196 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, namely: –

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in the Schedule -- (1) In para VI, in clause 10,

(a) for sub-clause (1), the following shall be substituted, namely: –

“(1) An individual or an insolvency professional entity may apply for enrolment as a professional member by submitting an application in Part – I of Form A and Part – I of Form AA, respectively, of the Second Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, in such manner and with such fees as may be specified by the Agency.”

Related Link: <https://ibbi.gov.in/uploads/press/e04bbad73f6a0deaafa1262326f8d61f.pdf>

Insolvency & Bankruptcy Code cannot be used as tool for recovery: NCLT

Dated: 19th September, 2023

Insolvency & Bankruptcy Code (IBC) cannot be used as a "tool for recovery", the NCLT observed on Tuesday while dismissing a plea by two unit buyers of a commercial complex. The Principal Bench of the National Company Law Tribunal (NCLT) was hearing the plea for initiating insolvency against Orris Infrastructure over an alleged default of Rs 3.60 lakh.

The NCLT bench observed that the purchaser of the Office space/Retail Unit has already received full and final payment from Orris Infrastructure in lieu of the assured returns towards the allotted unit, as per the agreement.

The amount has been paid in excess of the default amount and counsel for the applicant has also acknowledged the receipt of the demand draft from the realty firm, which was developing a commercial building complex, known as Floreal Tower, at Sector 83, Gurgaon (Haryana), said insolvency tribunal.

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Related Link: <https://realty.economictimes.indiatimes.com/news/regulatory/insolvency-bankruptcy-code-cannot-be-used-as-a-tool-for-recovery-nclt/103796461#:~:text=%22We%20are%20of%20the%20view,NCLT%20bench%20comprising%20President%20Ramli ngam>

Thanking You,

Team Indiacorp

0120 - 421 4372, 9810894275, 8826016751

indiacorp@live.com, info@indiacorplaw.com

www.indiacorplaw.com

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