

WEEKLY CORPORATE UPDATES

Saturday 02nd September, 2023

(Curated & compiled by)

Team Indiacorp Law

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MCA UPDATES

Stakeholders are informed that 1,02,611 Companies & LLPs got incorporated from 1st April 2023 to 31st Aug 2023, as against previous year's count of 92,064 for the same period

Dated: 30th August, 2023

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Relevant Link:

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

SEBI UPDATES

SEBI eyes boosting NRI, OCI investments via FPI route in Indian markets

Dated: 25th August, 2023

SEBI on Friday proposed allowing increased participation from NRIs and Overseas Citizens of India (OCIs) in the Indian securities market through the Foreign Portfolio Investor (FPI) route while putting in place adequate measures to mitigate the risks emanating from such investments. The proposed move is aimed at boosting investment by FPIs in India, the Securities and Exchange Board of India (SEBI) said in its consultation paper.

Under the current rule, an FPI applicant cannot be a Non-resident Indian (NRI) or OCI. However, NRIs or OCIs or Resident Indian individuals (RIIs) can be constituents of the applicant after meeting the conditions specified by Sebi.

To enhance investments by FPIs in India, Sebi has proposed facilitating increased participation from NRIs and OCIs as constituents of FPIs that are based out of International Financial Services Centres (IFSCs) in the country and regulated by the International Financial Services Centres Authority (IFSCA).

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-eyes-boosting-nri-oci-investments-via-fpi-route-in-indian-markets/articleshow/103070646.cms>

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SEBI examined funds named by OCCRP in Adani probe: Report

Dated: 31st August, 2023

India's market regulator has examined the funds named by a non-profit media organisation that were allegedly involved in investing millions of dollars in some publicly traded stocks of India's Adani Group, said sources aware of the matter.

According to the Organised Crime and Corruption Reporting Project (OCCRP), offshore structures based in Mauritius purchased between 8% and 14% of shares in four Adani Group units - Adani Power, Adani Enterprises, Adani Ports, and Adani Transmissions. The Adani Group has rejected the report. The funds named today are already a part of a regulatory probe into violations of public float norms by the Adani Group and any new facts will be considered, sources added.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-examined-funds-named-by-occrp-in-adani-probe-report/articleshow/103246237.cms>

Overhauling of delisting norm – a step towards the right direction

Dated: 27th August, 2023

On the eve of India's 77th Independence Day, Keki Mistry led the SEBI sub-group and came up with the proposal to overhaul the SEBI (Delisting of Equity Shares) Regulations, 2021 – the proposal is currently out for public comments. In addition to certain tweaks in respect of the counter-offer mechanism, computation of floor price and related reference date, the proposal seeks to provide an alternative to the long-standing Reverse Book Building ('RBB') mechanism.

One look at the proposed draft is enough to realise the effort of SEBI to fine-tune the delisting mechanism to make it more efficient.

Current scenario

Currently, a delisting is considered successful when (a) the post-offer shareholding of the acquirer, along with the shares tendered by the public shareholders reaches 90% ('90% Threshold'); and (b) the price discovered pursuant to RBB is acceptable to the acquirer.

Where the RBB discovered price is not acceptable to the acquirer, the acquirer can make a Counter - offer at a price that should not be lower than the book value of the company, but only if the 90% Threshold is met.

Further, the RBB discovered price is the price at which the acquirer reaches 90% Threshold – thus, market has seen precedents where a shareholder holding big block bids at an exorbitant price, thereby making the deal unsustainable.

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In the absence of an alternate to RBB mechanism, where the discovered price is not acceptable to the acquirer, the delisting fails, and the acquirer has to wait for a minimum period of 6 months to go through the grind again.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/overhauling-of-delisting-norm-a-step-towards-the-right-direction/articleshow/103103521.cms>

RBI UPDATES

RBI in tight spot as interest rate differential with US narrows

Dated: 27th August, 2023

The Federal Reserve's latest move to raise its policy rate, marking the 11th increase in 12 meetings, has sparked widespread discussion in economic circles. The overnight interest rate at 5.25%-5.50% now stands at its highest level in 22 years, prompting the European Central Bank to follow suit with its 9th consecutive rate hike, reaching levels not seen since 2001. While these actions were somewhat anticipated, they have inadvertently created a challenging situation for India's central bank.

India finds itself at a critical point as its interest rate differential with the US has notably narrowed (see Figures 1 & 2 wherein government bond yields have been used as proxies for interest rates). This tight spot has left the Reserve Bank of India (RBI) facing a tough decision - whether to align with global peers and raise its repo rate or opt for a differing path.

On one hand, following the global trend of raising interest rates might help control inflation and fortify the Indian rupee. However, this move carries various implications for the country's economic growth. Despite uncertainties in the global economic outlook, India has sustained strong economic momentum since the COVID-19 pandemic, achieving a robust growth rate of 7.2% in FY 2022-23. Elevating interest rates would inevitably heighten credit costs for businesses and consumers, thus potentially dampening India's growth trajectory.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/rbi-in-tight-spot-as-interest-rate-differential-with-us-narrows/articleshow/103103660.cms>

RBI MPC members cautions of spillover from food prices as odds of rate hike begins to build

Dated: 27th August, 2023

The Reserve Bank of India must ensure there's no spillover from the surge in food prices, two monetary policymakers said, as the odds for a rate hike begin to build with inflation at a 15-month high. The central bank is targeting to keep

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inflation between 2% and 6% but the consumer price index accelerated by 7.44% last month. Food prices, which account for about half of CPI, jumped 11.51% on concerns of supply shortages owing to unfavorable weather affecting crop production.

“The key would be to control food inflation itself,” said Shashanka Bhide, who is one of the six members of the monetary policy committee. “There is a need for ensuring increasing supplies in the domestic market and to the social safety programs.” India’s government has moved to curb exports of rice and sugar and impose steep taxes on onion shipments to ensure domestic supplies. It has also allowed for tomato imports from Nepal to bring down prices.

Without including food and fuel prices, core inflation is moderating after the RBI raised rates by a cumulative 250 basis points since May last month. The monetary policy committee left rates unchanged for a third straight meeting in August as it looks to see if growth in Asia’s third largest economy comes under pressure. The policy tightening “is still working its way through the system and this is expected to maintain downward pressure on core inflation over the next several quarters,” said Jayanth Rama Varma, an external member of the panel, in an emailed interview.

Related Link: <https://www.financialexpress.com/policy/economy-rbi-mpc-members-cautions-of-spillover-from-food-prices-as-odds-of-rate-hike-begins-to-build-3227714/>

RBI Central Board reviews global, domestic economic situation

Dated: 01st September, 2023

The Central Board of Directors of the Reserve Bank of India on Friday reviewed the global and domestic economic situation and associated challenges, including the impact of current global geopolitical developments.

The 603rd meeting of the Board, chaired by Governor Shaktikanta Das, was held in Indore.

The Board also discussed various areas of operations of the Reserve Bank of India including the functioning of Local Boards and activities of select central office departments, the RBI said in a statement.

Directors of the Central Board – S Gurusurthy, Revathy Iyer, Sachin Chaturvedi, Anand Gopal Mahindra, Pankaj Ramanbhai Patel and Ravindra H Dholakia attended the meeting.

Ajay Seth, Secretary, Department of Economic Affairs and Vivek Joshi, Secretary, Department of Financial Services also attended the meeting besides RBI deputy governors Michael Debabrata Patra, M Rajeshwar Rao, T Rabi Sankar and Swaminathan J.

Related Link: <https://www.moneycontrol.com/news/business/rbi-central-board-reviews-global-domestic-economic-situation-11296471.html>

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NCLT UPDATES

The use of the term 'Default' in Section 10A of IBC makes it clear that irrespective of the fact that the debt may or may not have occurred during the excluded period, but if the default in payment of such debt arose during the said period, then no proceeding for CIRP can ever be initiated against the Corporate Debtor for the said default occurring during the said period – NCLT New Delhi Bench Court-V

Published on: 29th August, 2023

Date of Judgment: 24th August, 2023

In the matter of Oncquest Laboratories Pvt. Ltd. Vs. Sanya GIC Imaging Pvt. Ltd., the NCLT Delhi observes that, 'Section 10A of the IBC clearly stated that the crucial factor, in determining the default timing is whether the debt was incurred during the excluded period or not. If a default occurs during this period it becomes an obstacle for initiating Corporate Insolvency Resolution Process (CIRP) proceedings against the Corporate Debtor, for that default.'

Moreover this observation emphasizes the impact that any partial default, during the excluded period. If there is a default it affects the claim and makes it ineligible, for Corporate Insolvency and Resolution Process (CIRP) regardless of any effort to separate or exclude specific invoices from that period. This aspect of Section 10A highlights the legislative intent to protect Corporate Debtors from CIRP proceedings in cases where the default occurred during the excluded period, regardless of the overall debt's origin.

Related

Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102143732022/04/Order-Challenge/04_order-Challange_004_1692951478194564802564e863b6b9682.pdf

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Suspended Director has no vested right to recommend the removal of the liquidator – NCLT Chandigarh Bench –

Date of the Judgment: 24th August, 2023

In the case of Kulwinder Singh Makhni (Ex-Director Punjab Basmati Rice Ltd.) Vs. Mr. Sanjay Kumar Aggarwal Liquidator of Punjab Basmati Rice Ltd., The applicant (Ex-Director of the corporate debtor) filed an application for the removal of the Liquidator from the liquidation process of the corporate debtor company. The NCLT of Chandigarh held that, 'According to the Regulation 31A it clearly stated that the power to remove the liquidator lies with the Stakeholder Consultation Committee and the applicant here is the Ex-director of the corporate debtor. Thus the applicant has no right to recommend the removal of the Liquidator from the process of liquidation.

Related

Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0404115011922023/04/Order-Challenge/04_order-Challenge_004_1692966820121784336064e89fa46b6f2.pdf

If Liquidation Process under IBC is completed and the Company is taken over by the Successful Bidder, application u/s 272(1)(e)/271(c) of Companies Act, 2013 cannot be maintained. – NCLT Hyderabad Bench

Dated: 01st September, 2023

In the case of Union of India Vs. Metkore Alloys and Industries Ltd., the NCLT Hyderabad noted that when a company has already gone through the liquidation process and a liquidator was appointed, who declared a successful bidder and requested the closure of the liquidation process, any subsequent application filed by an individual or corporate entity seeking to close the liquidation process would not be entertained, such application would not entertained on the ground of impermissible of law.

Related

Link:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/3607130004572019/04/Order-Challenge/04_order-Challenge_004_169225769786396321564ddcda1e68ce.pdf

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