

## **WEEKLY CORPORATE UPDATES**

*Saturday 28<sup>th</sup> October, 2023*

(Curated & compiled by)

### **Team Indiacorp Law**

**Headed by:**

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## MCA UPDATES

### *Private Companies are now in compulsory Demat, rule 9B in PAS Rules is inserted.*

*Dated: 27<sup>th</sup> October, 2023*

**G.S.R. 802(E).**— *In exercise of the powers conferred by section 29 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-*

*1. Short title and commencement. -*

*(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.*

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

*2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as the said rules) rule 9 shall be numbered as sub-rule*

*(1) thereof, and after sub-rule (1) as so numbered, the following sub-rules shall be inserted, namely: -*

*“(2) Every public company which issued share warrants prior to commencement of the Companies Act, 2013 (18 of 2013) and not converted into shares shall, -*

*(a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and*

*(b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.*

*Related Link: <https://egazette.gov.in/WriteReadData/2023/249772.pdf>*

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*Stakeholders are informed that during FY 2023-24, as on 26.10.2023, 3.28 Lakh Financial Statements and 1.92 Lakh Annual Returns have been filed against 2.13 Lakh Financial Statements and 1.38 Lakh Annual Returns filed during the corresponding period of last financial year. Stakeholders are requested to file these two returns in time and not wait for the last day.*

*Dated: 27<sup>th</sup> October, 2023*

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

## **MCA notification G.S.R. 790(E)-The Companies (Incorporation) Third Amendment Rules, 2023**

*Dated: 20<sup>th</sup> October, 2023*

**G.S.R.790 (E).** —In exercise of the powers conferred by section 3, section 4, sub-sections (5) and (6) of section 5, section 6, sub-sections (1) and (2) of section 7, sub-sections (1) and (2) of section 8, sub-sections (2), (3), (4), (5) and (9) of section 12, sub-sections (3), (4) and (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. These rules may be called the Companies (Incorporation) Third Amendment Rules, 2023.
- (2) They shall come into force with effect from 21st October, 2023.

2. In the Companies (Incorporation) Rules, 2014, in rule 30, in sub-rule (9), -

(i) the words "and may include such order as to costs as it thinks proper" shall be omitted;

(ii) after the proviso, the following proviso shall be inserted, namely: -

"Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed."

Related Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc0Nzk4OTM4&docCategory=Notifications&type=open>

### **Concerns:**

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*The stakeholders are informed that Ministry of Corporate Affairs has integrated with National Single Window System (NSWS) for the Incorporation of Companies and LLPs. Incorporation services can also be availed through NSWS portal.*

*Dated: 23<sup>rd</sup> October, 2023*

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

## **SEBI UPDATES**

***SEBI bans 'Baap of Chart' from securities market | Directs firm to refund Rs 17 crore in unlawful gains***

*Dated: 27<sup>th</sup> October, 2023*

*The market regulator has called attention to Mohammad Nasiruddin Ansari aka Baap of Chart providing unregistered investment advice, under the garb of education. In an interim order dated October 25, the Securities and Exchange Board of India (Sebi) stated, "It is observed that Nasir is inducing clients/ investors by assuring profits/ returns of a minimum INR 3,00,000 and extending to 6,00,000 per month and also giving recommendation to buy. Further, it is also stated that upon payment for courses, Nasir will give dedicated support and guide everyone personally for live market transactions". Ansari, has been asked to deposit over Rs 17.20 crore in an escrow account collected from carrying out unregistered and fraudulent illegal advisory service.*

*Related Link: <https://www.moneycontrol.com/news/videos/business/markets/sebi-bans-baap-of-chart-from-securities-market-directs-firm-to-refund-%e2%82%b917-crore-in-unlawful-gains-11605231.html>*

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## **SEBI proposes new 'high-risk' category of mutual funds, seeks comments from AMFI**

Dated: 27<sup>th</sup> October, 2023

The capital market regulator, Securities and Exchange Board of India (SEBI) has proposed to introduce a new mutual fund (MF) that comes with high-risk, and offers a chance to earn higher returns. SEBI has sent a letter to Association of Mutual Funds of India (AMFI; the MF industry's trade body).

SEBI initially put forth this proposal at a meeting with AMFI. Following which, it wrote a letter to AMFI to internally consult about the possibility of such a category. A person with knowledge of the matter said that SEBI is concerned that many investors- in the race to earn higher returns (out of greed)- rush to high-risk Portfolio Management Services and sometimes to unregistered advisors.

Instead, he quoted SEBI's thinking- if mutual funds launch such a high risk product, then investors would more likely stay with mutual funds, which itself is tightly regulated by SEBI.

Related Link: <https://www.moneycontrol.com/news/business/personal-finance/sebi-proposes-new-high-risk-category-of-mutual-funds-seeks-comments-from-amfi-11603971.html>

## **SEBI issues Rs 1.8 crore demand notices to former officials of Karvy Group**

Dated: 25<sup>th</sup> October, 2023

Capital markets regulator Sebi on Wednesday sent demand notices to three former officials of Karvy Group, asking them to pay about Rs 1.8 crore in the case of the misappropriation of client's funds by Karvy Stock Broking Ltd (KSBL). The regulator has warned them of arrest and attachment of assets as well as bank accounts if they fail to make the payment within 15 days.

Those who have been sent notices are Krishna Hari G, who was VP (F&A) of KSBL; Srikrishna Gurazada, former compliance officer of KSBL and Srinivasa Raju, who was the General Manager of back office operation. The demand notices came after the officials failed to pay the fine imposed on them by the Securities and Exchange Board of India (Sebi) in May. In three separate notices, Sebi directed Krishna Hari G to pay Rs 1.06 crore and asked Raju and Gurazada to remit Rs 42.41 lakh and Rs 31.81 lakh, respectively. This includes interest and recovery costs, within 15 days.

In the event of non-payment of dues, the market regulator will recover the amount by attaching and selling moveable and immovable property of these officials. Besides, they face attachment of their bank accounts and arrest. Sebi levied a fine of Rs 1 crore on Krishna Hari G, Rs 40 lakh on Raju, and Rs 30 lakh on Gurazada in May. The case relates to KSBL's raising huge funds by pledging clients' securities and by misusing the Power of Attorney (PoA) granted to it by

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its clients. Further, the funds by KSBL were being diverted to its group entities, thereby violating various provisions of law.

Related Link: <https://www.moneycontrol.com/news/business/sebi-issues-rs-1-8-crore-demand-notices-to-former-officials-of-karvy-group-11598371.html>

## **India emerging as a global trendsetter in ESG disclosures**

Dated: 25<sup>th</sup> October, 2023

The Indian ethos for millennia has considered the plants and animals as the cousins of humans and the Earth as a nourishing mother. The emerging ESG reporting landscape of the Indian market regular Securities Exchange Board of India (SEBI) seems to be intent on reflecting these ethos, leading to a search towards a golden balance between growth and environment, and social parameters, away from sterile shareholder capitalism which considers the ecology and the earth and the society as resources available for exploitation rather than for co-existence.

This philosophical difference will eventually lead SEBI towards promulgating the world beating ESG disclosure requirements in its jurisdiction, without compromising on the short and long-term growth potential of the country.

The Business Responsibility and Sustainability Report (BRSR) format which was first introduced in 2021 and has become mandatory for the top 1000 companies from FY23, is by any yardstick the most comprehensive reporting guideline globally. SEBI's construction of BRSR is painstakingly detailed, and not comparable to any other regulatory regime anywhere in the world.

Related Link: <https://www.moneycontrol.com/news/opinion/india-emerging-as-a-global-trendsetter-in-esg-disclosures-11594431.html>

## **SEBI bans individual from securities markets for 5 years**

Dated: 22<sup>nd</sup> October, 2023

Capital markets regulator Sebi has barred an individual from the securities markets for a period of five years as well as slapped a fine of Rs 30 lakh for flouting regulatory norms. Besides, the regulator restrained Mohit Manghnani (proprietor of Wealth it Global) from associating himself as a director or key managerial personnel with any listed public company or any Sebi-registered intermediary for a period of five years.

Sebi also directed Manghnani to resolve all complaints received through the regulator's SCORES portal within a period of three months. The order came after the markets watchdog had passed an ex parte order against Manghnani and the latter approached the Securities Appellate Tribunal (SAT), which remanded the matter back to Sebi and directed the regulator to pass a fresh order.

In its order passed on Friday, the regulator found that the noticee (Manghnani) did not cooperate with Sebi during the inspection and deceived its clients by not disclosing the information as regards change in the address and stopping of business. Further, the noticee made promises of assured and unrealistic returns to clients and has sold non-suitable

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services and charged exorbitant fees from its clients, thereby violating the provisions of PFUTP (Prohibition of Fraudulent and Unfair Trade Practices) rules and IA (Investment Adviser) norms.

Related Link: <https://www.moneycontrol.com/news/business/markets/sebi-bans-individual-from-securities-markets-for-5-years-11582401.html>

## RBI UPDATES

### **CICs to compensate for delay in credit info updation: RBI**

Dated: 27<sup>th</sup> October, 2023

Credit information companies (CICs) will have to pay a compensation of Rs 100 per day to customers for delays in updation or rectification of their credit information, the Reserve Bank said on Thursday.

Credit institutions (CIs) and CICs have been given six months to put in place the necessary systems and processes to implement the 'Framework for compensation to customers for delayed updation/rectification of credit information'. In a circular, the Reserve Bank directed CICs and CIs to implement the compensation framework for delayed updation/rectification of credit information.

"Complainants shall be entitled to a compensation of 100 per calendar day in case their complaint is not resolved within a period of thirty (30) calendar days from the date of the initial filing of the complaint by the complainant with a CI/ CIC," it said. The circular further said the complainant can approach the RBI Ombudsman in case of wrongful denial of compensation by CIs or CICs. With the increase in customer complaints regarding credit information reporting and the functioning of CICs, the RBI has decided to put in place a comprehensive framework for strengthening and improving the efficacy of the grievance redress mechanism and customer service provided by CIs and CICs.

Related Link: <https://www.financialexpress.com/business/banking-finance-cics-to-compensate-for-delay-in-credit-info-updation-rbi-3287766/>

### **Two whole-time directors must: RBI**

Dated: 27<sup>th</sup> October, 2023

In a move to strengthen the senior management team and better succession planning of private sector banks and wholly-owned subsidiaries of foreign banks, the Reserve Bank of India (RBI) on Wednesday asked them to ensure the presence of at least two whole-time directors (WTDs), including the MD & CEO, on their boards.

Banks that do not meet the minimum requirement have to submit their proposals for the appointment of WTDs within four months.

"Given the growing complexity of the banking sector, it becomes imperative to establish an effective senior management team in the banks to navigate ongoing and emerging challenges," RBI said in a circular. The number of

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*WTDs shall be decided by the respective board by taking into account factors such as the size of operations, business complexity, and other relevant aspects, it added.*

Related Link: <https://www.financialexpress.com/business/banking-finance-two-whole-time-directors-must-rbi-3286558/>

## **Retail investors can buy Floating Rate Savings Bonds through RBI portal**

*Dated: 23<sup>rd</sup> October, 2023*

*The Reserve Bank on Monday said retail investors can subscribe to Floating Rate Savings Bonds, 2020 (Taxable) through its Retail Direct portal.*

*RBI-Retail Direct Scheme was launched by the Prime Minister on November 12, 2021.*

*Under the scheme, individual investors are permitted to open a Retail Direct Gilt account with the Reserve Bank of India, using an online portal, through which investments in government Securities can be made in primary and secondary markets.*

*The scheme has brought government securities within easy reach of retail investors by simplifying the process of investment.*

*“In its endeavour to expand the basket of products offered through the Retail Direct Portal, Reserve Bank of India, in consultation with the Government of India, has enabled subscription to Floating Rate Savings Bonds, 2020 (Taxable) – FRSB 2020 (T),” the central bank said in a statement.*

Related Link: <https://www.financialexpress.com/market/retail-investors-can-buy-floating-rate-savings-bonds-through-rbi-portal-3284632/>

## **RBI to maintain ‘prolonged pause’ stance; Kotak expects MPC to keep liquidity conditions tight**

*Dated: 23<sup>rd</sup> October, 2023*

*The October RBI MPC minutes highlighted members’ increased focus on returning inflation to the 4 per cent target. While noting that supply-side shocks remained transient, MPC members highlighted that the recurrence of these shocks increases generalization risks. Some members also stressed on the need to manage liquidity actively. Kotak Institutional Equities maintained its view of MPC’s prolonged pause and expected system liquidity to remain tight in the near term.*

*“The minutes of the October RBI MPC meeting brought out members’ concerns of recurring shocks, increasing the uncertainties in the inflation outlook. We see upside risks to the inflation trajectory, stemming from (1) rising crude oil prices and (2) weather-oriented disruptions. We do not see inflation durably settling near the 4 per cent target, at least in the next 12 months,” said Kotak Institutional Equities in its report.*

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Related Link: <https://www.financialexpress.com/policy/economy-rbi-to-maintain-prolonged-pause-stance-kotak-expects-mpc-to-keep-liquidity-conditions-tight-3284278/>

## ***Governance deficit: RBI's recent actions must serve as a wake-upcall to banks for putting their house in order***

*Dated: 23<sup>rd</sup> October, 2023*

*Some of the country's top lenders seem to be taking compliance with rules and regulations rather casually, which is why they have been called out by the regulator. In its latest set of strictures, Reserve Bank of India (RBI) has pulled up ICICI Bank and Kotak Mahindra Bank and imposed monetary penalties of Rs 12.19 crore and Rs 3.95 crore, respectively. ICICI Bank was found to have sanctioned or committed loans to companies in which two of its directors were also directors. This is an unfortunate revelation at a time when the bank is trying to win back its reputation following a breach of corporate governance practices during the term of the former CEO and MD Chanda Kochhar. That there has been such dereliction of duty at the highest level is indeed cause for concern because one had expected discipline in corporate governance matters to have been restored after such a damaging episode.*

*The regulator's annual inspections, for the years FY20 and FY21, also found that the bank had marketed and engaged in sales of non-financial products; how exactly this happened is not clear. It is also worrying that the lender failed to report frauds to the regulator within the prescribed timelines. On its part, KMB was found to have neglected to conduct an annual review and due diligence of its service provider and also for contacting customers beyond the prescribed hours. The bank, according to the regulator, levied interest from the disbursement due date instead of the actual date of disbursement, contrary to the terms and conditions of sanction, and levied foreclosure charges despite there being no such clause in the loan agreement.*

Related Link: <https://www.financialexpress.com/opinion/governance-deficit-rbis-recent-actions-must-serve-as-a-wake-upcall-to-banks-for-putting-their-house-in-order/3283889/>

### **NCLT UPDATES**

***The fine imposed by NCLT on non-cooperation by Ex-management u/s 19(2) or 34(3) of IBC is covered in 'penalty' and not 'cost' under Rule 149 of NCLT, and it is required to be dealt under Section 70 and 236 of the Code which is not within jurisdiction of Adjudicating Authority —***  
***NCLAT New Delhi***

*Date of Publication – 26<sup>th</sup> October, 2023*

*Date of Judgment – 19.10.2023*

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*In the matter of Rakesh Gupta Vs. Mahesh Bansal Erstwhile RP of Gupta Marriage Halls Pvt. Ltd., the Hon'ble NCLAT held that the terms "fine" and "cost" cannot be considered synonymous. The speaker emphasizes that the legal intent and basis for a cost are distinct from those of a penalty, which may include a "fine". The use of the term "fine" in a specific Adjudicating Authority's order falls under the category of a penalty, which should be addressed in accordance with Sections 70 and 236 of the relevant legal code. Furthermore, it is noted that the Adjudicating Authority does not possess the jurisdiction to handle matters related to penalties.*

Related Link:

[https://nclt.gov.in/gen\\_pdf.php?filepath=/Efile\\_Document/ncltdoc/casedoc/0710102046162019/04/Order-Challenge/04\\_order-Challenge\\_004\\_164663398320050775056225a3ff1754b.pdf](https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102046162019/04/Order-Challenge/04_order-Challenge_004_164663398320050775056225a3ff1754b.pdf)

## **Whether the Registration of assignment is mandatory under Section 7 of the IBC — NCLT Kolkata Bench**

Date of Publication – 23<sup>rd</sup> October, 2023

Date of Judgment – 20<sup>th</sup> October, 2023

*In the case of Manavta Tradelink Pvt. Ltd. Vs. Manikaran Vincom Pvt. Ltd., an application under Section 7 of the code led to the initiation of the Corporate Insolvency Resolution Process (CIRP). The respondent did not dispute the debt amount, mainly expressing concerns about an unregistered assignment. It was clarified that assignment registration wasn't mandatory. The respondent had never contested the assignment and was actively discussing an extension of the loan repayment with interest. Notably, a clear financial debt default exceeding the threshold was established, and an acknowledgment letter prevented it from becoming time-barred. Consequently, the application met all requirements and was approved, initiating the CIRP for the Corporate Debtor.*

Related Link:

[https://nclt.gov.in/gen\\_pdf.php?filepath=/Efile\\_Document/ncltdoc/casedoc/1908134015252023/04/Order-Challenge/04\\_order-Challenge\\_004\\_16977974529408390696532554c54316.pdf](https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/1908134015252023/04/Order-Challenge/04_order-Challenge_004_16977974529408390696532554c54316.pdf)

## **NCLT To Hold Joint Colloquium With MCA And NeSL From 3rd To 5th November 2023, Matters Listed Before NCLT On 03.11.2023 To Be Renotified**

Dated: 27<sup>th</sup> October, 2023

*The National Company Law Tribunal ("NCLT") has issued a circular dated 23.10.2023, intimating that from 3rd to 5th November 2023 the NCLT would be holding a Joint Colloquium with the Ministry of Corporate Affairs ("MCA"), Government of India and National E-Governance Services Ltd. (NeSL).*

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*Since the Members of NCLT Benches would be participating in the Joint Colloquium, the matters listed before their respective NCLT Bench on 03.11.2023 will be re-notified. If any Member is not participating in the Colloquium, then they would hold their Court as usual.*

*Further, if any urgent matter is listed before any NCLT Bench on 03.11.2023, in that case the Counsel may mention the matter before the concerned NCLT Bench prior to 03.11.2023 for early hearing, if required.*

Related Link: [https://www.livelaw.in/pdf\\_upload/nclt-colloquium-500467.pdf](https://www.livelaw.in/pdf_upload/nclt-colloquium-500467.pdf)

## **NCLAT Chennai: Shareholders Cannot Take Decisions for the Company's Business or Hold Negotiations with Parties**

*Dated: 27<sup>th</sup> October, 2023*

*The National Company Law Appellate Tribunal ('NCLAT'), Chennai Bench comprising of Justice M. Venugopal (Judicial Member) and Shreesh Merla (Technical Member) has dismissed an appeal filed by Jitendra Virmani (Appellant) against Mro-Tek Realty Limited ('Company'). The appeal was filed against the order 27.11.2019 passed by the National Company Law Tribunal ('NCLT') Bangalore.*

*The Appellate Tribunal held that the Board of Directors has the onus to take decisions for the Company's business or negotiations with the parties concerned and not the shareholders of the company.*

### **Facts:**

*Proceedings were initiated by the Appellant who was the Chairman and Founder of the Embassy Group against Mro-Tek Realty Limited ('Company') on the grounds of oppression and mismanagement challenging a real estate development undertaken by the Company.*

*Multiple proceedings were initiated by the Appellant before the Civil Courts in Bengaluru. The Appellant withdrew an oppression and mismanagement petition and initiated another proceeding for oppression and mismanagement against the Company, which was dismissed by the NCLT Bangalore. The said order of NCLT Bangalore dated 27.11.2019 was in appeal before the NCLAT Chennai.*

Related Link: [https://www.livelaw.in/pdf\\_upload/nclat-mro-500131.pdf](https://www.livelaw.in/pdf_upload/nclat-mro-500131.pdf)

## **NCLT New Delhi Bench (Court IV) Reconstituted W.E.F. 1st November 2023**

*Dated: 27<sup>th</sup> October, 2023*

*The National Company Law Tribunal ("NCLT") has issued a circular dated 25.10.2023, intimating the reconstitution of NCLT New Delhi Bench (Court IV) with effect from 01.11.2023.*

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Dr. Binod Kumar Sinha (Technical Member) is demitting office on 31.10.2023 on completion of his tenure. The reconstituted bench is as under:

**NCLT New Delhi (Court No. IV) (Second Half)**

- Shri M.S.S. Sundaram (Judicial Member)
- Dr. Sanjeev Ranjan (Technical Member)

Related Link: [https://www.livelaw.in/pdf\\_upload/reconstituted-nclt-delhi-500464.pdf](https://www.livelaw.in/pdf_upload/reconstituted-nclt-delhi-500464.pdf)

## **IBC | Assistant General Manager Signs Inspection Order In Place Of Executive Director Of IBBI, Bombay High Court Stays The Suspension Of Insolvency Professional**

Dated: 27<sup>th</sup> October, 2023

The Bombay High Court bench, comprising Justice B. P. Colabawalla and Justice M.M. Sathaye, while adjudicating a petition filed in Partha Sarathy Sarkar v Insolvency & Bankruptcy Board of India (IBBI) & Ors., has stayed the Suspension Order issued against an Insolvency Professional ("IP") by the Insolvency and Bankruptcy Board of India ("IBBI"). The Inspection Order issued by IBBI against the IP was signed by Assistant General Manager alone, whereas, as per IBBI (Delegation of Powers and Functions) Order, 2017, any action, inspection or investigation order has to be issued by the Executive Director of IBBI.

Related Link: <https://www.livelaw.in/high-court/bombay-high-court/ibc-assistant-general-manager-signs-inspection-order-in-place-of-executive-director-of-ibbi-bombay-high-court-stays-the-suspension-of-insolvency-professional-241012?infinitescroll=1>

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