

Info Capsule

Wednesday
June 23, 2021

President : CS Nagendra D. Rao

Vice President : CS Devendra V. Deshpande

❖ Latest @ ICSI

ICSI International Webinar- 'Developing Leadership in Governance and Risk Management'

The ICSI is conducting a Live Webinar on Developing Leadership in Governance and Risk Management on June 24, 2021(Thursday) at 6:00 PM (IST). Members will be awarded 2 CPE Credit (Unstructured).

For details:

https://www.icsi.edu/media/webmodules/International_Webinar240621.pdf



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

❖ Securities Laws & Capital Market

SEBI Adjudication Order

• In the matter of Himachal Fibres Ltd. (HFL) (June 22, 2021)

SEBI imposed a monetary penalty of Rs 10 lakh on seven entities, to be paid jointly and severally, for executing manipulative trades in small quantities and carrying out connected counterparty trades to increase the price of scrip of HFL thus violated the provisions of Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulation 3(a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of the PFUTP Regulations, 2003.

For details:

https://www.sebi.gov.in/enforcement/orders/jun-2021/adjudication-order-in-respect-of-seven-entities-in-the-matter-of-himachal-fibres-ltd_50655.html

SEBI News

• United Breweries case: SEBI exempts Heineken International from open offer obligation (June 22, 2021)

SEBI exempted Heineken International B V from the obligation of making an open offer following its proposed acquisition of shares in United Breweries Ltd (UBL). The order came after SEBI received an application from Heineken International seeking exemption from the applicability of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in the matter of its proposed acquisition of certain equity shares of UBL from the recovery officer of the Bangalore Debt Recovery Tribunal (DRT) under whose custody the transfer shares owned by the Vijay Mallya Group are being held.

For details:

<https://www.livemint.com/market/stock-market-news/united-breweries-case-sebi-exempts-heineken-international-from-open-offer-obligation-11624369242422.html>

❖ **Banking and Insurance**

- **IIFCL seeks Reserve Bank nod to lend to InvITS, earmarks Rs 4,000 crore (June 22, 2021)**

India Infrastructure Finance Company Ltd (IIFCL) has sought clearance from the banking sector regulator to lend to infrastructure investment trusts, or InvITs, as they are performing well.

For details:

<https://economictimes.indiatimes.com/industry/banking/finance/iifcl-seeks-reserve-bank-nod-to-lend-to-invits-earmarks-rs-4000-crore/articleshow/83749054.cms>

- **Gang steals Rs 48 lakh from SBI cash deposit machines; lender puts withdrawal on hold (June 23, 2021)**

Abusing technology that is meant to help customers, a gang has stolen Rs 48 lakh from various cash deposit machines of State Bank of India in Tamil Nadu. The government owned top lender meanwhile said it has halted the facility to withdraw cash from these machines across the country, as an immediate preventive measure and these could be used only to deposit cash.

For details:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/gang-steals-rs-48-lakh-from-sbi-cash-deposit-machines-lender-puts-withdrawal-on-hold/articleshow/83754492.cms>

- **IDBI Bank privatisation process kicks off (June 23, 2021)**

Kickstarting privatisation process in the banking sector, the government on June 22, 2021 invited bids to appoint transactions and legal advisors to assist in strategic sale of its equity, along with transfer of management control, in IDBI Bank to private players.

For details:

<https://indianexpress.com/article/business/banking-and-finance/idbi-bank-privatisation-process-kicks-off-7371203/>

❖ **Market Watch**

Stock Market Indices as on 23.06.2021

S & P BSE Sensex	52306.08 (-282.63)
Nifty 50	15686.95 (-85.80)

Foreign Exchange Rates as on 22.06.2021

(<https://www.geojit.com/currency-futures/rbi-reference-rate>)

INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
74.05	88.07	102.73	0.67

❖ ***Insolvency and Bankruptcy***

NCLT clears Kalrock-Jalan resolution plan for Jet Airways with riders (June 23, 2021)

The National Company Law Tribunal (NCLT) has cleared the Kalrock-Jalan plan to revive Jet Airways, while rejecting the consortium's demand for historicity of airport slots. The Naresh Goyal-founded airline was shut down in April 2019 under heavy debt.

The tribunal order comes exactly two years after the start of the insolvency proceedings. Jet is the first airline to see resolution under the Insolvency and Bankruptcy Code (IBC). Even as the order paves the way for the grounded airline's revival, the resumption of operations hinges on negotiations between the consortium and the government on the issue of airport slots.

For details:

https://www.business-standard.com/article/companies/jet-airways-resolution-plan-approved-by-nclt-with-riders-121062200702_1.html

❖ ***Competition Law***

CCI prima facie finds Google in violation of abuse of dominance in smart TV OS market, orders probe (June 22, 2021)

The Competition Commission of India (CCI) has prima facie found Google to be in violation of competition laws relating to abuse of dominance in the smart TV operating system (OS) market.

The CCI has ordered its investigative arm, the Director General, to conduct a probe into Google's market practices including for anti-competitive agreements, in an order on Tuesday.

For details:

<https://economictimes.indiatimes.com/industry/cons-products/electronics/cci-prima-facie-finds-google-in-violation-of-abuse-of-dominance-in-smart-tv-os-market-orders-probe/articleshow/83750439.cms>

❖ Pronouncements

June 16, 2021	Zacharia Maramkandathil Mohan and Ors. vs. Union of India	Kerela High Court
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The DINs are not liable to be deactivated solely for the reason that the petitioners stand disqualified for appointment / reappointment as Directors of Companies by operation of Section 164(2) of the Companies Act, 2013.

Fact of the case

More than 200 petitions were filed challenging the Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013 and the disqualification thrust upon the petitioners for acting as Directors of Companies, pursuant to Sections 164 and 167. The petitioners are persons who are disqualified pursuant to Section 164(2) for failure of their respective Companies to file Financial Statements/Annual Returns.

Several important questions of law were raised, including:

- Whether Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013 are ultra vires the Constitution of India, being violative of Article 14 or 19?
- Whether the principles of natural justice should be read into Section 164(2) in view of the nature and severity of consequences arising from its operation?
- Whether Section 164(2) is retrospective in its operation?
- Constitutionality and consequences of the first proviso to Section 164(2) and the proviso to Section 167(1)(a), inserted by the Companies (Amendment) Act, 2017 with effect from May 07, 2018.
- Whether the action of the respondents in deactivating the DINs of the petitioners, is justified?

Judgment

The Kerela High Court ruled that Section 164(2) and Section 167(1) of the Companies Act, 2013 are not ultra vires Article 14 or Article 19(1)(g) of the Constitution of India. Further, Section 164(2) is not retrospective in operation and only the defaults made by Companies in filing Financial Statements / Annual Returns in the financial year 2014-15 and subsequent financial years can be taken into account for disqualifying a Director under Section 164(2) of the Companies Act, 2013.

Furthermore, it was held that The Director Identification Numbers (DINs) of the petitioners allotted under Rule 10 of the Companies (Appointments and Qualifications of Directors) Rules, 2014, are not liable to be deactivated or cancelled solely for the reason that the petitioners stand disqualified for appointment / reappointment as Directors of Companies by operation of Section 164(2).

Consequently, there will be a direction to the respondents to re-activate the Director Identification Numbers (DINs) of the petitioners forthwith. However, it is made clear that the respondents will be at liberty to cancel or deactivate the DINs of the petitioners for any reasons laid down in Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

For details: https://images.assettype.com/barandbench/2021-06/4f5af2d3-47c0-436b-8e8a-eed27c4a50b7/Judgment_WPC_21628_of_2020.pdf

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082116

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वचनं धर्मोः शिरोधार्यं। अमृतं इत्युच्यते।

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