

# Info Capsule

Wednesday  
July 06, 2022

**President : CS Devendra V. Deshpande**

**Vice President : CS Manish Gupta**

## ❖ **Ministry of Corporate Affairs**

### **Appointment of Smt. Anita Shah Akella as ex officio member of IBBI (July 05, 2022)**

In exercise of the powers conferred by section 189 (1)(b) of the Insolvency and Bankruptcy Code, 2016, the Central Government appointed Smt. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA) as ex-officio member in the Insolvency and Bankruptcy Board of India (IBBI) to represent the MCA in IBBI.

*For details:*

<https://egazette.nic.in/WriteReadData/2022/237091.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 Markets**

### **SEBI Circular**

### **Investor Grievance Redressal Mechanism and Amendment to SEBI Circular no. SEBI/HO/DMS/CIR/P/ 2017/15 dated February 23, 2017 (July 04, 2022)**

SEBI has implemented an online platform (SCORES) designed to help investors to lodge their complaints, pertaining to securities market, against listed companies and SEBI registered intermediaries. In line with the same, to enable investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere, all Recognized Stock Exchanges including Commodity Derivatives Exchanges / Depositories are advised to design and implement an online web based complaints redressal system of their own, which will facilitate investors to file complaints and escalate complaints for redressal through Grievance Redressal Committee (GRC), arbitration, appellate arbitration etc. in accordance with their respective byelaws, rules and regulations. The above redressal mechanism shall be implemented within 6 months from the issuance of this circular. The salient features of the system are enclosed as Annexure.

*For details:*

[https://www.sebi.gov.in/legal/circulars/jul-2022/investor-grievance-redressal-mechanism-and-amendment-to-sebi-circular-no-sebi-ho-dms-cir-p-2017-15-dated-february-23-2017\\_60535.html](https://www.sebi.gov.in/legal/circulars/jul-2022/investor-grievance-redressal-mechanism-and-amendment-to-sebi-circular-no-sebi-ho-dms-cir-p-2017-15-dated-february-23-2017_60535.html)

## ❖ **Indirect Tax**

### **Goods and Services Tax**

- **Notification to make amendments (First Amendment, 2022) to the CGST Rules, 2017 (Notification No. 14/2022- Central Tax dated July 05, 2022)**

These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2022.

Rule 21A has been amended to provide that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

Explanation 1 to Rule 43 has been amended to provide that value of supply of Duty Credit Scrips shall not be included for the purpose of reversal of common credits.

For details: [https://www.cbic.gov.in/resources//htdocs-cbec/gst/14\\_2022\\_CT\\_Eng.pdf](https://www.cbic.gov.in/resources//htdocs-cbec/gst/14_2022_CT_Eng.pdf)

## ❖ **Banking and Insurance**

### **HDFC merger gets RBI nod (July 05, 2022)**

HDFC Bank on July 04, 2022 said the Reserve Bank of India (RBI) has approved its amalgamation with Housing Development Finance Corporation (HDFC). Once all approvals are in place, HDFC Bank will become a 100% publicly owned institution, with HDFC's 21% promoter holding getting extinguished. Sashidhar Jagdishan, who became MD & CEO of HDFC Bank in October, 2020 will lead the merged entity. The merger would be the largest in Indian corporate history, creating a financial behemoth with a \$169-billion market capitalisation (the second-largest in India) and will be among the 10 most valued banks in the world. Shareholders of HDFC will receive 42 shares of HDFC Bank for 25 shares of HDFC.

For details:

<https://www.financialexpress.com/industry/banking-finance/hdfc-merger-gets-rbi-nod/2582887/>

## ❖ **Market Watch**

<b>Stock Market Indices as on 06.07.2022</b>	
S & P BSE Sensex	53750.97 (+616.62)
Nifty 50	15989.80 (+178.95)

<b>Foreign Exchange Rates as on 05.07.2022</b> ( <a href="https://www.geojit.com/currency-futures">https://www.geojit.com/currency-futures</a> )			
<b>INR / 1 USD</b>	<b>INR / 1 EUR</b>	<b>INR / 1 GBP</b>	<b>INR / 1 JPY</b>
78.79	82.20	95.43	0.58

## ❖ *Consumer Protection*

### **No hotels or restaurants can add service charge automatically or by default in the food bill (July 4, 2022)**

The Central Consumer Protection Authority (CCPA) has issued guidelines for preventing unfair trade practices and violation of consumer rights with regard to levying of service charge in hotels and restaurants. The guidelines issued by CCPA *inter-alia* stipulate that hotels or restaurant shall not add service charge automatically or by default in the food bill. No collection of service charge shall be done by any other name. No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.

If any consumer finds that a hotel or restaurant is levying service charge in violation to the guidelines, a consumer may make a request to the concerned hotel or restaurant to remove service charge from the bill amount. Also, the consumer may lodge a complaint on the National Consumer Helpline (NCH), which works as an alternate dispute redressal mechanism at the pre-litigation level by calling 1915 or through the NCH mobile app. The consumer may also file a complaint against unfair trade practice with the Consumer Commission. The Complaint can also be filed electronically through e-daakhil portal [www.e-daakhil.nic.in](http://www.e-daakhil.nic.in). Furthermore, the consumer may submit a complaint to the District Collector. The complaint may also be sent to the CCPA by e-mail at [com-ccpa@nic.in](mailto:com-ccpa@nic.in).

Various cases relating to levying of service charge have also been decided by consumer commissions in favor of consumers, holding the same as an unfair trade practice and in violation of consumer rights.

*For details:*

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1839133>

## ❖ *Terminology for today*

### **Yield on Earning Assets**

The yield on earning assets is a popular financial solvency ratio that compares a financial institution's interest income to its earning assets. Yield on earning assets indicates how well assets are performing by looking at how much income they bring in.

❖ **Pronouncement**

<b>Date of Judgment</b>	<b>Case Title</b>	<b>Tribunal</b>
01.07.2022	<i>Mayank Agarwal (Applicant) vs. M/s. Technology Frontiers (India) Private Limited (Respondent Company)</i>	<i>National Company Law Tribunal (Chennai Bench) IA/2/2021 in CP/75/CHE/2021</i>

**Facts of the case:**

The main petition was filed pertaining to ensuring compliance of the mandatory requirements under section 90 of the Companies Act, 2013. Section 90(1) states that every individual holding beneficial interest over the company shall make a declaration specifying the nature of interest in Form BEN-1 within 30 days of acquiring such interest. Further as per Section 90(5) of the Companies Act, 2013 the Company shall also give notice to any person when it has reasonable cause to believe and knowledge of identity of significant beneficial owner.

In the present case the Company Secretary of the respondent company had sent the notice to the applicant under Section 90(5), (who is nominee director of the Respondent Company) on May 3<sup>rd</sup>, 2021 along with the form to disclose their Ultimate Beneficial Ownership of the shares held.

However, the applicant alleged that the company alone is empowered to apply to NCLT under Section-90(7) of the Companies Act, 2013 and Company Secretary has not taken approval from Board of directors to file the present petition.

The Company Secretary of Respondent Company in his written submission stated that he has the locus standi as per the board resolution passed for his appointment which clearly states that “he can perform any duties as required under Companies Act, 2013” and have the authority to enter into pleadings on behalf of company even in absence of formal board authorization. Further, he referred to the provisions of section 205 of the Companies Act 2013, under which he is authorized to represent and that it is his duty to do so.

**NCLT Observed:**

The usage of the words “Company shall give notice” under Section 90(5) makes it amply clear that the Key Managerial Personnel have to do this activity of seeking information; in order to find out the Ultimate Beneficial Owners.

NCLT further observed

“..... The era in which the Company Secretary occupied the position of a glorified clerk in Companies has expired consequent upon evolution of corporate governance and the various compliance requirement in a complex regime so as to protect the interest of the company as well as its various stakeholders.

There is no idealistic overstatement in holding that Company Secretary is required to act not only with adequate diligence while discharging his duties by sounding the knell in order to alert all concerned including the Board of Directors on occasions where he apprehends deviations from sound corporate principles and prudent governance practice in the best interest of the company and its stakeholders; he has to ensure the mandatory compliances by moving the Competent Authority, if not such compliances were failed at the behest of the Board or in the event of a lapse from the Board of Directors.”

### **Held:**

The Company Secretary has acted diligently and promptly to ensure compliance of the mandatory provisions.

“.....To answer the question put forward whether the Company Secretary has the locus standi to file such application we answer the same in **Affirmative** by virtue of the above position of law, it is fairly clear that the company can be represented by the company secretary since he is the Key Managerial Person under section 2(51) of the Companies Act, 2013, officer in default as per section 2(60) of the Companies Act, 2013 and as per the power given under section 205(1)(c ) read with Rule 10(4) of the Companies (Appointment and remuneration of Managerial Personnel) Rules, 2014, it is abundantly clear that the Company Secretary can represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act. The NCLT being a quasi-judicial authority the Company Secretary can very well do the same.”

Hence, the application stand dismissed.

*For details:*

[https://nclt.gov.in/gen\\_pdf.php?filepath=/Efile\\_Document/ncltdoc/casedoc/3305118033382021/04/Order-Challenge/04\\_order-Challenge\\_004\\_165702470256911311562c430be9d3d3.pdf](https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/3305118033382021/04/Order-Challenge/04_order-Challenge_004_165702470256911311562c430be9d3d3.pdf)

### **Prepared by Directorate of Academics**

*For any suggestions, please write to [academics@icsi.edu](mailto:academics@icsi.edu).*

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सत्यं वद। धर्मं चर। इत्येते ते लोकेः शब्देः स्युः ते लोकाः

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