

Info Capsule

Friday
November 20, 2020

President : CS Ashish Garg

Vice President : CS Nagendra D. Rao

❖ Latest @ ICSI

- **CSEET e-bulletin for the month of November 2020 (November 19, 2020)**

The ICSI has published online the 8th Issue of CSEET e-bulletin, for the month of November, 2020

For details:

https://www.icsi.edu/media/webmodules/CSEET/CSEET_e_bulletin_November_2020.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 Adjudicating Orders

- **In respect of Raymond Ltd. (November 19, 2020)**

SEBI imposed Rs 7 lakh fine on Raymond Ltd. for the violation of Clause 49(VII)(D) of the listing agreement as instructed vide SEBI Circular dated April 17, 2014. It was alleged that Raymond Ltd. had failed to take necessary approval for certain related party transactions thereby violating the provisions of Clause 49(VII)(D) of the erstwhile equity listing agreement (amendments introduced vide SEBI circular dated April 17, 2014).

For details:

https://www.sebi.gov.in/enforcement/orders/nov-2020/adjudication-order-in-respect-of-raymond-ltd-_48202.html

- **In respect of 4 entities in the matter of Focus Industrial Resources Limited (FIRL) (November 19, 2020)**

SEBI imposed a total penalty of Rs. 8 lakh on four entities for creating artificial volume in the scrip of FIRL by repeatedly transacting in off market and on market. In view of the same, it was observed that the said entities had violated the provisions of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

For details:

https://www.sebi.gov.in/enforcement/orders/nov-2020/adjudication-order-in-respect-of-4-entities-in-the-matter-of-focus-industrial-resources-limited_48199.html

SEBI NEWS

- **Subrata Roy Must Pay ₹62,600 Crore to Stay Out of Jail : Regulator SEBI (November 20,2020)**

The Securities and Exchange Board of India (SEBI) has petitioned the Supreme Court to direct business tycoon Subrata Roy to pay ₹62,600 crore (\$8.43 billion) immediately, or cancel his parole if he doesn't yield.

The markets regulator said the outstanding liability of the Sahara India Parivar group's two companies and the Group's Chief Roy stand at ₹62,600 crore, including interest.

For details:

<https://www.ndtv.com/business/sahara-group-chief-subrata-roy-must-pay-rs-62-600-crore-to-stay-out-of-jail-regulator-sebi-2327748>

❖ **Banking and Insurance**

- **Maintenance of Escrow Account with a Scheduled Commercial Bank (November 17, 2020)**

A reference is invited to the instructions issued by Reserve Bank of India vide (a) DPSS.CO.PD.No.1164/02.14.006/2017-18 dated October 11, 2017 (updated as on February 28, 2020) on 'Issuance and Operation of Prepaid Payment Instruments (PPIs)'; and (b) November 17, 2020 on 'Regulation of Payment Aggregators (PAs) and Payment Gateways (PGs)'.

2. An authorized PPI Issuer or a PA is required to maintain an escrow account with a scheduled commercial bank on an ongoing basis. With a view to diversify risk and address business continuity concerns, it has been decided to allow one additional escrow account in a different scheduled commercial bank. The relevant instructions are being modified as per Annex 1 and 2 to this circular.

3. These directions are issued under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11996&Mode=0>

❖ **Insolvency and Bankruptcy**

- **Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020 (November 13, 2020)**

In exercise of this power, the IBBI amended the Regulations to specify public announcement made under the Code as financial information. It mandated the Information Utilities to disseminate the public announcement to its registered users, who are creditors of the CD undergoing insolvency proceeding. This is in addition to publishing the public announcement in the newspapers and websites as required in the Regulations.

For details:

<https://www.ibbi.gov.in/uploads/legalframework/8191e81d94683a4f39467229de560ec8.pdf>

❖ Labour Laws

• Occupational Safety, Health and Working Conditions (Central) Rules, 2020 (November 19, 2020)

Ministry of Labour and Employment issued Draft Occupational Safety, Health and Working Conditions (Central) Rules, 2020 for information of all persons likely to be affected thereby, and invited objections and suggestions, if any, which may be addressed to Shri Shivakant Kumar, Under Secretary to the Government of India, Ministry of Labour and Employment, Room No: 17, Shram Shakti Bhawan, Rafi Marg, New Delhi or by email (fasli@dgfasli.nic.in and shivkant.kr@gov.in).

The objections and suggestions should be sent in a proforma containing the following columns:

- (i) specifying the name and address of the persons and organizations ,
- (ii) specifying the rule or sub-rule which is proposed to be modified and
- (iii) specifying the revised rule or sub rule proposed to be submitted and the reasons therefore.

For details:

<http://www.egazette.nic.in/WriteReadData/2020/223194.pdf>

❖ Terminology for Today

• Modified Internal Rate of Return (MIRR)

The modified internal rate of return (MIRR) assumes that positive cash flows are reinvested at the firm's cost of capital and that the initial outlays are financed at the firm's financing cost. By contrast, the traditional internal rate of return (IRR) assumes the cash flows from a project are reinvested at the IRR itself. The MIRR, therefore, more accurately reflects the cost and profitability of a project.

❖ Market Watch

Stock Market Indices as on 20.11.2020	
S & P BSE Sensex	43882.25 (+282.29)
Nifty 50	12859.05 (+87.35)

Foreign Exchange Rates as on 19.11.2020 (https://www.fbil.org.in/#/home)			
INR / 1 USD	INR / 1 GBP	INR / 1 EUR	INR/ 1 JPY
74.2555	98.2697	87.9764	.7153

❖ Pronouncement

November 19, 2020	M/S Kaledonia Jute and Fibres Pvt. Ltd. (Appellant) vs. M/S Axis Nirman and Industries Ltd. & Ors. (Respondents)	The Supreme Court of India
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Any Creditor of a company in Liquidation can seek transfer of winding up plea from High Court to the NCLT

Fact of the case

A petition was filed before the High Court of Allahabad for the winding up of the 1st Respondent company on the ground that the Company was unable to pay its debts. The Appellant herein, claiming to be a creditor of the 1st Respondent herein, moved an application before the NCLT, Allahabad under Section 7 of the Insolvency and Bankruptcy Code, 2016. The claim of the Appellant before the NCLT was that the 1st Respondent was due and liable to pay a sum of Rs.32 lakhs and the company failed to pay the said amount. It also moved an application before the High court seeking a transfer of the winding up petition to the NCLT, Allahabad. This application was rejected by the High Court, on the sole ground that the requirement of Rule 24 had already been complied with and that a winding up order had already been passed. Aggrieved by the order of the High court, the financial creditor has filed this civil appeal.

The main issues that arise for consideration in this appeal are:

- what are the circumstances under which a winding up proceeding pending on the file of a High court could be transferred to the NCLT and
- at whose instance, such transfer could be ordered.

Judgment

The Hon'ble Supreme Court observed that the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The proceeding might have been initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word "party" appearing in the 5th proviso to Section 434 (1) (c) of the Companies Act, 2013 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words "party or parties" would take within its fold any creditor of the company in liquidation.

Further, as observed in *Forech India Limited (supra)*, the object of IBC will be stultified if parallel proceedings are allowed to go on in different fora. Hence, it is held that the Appellant will come within the definition of the expression "party" appearing in the 5th proviso to Section 434(1) (c) of the Companies Act, 2013 and is entitled to seek a transfer of the pending winding up proceedings against the 1st Respondent, to the NCLT.

For details:

https://main.sci.gov.in/supremecourt/2020/8017/8017_2020_31_1501_24702_Judgement_19-Nov-2020.pdf

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082269

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