

Info Capsule

Thursday
January 27, 2022

President: CS Devendra V. Deshpande

Vice President: CS Manish Gupta

❖ **Insolvency and Bankruptcy**

Need for an Insolvency Code tweak for the common man in Budget 2022 (January 25, 2022)

On the eve of budget, the big announcement of last year's budget of establishing a National Asset Reconstruction Company (NARCL) is yet to be implemented due to procedural logjam. The ask in this budget is to introduce new amendments to Insolvency and Bankruptcy Code (IBC Code) that are amenable to implementation and help of common man. Thus change in vis-à-vis Micro, Small and Medium Enterprises (MSMEs), financial service providers, disclosure to exchanges and tribunals will make the functioning of the Code more meaningful for the common man.

For details:

<https://timesofindia.indiatimes.com/business/india-business/need-for-an-insolvency-code-tweak-for-the-common-man-in-budget-2022/articleshow/89120963.cms>



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भारतीय कम्पनी सचिव संस्थान
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❖ **Securities Laws & Capital Markets**

SEBI CIRCULAR

• **Issuance of Securities in dematerialized form in case of Investor Service Requests (January 25, 2022)**

As an on-going measure to enhance ease of dealing in securities markets by investors, SEBI has prescribed that listed companies shall issue the securities in dematerialized form only while processing service request including issue of duplicate securities certificate, claim from unclaimed suspense account, renewal / exchange of securities certificate etc. The securities holder/claimant shall submit duly filled up Form ISR-4 (to be hosted on the website of the Issuer Companies and the RTAs) as per the format attached to this circular along with the documents / details specified therein. The RTA / Issuer Companies shall verify and process the service requests and thereafter issue a 'Letter of confirmation' in lieu of physical securities certificate(s), to the securities holder/claimant within 30 days of its receipt of such request after removing objections, if any. The operational guidelines are detailed in the Annexure - A to this circular.

For details:

https://www.sebi.gov.in/legal/circulars/jan-2022/issuance-of-securities-in-dematerialized-form-in-case-of-investor-service-requests_55542.html

SEBI NOTIFICATION

• **SEBI (Mutual Funds) (Amendment) Regulations, 2022 (January 25, 2022)**

SEBI, vide its notification dated January 25, 2022, has notified the SEBI (Mutual Funds) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. The amendment, *inter alia*, provides that the financial statements and accounts of the mutual fund schemes shall be prepared in accordance with Indian Accounting Standards (IND AS) and any addendum thereto, as notified by the Companies (Indian Accounting Standards)

notified by the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time. Provided that in case there is any conflict between the requirements of IND AS and these regulations and guidelines issued thereunder, the asset management companies shall follow the requirements specified under SEBI (Mutual Fund) Regulations.

For details:

<https://egazette.nic.in/WriteReadData/2022/232913.pdf>

SEBI NEWS

• **SEBI bans 14 entities in Lux Industries insider trading case (January 25, 2022)**

Capital markets regulator SEBI barred 14 entities for indulging in insider trading and ordered impounding ill-gotten gains of Rs 2.94 crore in the matter of Lux Industries Ltd. The surveillance alert system of SEBI had detected suspicious trading pattern in the scrip of Lux around the announcement dated May 25, 2021 regarding the audited financial results for the quarter and financial year ended March 31, 2021, wherein substantial increase in profits both on a quarter-on-quarter as well as a year-on-year basis was observed. On an analysis of the alerts on the announcement related to financial results, SEBI found that a group of connected/ related entities were observed to have taken long positions in the scrip. Subsequently, the entities squared off the said long positions, thereby generating substantial profits.

For details:

https://www.business-standard.com/article/companies/sebi-bans-14-entities-in-lux-industries-insider-trading-case-122012401458_1.html

❖ **Indirect Tax**

Goods and Services Tax

• **Deployment of Interest Calculator in GSTR-3B (January 26, 2022)**

The new functionality of interest calculator in GSTR-3B is now live on the GST Portal. This functionality will facilitate & assist the taxpayers in doing self-assessment. This functionality will arrive at the system computed interest on the basis of the tax liability values declared by the taxpayers, along with the details about the period to which it pertains. The interest applicable, if any, will be computed after the filing of the said GSTR-3B and will be auto-populated in the Table-5.1 of the GSTR-3B of the next tax-period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B. This functionality will inform the taxpayers about the manner of system computed interest for each tax-head and hence will assist the taxpayers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.

For details:

<https://www.gst.gov.in/newsandupdates/read/520>

❖ **Ethics and Governance News**

- SEBI notifies stricter norms for appointment of MD at listed cos (January 25, 2022)**
 Putting in place stringent norms, SEBI has said that a person rejected by shareholders at a general meeting can be appointed or re-appointed as a managing director or whole time director or manager, only after providing detailed justifications and ensuring compliance with various conditions. "The appointment or a re-appointment of a person, including as a Managing Director (MD) or a Whole Time Director (WTD) or a Manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders," SEBI said in a notification on Monday.

For details:

<https://economictimes.indiatimes.com/markets/stocks/news/sebi-notifies-stricter-norms-for-appointment-of-md-at-listed-cos/articleshow/89119176.cms>

- SEBI asks PFS to address CG issues before holding board meet, seeks report in 4 weeks (January 24, 2022)**

The Securities and Exchange Board of India (SEBI) has asked PTC India Financial Services (PFS) to address corporate governance and other issues raised by its former Chairman and outgoing Independent Directors, before holding its board meeting. The capital markets regulator has also asked PFS to file an Action Taken Report on these issues within four weeks, the company said in a regulatory filing.

For details:

<https://economictimes.indiatimes.com/markets/stocks/news/sebi-asks-pfs-to-address-cg-issues-before-holding-board-meet-seeks-report-in-4-weeks/articleshow/89088971.cms>

❖ **Market Watch**

Stock Market Indices as on 27.01.2022

S & P BSE Sensex	57276.94 (-581.21)
Nifty 50	17110.15 (-167.80)

Foreign Exchange Rates as on 25.01.2022

(<https://www.fbil.org.in/#/home>)

INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
74.63	84.31	100.63	0.66

❖ Pronouncements

19/01/2022	CBRE South Asia Pvt. Ltd. (Appellant) Vs. M/s United Concepts and Solutions Pvt. Ltd. (Respondent)	NCLT New Delhi Bench (IB)-797(ND)2021
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Interest amount cannot be clubbed with the Principal amount of debt to arrive at the minimum threshold of Rs.1 Crore for complying with the provision of Section 4 of IBC, 2016

Brief Facts

M/s. CBRE South Asia Pvt. Ltd., has filed the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. United Concepts and Solutions Pvt. Ltd. (for brevity the 'Corporate Debtor'). During the course of preliminary hearing while going through the Part IV of the Application, it was observed by NCLT New Delhi Bench that the Applicant has claimed a total amount of Rs.1,39,84,400/- as Operational Debt, out of which Rs.88,50,886/- only is the Principal amount and the remaining Rs.51,33,514/- is the interest component. Since the principal outstanding claimed by the Operational Creditor is less than Rs. 1 Crore, a query to the Applicant was raised by NCLT New Delhi Bench as to whether the Principal and Interest amounts can be clubbed together to reach the minimum threshold of Rs. 1 Crore as stipulated under Section 4 of IBC, 2016.

Judgment

Since an Application under Section 9 can only be filed on "occurrence of default", therefore, NCLT New Delhi Bench examined the definition of "default" as defined under Section 3(12) & "debt" as defined under Section 3(11) & claim" as defined under Section 3(6) of IBC, 2016. Further, the Hon'ble Bench also examined "Operational Debt" and "Financial Debt" as defined under section 5(21) & 5(8) of IBC, 2016 respectively and referred to the finding was given by the NCLT Chandigarh Bench in the matter of *M/s. Wanbury Ltd. Vs. M/s. Panacea Biotech Ltd.* in CP No. 8/2016 dated 18.04.2017.

From the above discussion, NCLT Bench observed that the "interest" can be claimed as the Financial Debt, but neither there is any provision nor any scope to include the interest to constitute as the Operational Debt. The Interest amount cannot be clubbed with the Principal amount of debt to arrive at the minimum threshold of Rs.1 Crore for complying with the provision of Section 4 of IBC, 2016.

For details:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102154392021/04/Order-Challenge/04_order-Challenge_004_1642672166148082997661e9302640fec.pdf

❖ *Terminology for today*

Gray Box

Gray box refers to the testing of software where there is some limited knowledge of its internal workings. Gray box testing is an ethical hacking technique where the hacker has to use limited information to identify the strengths and weaknesses of a target's security network.

Prepared by Directorate of Academics

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

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