

### Vision

"To be a global leader in promoting good corporate governance"

### Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु तपुः। श्रेयते इयं कुरु।

### Mission

"To develop high calibre professionals facilitating good corporate governance"

Friday, November 10, 2023

# Info Capsule

*President*

**CS Manish Gupta**

*Vice President*

**CS B Narasimhan**

## ❖ Latest @ ICSI

### Feedback on Company Forms in MCA21-V3 Portal

As you are aware, the Ministry of Corporate Affairs w.e.f. August 31, 2022 migrated filing of 9 Company Forms from MCA 21 V2 to V3 Portal.

The Ministry of Corporate Affairs w.e.f. January 23, 2023, has launched second set of Company Forms covering 56 forms on MCA21-V3 Portal for filing purposes. The list of all 56 Company Forms is available on MCA website.

The Institute of Company Secretaries of India, in its attempt to further facilitate the stakeholders and ensure smooth transition and implementation, is sharing your feedback to the Ministry of Corporate Affairs (MCA) on regular basis. Such feedback is constantly and closely monitored by MCA at all levels for timely resolution.

We request you to share your inputs/issues/suggestions on filing of Company Forms in MCA V3 at the link given below:

<https://forms.gle/m5NGoCbt4TibuD196>

We thank you for your continued support and hope for association in the future as well.

## ❖ Banking

### • RBI governor Das pitches linking fast payments of India, Japan (November 09, 2023)

Reserve Bank of India (RBI) governor Shaktikanta Das on November 09, 2023 suggested linking fast payment platforms of India and Japan for easy cross-border transfers. India's UPI (unified payments interface) has spurred development of new payment-related products and services, Das said, adding that linking the UPI with fast payment systems of other countries is being undertaken. "Linkage of fast payment systems of India and Japan may also be explored to leverage the power of fintech and make cross-border payments more efficient and less costly," he said at the Symposium on Indian Economy 2023 in Tokyo.

*For details:*

<https://www.livemint.com/industry/banking/rbi-governor-das-pitches-linking-fast-payments-of-india-japan-11699515055340.html>

### • Banks aim to launch wholesale CBDC by January next year (November 10, 2023)

Banks are likely to launch wholesale Central Bank Digital Currency (CBDC) by January next year as they move cautiously to test the infrastructure for the digital currency for companies. In the first phase, the lenders will target Small and Medium Enterprises (SMEs) to ensure a smooth roll-out of the system. The Reserve Bank of India (RBI) launched the wholesale pilot of CBDC on November 1 last year to settle secondary market transactions in government securities.

*For details:*

<https://www.financialexpress.com/business/banking-finance-banks-aim-to-launch-wholesale-cbdc-by-january-next-year-3303506/>

## ❖ *Insolvency and Bankruptcy*

### **Insolvency and Bankruptcy Code: Personal guarantors get no SC reprieve (November 09, 2023)**

In a landmark judgment, the Supreme Court on November 09, 2023, Thursday refused to give reprieve to personal guarantors in case of default by a company under the Insolvency and Bankruptcy Code (IBC). The court upheld the constitutionality of key provisions of the IBC, including the initiation of insolvency proceedings against such guarantors.

Over 200 petitions had been filed against various provisions of the IBC, such as applications by creditors to initiate the insolvency resolution process against personal guarantors, interim moratorium, and appointment of the resolution professional (RP).

Reliance Group Chairman Anil Ambani, who was among the petitioners, had said in his appeal that the IBC left personal guarantors without any remedy and at the mercy of RPs. In 2017, two loan accounts of Reliance Communications and Reliance Infratel Ltd — both part of Reliance Group — were classified as non-performing assets, and personal insolvency was initiated against Ambani, who was the guarantor.

Upholding the provisions, the three-judge Bench of Chief Justice D Y Chandrachud and justices J B Pardiwala and Manoj Misra said the IBC provisions did not suffer from arbitrariness and were constitutionally sound. “The IBC cannot be held to be operating in a retroactive manner in order to hold it violative of the Constitution. Thus, we

hold that the statute does not suffer from the vices of manifest arbitrariness,” the Bench said.

The petitioners had challenged the constitutional validity of the IBC on grounds like absence of due process and violation of natural justice principles. The main issue, they had said, was that the personal guarantor was not given an opportunity to present their case or contend the initiation of the insolvency resolution process or have a say in the appointment of the RP.

*For details:*

*[https://www.business-standard.com/companies/news/sc-upholds-ibc-says-provisions-don-t-have-vices-of-arbitrariness-123110900796\\_1.html](https://www.business-standard.com/companies/news/sc-upholds-ibc-says-provisions-don-t-have-vices-of-arbitrariness-123110900796_1.html)*

## ❖ *Market Watch*

| <b>Stock Market Indices as on<br/>10.11.2023</b> |                    |
|--|--------------------|
| S & P BSE Sensex                                 | 64,904.68 (+72.48) |
| Nifty 50   | 19,425.30 (+30.05) |

| <b>Foreign Exchange Rates as on 10.11.2023</b><br><i>(<a href="https://m.rbi.org.in/scripts/ReferenceRateArchive.aspx">https://m.rbi.org.in/scripts/ReferenceRateArchive.aspx</a>)</i> |                    |                    |                    |
|--|--------------------|--------------------|--------------------|
| <b>INR / 1 USD</b>   | <b>INR / 1 EUR</b> | <b>INR / 1 GBP</b> | <b>INR / 1 JPY</b> |
| 83.35  | 88.91              | 101.93             | .5506              |

## ❖ Pronouncement

|                      |  |   |
|----------------------|--|---|
| November 07,<br>2023 | Thankamma Baby (Appellant)<br>vs.<br>The Regional Provident Fund Commissioner,<br>Kochi, Kerala (Respondent) | Supreme Court of India<br>Civil Appellate Jurisdiction Civil<br>Appeal No. 4619 of 2010 |
|----------------------|--|---|

**Issue Involved:** Interpretation of Section 1(3) (b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Section 1(3) states that subject to the provisions contained in section 16, EPF Act applies—

- to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and
- to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:**

### Judgement

The Hon'ble Apex Court in the above case referred to the case of *Mohmedalli and others V. Union of India and another, 1963 Supp (1) SCR 993*, wherein the Constitution Bench of Supreme Court has dealt with the issue of interpretation of the provisions of the 1952 Act and in particular sub-Section (3) of Section 1 of the 1952 Act. The Constitution Bench held that:

- The 1952 Act was made to institute provident funds for the benefit of the employees in factories and other establishments;**
- The provisions of the 1952 Act constitute social justice measures; and**
- The underlying idea behind the provisions of the 1952 Act is to bring all kinds of employees within its fold as and when the Central Government might think it fit after reviewing each class of establishments.**

**After considering clause (a) of sub-Section (3) of Section 1, the Constitution Bench held that, in so far as establishments which do not come within the description of the factories engaged in industries enumerated in schedule I are concerned, the Central Government has been vested with the power of specifying such establishments or class of establishments as it might determine to be brought within the purview of the 1952 Act.**

Further, Supreme Court observed that Clause (a) of sub-Section (3) is applicable only to those factories engaged in any industry specified in Schedule I. Clause (b) of sub-Section (3) is applicable to all other establishments which are not covered by clause (a) of sub-Section (3) provided such establishments are notified by a notification issued by the Central Government which is published in the official Gazette. Clause (b) of sub-Section (3) takes within its fold all establishments which are not covered by clause (a). Therefore, a notification under clause (b) can be issued in respect of factories engaged in any industry which is not specified in Schedule I.

For details:

[https://main.sci.gov.in/supremecourt/2009/39284/39284\\_2009\\_9\\_1501\\_48155\\_Judgement\\_07-Nov-2023.pdf](https://main.sci.gov.in/supremecourt/2009/39284/39284_2009_9_1501_48155_Judgement_07-Nov-2023.pdf)

**Prepared by Directorate of Academics**

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

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