

Info Capsule

Thursday, August 24, 2023

President
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❖ 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.

❖ Securities Laws & Capital Market

SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 (August 23, 2023)

The SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification a new Chapter VIA has been inserted which provides the framework for voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares and obligations of the listed entity on such delisting. The provisions of this Chapter VIA shall be applicable to voluntary delisting of all listed non-convertible debt securities or non-convertible redeemable preference shares from all or any of the stock exchanges where such non-convertible debt securities or non-convertible redeemable preference shares are listed except a few mentioned in the notification.

For details:

<https://egazette.gov.in/WriteReadData/2023/248255.pdf>

❖ Banking

Enhancing transaction limits for Small Value Digital Payments in Offline Mode (August 24, 2023)

The Reserve Bank of India had issued a circular on January 03, 2022 on "Framework for Facilitating Small Value Digital Payments in Offline Mode". As announced in the Statement on Development and Regulatory Policies dated August 10, 2023, the upper limit of an offline payment transaction is increased to ₹500.

For details:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12531&Mode=0>

❖ *Business and Economic News*

Government e-Marketplace surpasses INR 1 lakh crore Gross Merchandise Value milestone in record time (August 23, 2023)

Accelerated growth, increased efficiency and unwavering trust propel Government e-Marketplace (GeM) to achieve an impressive milestone, crossing INR 1 lakh crore in Gross Merchandise Value (GMV) within a remarkable span of 145 days in the current financial year, FY 2023-24. This outstanding achievement underscores GeM's commitment to revolutionizing government procurement and signifies a substantial improvement compared to the previous year, where this GMV landmark was reached in 243 days. The average GMV per day has also witnessed significant growth from INR 412 crore per day in FY 22-23 to INR 690 crore per day in FY 23-24.

This notable milestone firmly establishes GeM as one of the largest public procurement portals globally, both in terms of transaction value and the breadth of the buyer-seller network within its unified digital ecosystem. Since inception, GeM has crossed INR 4.91 Lakh Crore in GMV and has facilitated over 1.67 crore orders on the platform.

Among the noteworthy contributors to this remarkable GMV achievement, the contribution of Central Public Sector Enterprises (CPSEs), Central Ministries and State Governments has been 54%, 26% and 20% respectively.

Additionally, GeM's efforts to foster inclusivity and accessibility have been commendable. The platform's integration with e-Gram Swaraj to streamline Panchayat-level procurement exemplifies its commitment to reaching last-mile sellers and optimizing costs at the grassroots level of administration.

Looking ahead, GeM's vision encompasses a wider federal reach, customized processes, and policies that will enhance public savings while upholding the highest quality standards for products and services. Its remarkable performance in achieving the INR 1 lakh crore GMV milestone within an accelerated time frame not only reflects its growth trajectory but also solidifies its position as the key player in transforming government procurement practices in the country.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1951461>

❖ *Market Watch*

Stock Market Indices as on 24.08.2023	
S & P BSE Sensex	65252.34 (-180.96)
Nifty 50	19386.70 (-57.30)

Foreign Exchange Rates as on 24.08.2023 <i>(https://m.rbi.org.in/Scripts/ReferenceRateArchive.aspx)</i>			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
82.55	89.73	105.02	.5690

❖ *Consumer Protection*

National Consumer Disputes Redressal Commission dismisses appeal by Clouddtail against Order passed by Central Consumer Protection Authority (August 23, 2023)

The National Consumer Disputes Redressal Commission (NCDRC) has dismissed an appeal filed by Clouddtail India Pvt. Ltd. challenging the Order passed by the Central Consumer Protection Authority (CCPA) with regard to violation of the rights of consumers by the company for sale of domestic pressure cookers to consumers in violation of mandatory BIS standards.

In its Order, CCPA had directed the company to recall the 1,033 units of domestic pressure cookers sold by it to consumers and reimburse the prices of the recalled pressure cookers to consumers and submit a compliance report within 45 days. The company was also directed to pay penalty of ₹1, 00,000 for sale of pressure cookers in violation to QCO and violating the rights of consumers.

Clouddtail India Pvt. Ltd. is the seller of pressure cooker namely “Amazon Basics Stainless Steel Outer Lid Pressure Cooker, 4 L (does not give pressure alert by whistle)”. The pressure cooker was being offered for sale to consumers on Amazon e-commerce platform at the URL <https://www.amazon.in/AmazonBasics-Stainless-Steel-Pressure-Cooker/dp/B071G5KNXK>.

As per the QCO which came into force on 01.02.2021, domestic pressure cookers are mandated to conform to Indian Standard (IS) 2347: 2017 and bear the standard mark under a license from the Bureau of Indian Standards (BIS) as per Scheme-I of Schedule II of Bureau of Indian Standard (Conformity Assessment) Regulations, 2018.

Pertinently, domestic pressure cookers are among the most commonly used everyday items in households, and are present in the immediate vicinity of family members. Therefore, a domestic pressure cooker, which violates the mandatory requirements of the QCO can prove to be extremely fatal and dangerous for the life and safety of consumers and public at large.

In the present case, Clouddtail was observed to be selling domestic pressure cookers to consumers without conforming to the prescribed mandatory standards and without the standard (ISI) mark under the license from the BIS. The non-certified pressure cooker was being sold by Clouddtail to consumers in India even after the QCO came into force.

Clouddtail had submitted in its reply to CCPA that after the QCO came into force, it had suspended the import of the pressure cookers. It was observed by CCPA that though import was suspended, the company had not stopped the sale of such pressure cookers to consumers. In fact, this submission evidently indicated that despite being aware of the QCO, the company was still selling such pressure cookers to consumers at large.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1951354>

❖ *Competition Law*

CCI Issues Desist Order Against Chandigarh Housing Board For Indulging In Anti-Competitive Practices (August 23, 2023)

The Competition Commission of India (CCI) issued an order under Section 27 of the Competition Act, 2002 (“Act”) on 22.08.2023 holding Chandigarh Housing Board (CHB) to be in contravention of the provisions of Section 4(2)(a)(i) read with Section 4(1) of the Act.

The case was initiated on the basis of an Information filed by Mr. Ramesh Kumar, an allottee of a flat offered under a Self-Financing Housing Scheme (“Scheme”) floated by CHB in the year 2010.

It was alleged that CHB has abused its dominant position under Section 4 of the Act, inter alia, by imposing unfair terms and clauses on the allottees, failure on behalf of CHB to disclose the date of possession of the flats to the allottees in its Brochure and/or Acceptance- Cum- Demand Letter (ACDL), and levy of penal interest for full month even for delay of one day.

Having delineated the relevant market as the “market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh”, the Commission found CHB to be in a dominant position so as to operate independently of the competitive forces prevailing in the relevant market. The Commission also found non-disclosure of date of delivery of possession to applicants of the flats and levying penal interest for full month on account of delay of one day in credit of instalment to be an abuse of dominant position under section 4(2)(a)(i) of the Act.

Considering the fact that corrective measures have already been taken by CHB, the CCI refrained from imposing any monetary penalty upon CHB.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1951426>

❖ *Terminology for today*

Thematic investing

When used in the context of ESG, this refers to investing in companies with a strategy that focuses on a defined theme or trend, such as renewable energy, climate change, water management or access to healthcare.

❖ **Pronouncement**

August 10, 2023	Irshad Ahmad Qureshi & Anr.{ Petitioner(s)} Vs. State of J&K & Others{Respondent(s)}	High Court of Jammu & Kashmir and Ladakh OWP No.1194/2011 c/w OWP No.757/2018 OWP No.820/2017
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Does simultaneous prosecution under the provisions of the PMLA & UAPA are Double Jeopardy?

In the instant case, Hon'ble High Court observed that the offence of money laundering involves the act of indulging in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. So far as the offences under ULA (P) Act, for which the petitioners have booked, are concerned, they relate to using of funds of an unlawful association, raising of funds for unlawful association and being a member of a terrorist organization. These offences are clearly distinguishable from the offence under Section 3 of the PMLA. Therefore, by no stretch of imagination, it can be stated that the petitioners have been subjected to double jeopardy by initiating prosecution against them under the provisions of the PMLA.

..... This question has been answered by the Supreme Court in *Vijay Madanlal Choudhary and others vs. Union of India and others, 2022 SCC Online SC 929* para 270 of the judgment by holding as under:

"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money -laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence.

.....
From a perusal of the afore-quoted observations of the Supreme Court, it is clear that even if a criminal activity has been committed before the same had been notified as a Scheduled offence for the purpose of the PLMA, still then if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as Scheduled offence, the said person is liable to be prosecuted for the offence of money-laundering. Therefore, merely because the predicate offence in the instant case dates back to a period when such offence was not incorporated in the Schedule to the PLMA, it cannot be stated that that the petitioners cannot be prosecuted for the offence under the PMLA.

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu.

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