



Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु। तृप्तये। श्रेयते। by the best

Mission

"To develop high calibre professionals facilitating good corporate governance"

Wednesday, November 29, 2023

Info Capsule

President

CS Manish Gupta

Vice President

CS B Narasimhan

❖ **Securities Laws & Capital Market**

SEBI proposes amendment to Special Situations Fund to allow AIFs to buy stressed assets (November 28, 2023)

The market regulator has proposed to amend the regulatory framework for a category of Alternative Investment Funds, called the Special Situation Funds (SSFs), so that the SSFs can acquire stressed loans, according to a consultation paper floated on November 28, 2023. This will mean the amendment of AIF Regulations. The consultation paper said that, with stressed loans in the Indian financial system, AIFs were considered as a potential source of risk capital to supplement the efforts of Asset Reconstruction Companies (ARCs). This would also free up capital in banks and non-banking financial corporations, and so on. Therefore, in December 2021, SEBI introduced SSF as a new sub-category of AIF-I which would invest in special situation assets including stressed loans. SSF were allowed to acquire stressed loan in terms of Clause 58 of RBI Master Directions, upon inclusion of SSF in the Annex of RBI Master Directions. But to be included in the Annex of RBI Master Circular, the central bank said that SEBI must put in place a regulatory framework for this in consultation with the central bank.

For details:

<https://www.moneycontrol.com/news/business/markets/sebi-proposes-amendment-to-special-situations-fund-to-allow-aifs-to-buy-stressed-assets-11823901.html>

❖ **Banking**

• **RBI bulletin lists factors that helped make monetary policy impactful (November 29, 2023)**

The External Benchmark-Based Lending Rate (EBLR) system of loan pricing, calibrated normalisation of surplus liquidity and robust credit growth strengthened the monetary policy transmission during the current rate tightening cycle, according to an article in the Reserve Bank of India's (RBI's) monthly bulletin. Monetary policy in the country moved into a tightening mode in May 2022 amidst inflationary pressures emanating from the conflict in Ukraine, rise in international commodity prices, disruption of supply chains and volatility in global financial market.

For details:

<https://indianexpress.com/article/business/banking-and-finance/surplus-liquidity-normalisation-robust-credit-growth-bolstered-monetary-policy-transmission-rbi-article-9044886/>

• **Centre checks on banks' cyber fraud readiness (November 29, 2023)**

The Government on November 29, 2023 took stock of the preparedness of the banks and other financial institutions in tackling the challenges arising from cybersecurity in the financial services sector and increasing digital payment frauds. The Government has already suspended seven million mobile numbers on account of suspicious transactions, financial services secretary Vivek Joshi said. So far, Rs. 900 crore defrauded money has been saved, benefiting 350,000 victims, the finance ministry noted in a statement.

For details:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/centre-checks-on-banks-cyber-fraud-readiness/articleshow/105572403.cms>

❖ **Pronouncement**

November 21, 2023	Ramkrishna Forgings Limited (Appellant) Vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.(Respondents)	Supreme Court of India Civil Appeal No.1527 of 2022
-------------------	----------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------

Committee of Creditors (CoC) decision is not to be subjected to unnecessary judicial scrutiny and intervention under IBC

Brief Facts

Application seeking approval of a Resolution Plan for ACIL Limited i.e. the “Approval Application” was kept in abeyance by NCLT while directing the Official Liquidator to carry out a re-valuation of the assets of the Corporate Debtor and to provide exact figures/value of the assets and exact valuation details. Further, the “NCLAT” upheld the order passed by the NCLT. The present appeal under Section 62 of IBC before the Hon’ble Supreme Court against the Impugned Judgment passed by the NCLAT.

Judgement

Hon’ble Supreme Court inter alia observed that having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver’s seat, so to say, of the Corporate Debtor. **K Sashidhar** (supra) and **Committee of Creditors of Essar Steel India Ltd.** (supra) are clear authorities that the CoC’s decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in **Maharashtra Seamless Limited** (supra), which also emphasised that the CoC’s commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In **Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401**, the Court concluded that ‘... **in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of “commercial wisdom”**, NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.’ (Para 27)

For details:

<https://ibbi.gov.in/uploads/order/27af15307f30c2cddcbfa2134bb676f7.pdf>

❖ Cabinet

Cabinet approves Terms of Reference for the Sixteenth Finance Commission (November 29, 2023)

The Union Cabinet chaired by the Prime Minister, Shri Narendra Modi has approved the Terms of Reference for the Sixteenth Finance Commission.

The Terms of Reference for the Sixteenth Finance Commission will be notified in due course of time. The 16th Finance Commission's recommendations, upon the acceptance by the government, would cover the period of five (5) years commencing April 1, 2026.

Article 280(1) of the Constitutions lays down that the modalities for setting up of a Finance Commission to make recommendation on the distribution of net proceeds of taxes between the Union and the States, allocation between the States of respective shares of such proceeds; grants- in-aid and the revenues of the States and measures needed to supplement the resources of the Panchayats during the award period.

The Fifteenth Finance Commission was constituted on November 27, 2017. It made recommendations covering the period of six years commencing on 1st April, 2020 through its Interim and Final Reports. The recommendations of the Fifteenth Finance Commission are valid upto the financial year 2025-26.

Terms of Reference for the Sixteenth Finance Commission:

The Finance Commission shall make recommendations as to the following matters, namely:

- i. The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under Chapter I, Part XII of the Constitution and the allocation between the States of the respective shares of such proceeds;
- ii. The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and the sums to be paid to the States by way of grants-in-aid of their revenues under article 275 of the Constitution for the purposes other than those specified in the provisos to clause (1) of that article; and
- iii. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1980688>

❖ Market Watch

Stock Market Indices as on 29.11.2023	
S & P BSE Sensex	66,901.91 (+727.71)
Nifty 50	20,096.60 (+206.90)

Foreign Exchange Rates as on 29.11.2023 (https://m.rbi.org.in//scripts/ReferenceRateArchive.aspx)			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY
83.31	91.64	105.92	.5659

Prepared by Directorate of Academics

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

Disclaimer : Although due care and diligence have been taken in preparation and uploading this info capsule, the Institute shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this info capsule. Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.