

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टार्कं कुरु। त्वात्के। अवेदं ह्यु कुरु। इव।

Mission

"To develop high calibre professionals facilitating good corporate governance"

Info Capsule

Thursday, August 31, 2023

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.

❖ Securities Laws & Capital Market

• Consultation Paper on flexibility in the framework on Social Stock Exchange (SSE) (August 29, 2023)

SEBI has released a consultation paper to seek comments from the public on flexibility in the framework on Social Stock Exchange (SSE). The views are sought on various queries related to reduction in minimum issue size NPOs issuing Zero Coupon Zero Principle Instrument (ZCZP), reduction in minimum application size NPOs issuing ZCZP, NPOs registration under Section 10(23C) and 10(46), substitution of the term Social Auditor with Social Impact Assessor, relaxation with the provisions of Chapter X-A (Social Stock Exchange) of the ICDR Regulations. The comments may be sent latest by September 19, 2023 in the prescribed format.

For details:

<https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-flexibility-in-the-framework-on-social-stock-exchange-sse-76054.html>

• Guidelines for MIIs regarding Cyber security and Cyber resilience (August 29, 2023)

SEBI vide this circular has issued guidelines for strengthening the existing cyber security and cyber resilience framework of MIIs. These guidelines should be read in conjunction with the applicable SEBI circulars and subsequent updates issued by SEBI from time to time and are placed at Annexure-A to this circular. The compliance of the guidelines shall be provided by the MIIs along with their cybersecurity audit report. The compliance shall be submitted as per the existing reporting mechanism.

For details:

https://www.sebi.gov.in/legal/circulars/aug-2023/guidelines-for-miis-regarding-cyber-security-and-cyber-resilience_76056.html

❖ **Pronouncement**

14th July, 2023	Ravindra Kumar Goyal (Appellant) vs. Committee of Creditors of Yashasvi Yarns Limited (Respondents)	National Company Law Appellate Tribunal Principal Bench, New Delhi Company Appeal (AT) (Insolvency) No. 809 of 2023
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Payment of Performance Linked Incentive Fee to the Resolution Professional is the discretionary power vested with the CoC under Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Brief facts

The CoC of the Corporate Debtor rejected the claim of performance incentive fee as claimed by the Appellant Resolution Professional. The RP filed an IA before the Adjudicating Authority [NCLT] seeking direction to be issued to the CoC for the grant of performance incentive, which was rejected by the Adjudicating Authority. Hence the appeal before the NCLAT

Judgement

The Hon'ble National Company Law Appellate Tribunal inter alia observed that Sub-Regulation 4 of Regulation 34B provides for "THAT THE COMMITTEE MAY DECIDE, IN ITS DISCRETION, TO PAY PERFORMANCE LINKED INCENTIVE FEE". The use of two expressions "MAY" and "IN ITS DISCRETION" makes it clear that the provision is enabling provision which vests discretion in the Committee of Creditors to pay performance linked incentive fee.

When a body is granted discretionary power it implies a freedom of choice, Hon'ble Supreme Court in (2013) 6 SCC 573, *State of Kerala & Ors. Vs. Kandath Distilleries* while examining the nature of discretionary power made following observations in Paragraph 28:

"28. Discretionary power implies freedom of choice, a competent authority may decide whether or not to act. The legal concept of discretion implies power to make a choice between alternative courses of action (Discretionary Justice Davis 1969). Statute has conferred discretionary power on the Commissioner and State Government but not discretion coupled with duty because they are dealing with a subject matter on which State has exclusive privilege. Permissive language used by the Statute in Section 14 and the rule making authority in Rule 4 gives the State Government and the Commissioner, no mandatory duty or obligation to grant the licence except perhaps to consider the application, if the liquor policy permits so."

Hon'ble Supreme Court again in (2021) 10 SCC 401, *Kalpraj Dharamshi Vs. Kotak Investment Advisors Ltd.* reiterated that limited judicial review which is available to the Adjudicating Authority and Appellate Authority can in no circumstances entitle to review the business decision arrived at by the majority of the CoC.

The decision taken by the CoC in not approving the payment of performance linked incentive fee to the Appellant thus cannot be faulted and is in accord with the discretionary power vested with the CoC under Regulation 34B. Appellant at best was entitled for consideration of his claim under statutory scheme. When claim is considered and not approved, Appellant has no right to claim that he was mandatorily entitled for payment of performance linked incentive fee.

For Details:

<https://ibbi.gov.in/uploads/order/70003813092c4c71e6d942ca94e640ca.pdf>

❖ **Business and Economics News**

In last 9 years, MSME Tool Room and training centres provided training to 16 lakh youth, 3 lakh MSME units were benefitted : Shri Narayan Rane (August 30, 2023)

On the occasion of 'National Small Industries Day', Union Minister for Micro, Small and Medium Enterprises Shri Narayan Rane took to Twitter to announce that 16 lakh youth have been trained subsequently benefiting over 3 lakh MSME units in the last 9 years, through 18 tool rooms and technology centres run by the Ministry of MSME across the country. These tool rooms and technology centres are also providing step by step support in manufacturing state of the art products.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1953578>

❖ **Terminology for Today**

Double Materiality

Assessment of an issue's significance from two angles: both its impact on the company, and the impact on environment and society, caused by the company.

Market Watch

Stock Market Indices as on 31.08.2023	
S & P BSE Sensex	64,831.41 (-255.84)
Nifty 50	19,253.80 (-93.65)

Foreign Exchange Rates as on 31.08.2023 (https://www.rbi.org.in/scripts/ReferenceRateArchive.aspx)			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY
82.68	105.09	90.22	0.57

Prepared by Directorate of Academics

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

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