

STUDENT COMPANY SECRETARY

[e-Journal for Executive and Professional Students]

May
2021
05

New Labour Reforms and Role of CS



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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[e-Journal for Executive & Professional Students]

May 2021

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Content

From the President	1
Recent Initiatives for Students	3
Articles	6
Practice Mentor	23
Regulatory Update	32
Company Law Corner	70
Legal Maxims	87
Legal World	89
Training	98
Membership	105
News from Region	108

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Announcement for the Students

*Students are invited to contribute articles for Student Company Secretary e-journal for the month of June at **academics@icsi.edu***

on the topic

Environmental Legislation - The role of CS in Practise and Employment

*Selected Articles will be published in the forthcoming issue of
Student Company Secretary e-journal*



“Be strong now, because things will get better. It might be stormy now, but it can’t rain forever”.

Dear Students,

While the year 2020 marked the beginning of the pandemic, it is the second wave in the year 2021 which has proved to be much more challenging and fatal. The impact of the same is being witnessed not only at an individual level but at a community, national and global level. Where on one hand, the functioning and operation of economies has been halted and disrupted, we as individuals have been facing challenges unprecedented. As students, where on one hand situations pertaining to our own health and well-being and that of our loved ones are being dealt with a personal level, as a professional in making the uncertainties of future have been surmounting.

However, holding strong to the thought that we shall all sail through these times of turbulence together, your Institute has undertaken several important decisions and launched several initiatives. The Institute, with a view to protect the interests of the students, their well-being and safety in view of Covid-19 Pandemic situation, has decided that the Examinations for Foundation, Executive and Professional Programme scheduled to be held from 1st June, 2021 to 10th June, 2021 stand postponed. Furthermore, temporary relaxation has also been provided in the Training Guidelines for conducting all types of training program through online mode till 30th September 2021. I am sure that all of these along with our patience, perseverance and grit and combined efforts shall lead us through these times of distress on the other side.

Friends, as human beings we are considered to be the ones firmly believing in traversing through tempest of situations and sailing through. For us barriers and bottlenecks are temporary and more so, we consider them as opportunities. In view of this, despite all odds created by the pandemic it is a common understanding that we should not stop our learning process for it is only when we continue to learn that we continue to grow. It is with this very intent that Institute rolled out the Bi-weekly Interactive Video sessions to deliberate upon crucial aspects of modules and subjects and clarify academic queries of students in a streamlined manner by Academic Officers and Expert Faculties. Given the response received from the students, to me this initiative is an out and out success and I hope that you shall keep on reaping maximum benefits from all such initiatives launched by the Institute from time to time for the upgradation and enhancement of your knowledge base. For as the Sanskrit shloka says,

नास्ति विद्यासमो बन्धुः नास्ति विद्यासमः सहृत् ।

नास्ति विद्यासमं वित्तम् नास्ति विद्यासमं सुखम् ॥

*(There is no relative equivalent to knowledge, there is no friend equivalent to knowledge.
There is no wealth equivalent to knowledge, there is no happiness equivalent to knowledge.)*

Stay Safe! Stay Healthy!

(CS Nagendra D. Rao)

President

The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. **Bi - weekly video interactive sessions for Students :** The Institute of Company Secretaries of India has created a unique platform to deliberate upon crucial aspects of modules and subjects and clarify academic queries of students in a streamlined manner by Academic Officers and Expert on the subject. The details of the sessions conducted so far are as under:

<i>Session</i>	<i>Date</i>	<i>Subject</i>
1 st	6 th April, 2021	Company Law
2 nd	8 th April, 2021	Tax Laws
3 rd	13 th April, 2021	Governance, Risk Management, Compliances and Ethics
4 th	16 th April, 2021	Financial and Strategic Management
5 th	20 th April, 2021	Setting up of Business Entities and Closure
6 th	22 nd April, 2021	Drafting, Pleading and Appearances
7 th	27 th April, 2021	Corporate Funding and Listing in Stock Exchanges
8 th	30 th April, 2021	Insurance Laws and Practice
9 th	4 th May, 2021	Banking Laws and Practice
10 th	6 th May, 2021	Securities Laws and Capital Markets
11 th	11 th May, 2021	Insolvency Law and Practice
12 th	13 th May, 2021	Secretarial Audit, Compliance Management and Due Diligence
13 th	18 th May, 2021	Multidisciplinary Case Studies – Securities Laws; FEMA and other Economic and Business Legislations; Insolvency Law
14 th	20 th May, 2021	Advanced Tax Laws

The video recordings of the sessions are available on the Academic Portal of the Institute under the tab video lectures.

https://www.icsi.edu/bi_weekly_sessions_for_students/?edit_off=true

2. The **Student Company Secretary e-journal** for Executive / Professional programme students of ICSI and **CS Foundation course e-bulletin** for Foundation programme students of ICSI have been released for the month of **April, 2021**. The same are available on the Institute's website at the weblink:
<https://www.icsi.edu/e-journals/>
3. The **CSEET e-bulletin** for the month of **April, 2021** containing the latest updates in respect of Papers of the CSEET has been placed on the ICSI Website. The same is also available at the CSEET Portal at the Institute's website at the weblink:
<https://www.icsi.edu/student/cseet/cseet-e-bulletin/>
4. **Info Capsule** is being issued as an update on daily basis for members and students, covering latest amendments on various laws for the benefit of our members and students. The same is available on the ICSI website at the weblink
<https://www.icsi.edu/infocapsule/>
5. Re-opening of online window for submission of CS examination form for June 2021 exam session (now postponed & fresh dates are yet to be announced). Details are available at the following link:
Re-opening window for filling exam form for June 2021 exam session
6. Online Doubt clearing classes for the students from 22nd March 2021 up to 16th May 2021. Eminent faculties are taking the classes. Feedback of all the faculties is taken from the students to make classes more qualitative.
7. Facility to opt out and carry forward of CSEET fees paid by candidates for May 2021 session to July 2021 session. Details are available at the following link.
https://www.icsi.edu/media/webmodules/CSEET/Announcement_Opt-Out_and_Carry_forward_of_CSEET_Fees_paid_for_May_2021_session_to_July%202021_session_29_04_21.pdf
8. Mock tests for the candidates appearing in May 2021 session of CSEET were conducted on 4th, 5th and 6th May 2021 respectively.
9. May 2021 CSEET Session was conducted successfully on 8th and 10th May respectively.
10. FAQs for the candidates appearing in May 2021 session were uploaded on the website which are available at the following link
https://www.icsi.edu/media/webmodules/FAQ_on_CSEET_to_be_held_through_Remote_Proctored_Mode_converted.pdf
11. CSEET (July session) will be held on 10th July 2021. Last date to register is 15th June 2021.
Click here to register:
https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

12. Recorded video lectures for students of the Institute are being made available at E Learning platform at the website of the Institute (www.icsi.edu).
13. Online CSEET classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in July 2021.

Click here to contact

<https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>

14. Crash Course/Revision classes of Foundation/Executive/Professional Programme for June 2021 Session of examination which has been postponed by Regional / Chapter Offices

Click here to contact

<https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>



Articles

- **LABOUR REFORMS AND ROLE OF CS**
- **DEMYSTIFYING THE LEGAL CONUNDRUM OF “LIMITATION ON ACKNOWLEDGEMENT OF DEBT IN THE BALANCE SHEET OF CORPORATE DEBTOR”**

LABOUR REFORMS AND ROLE OF CS*

Introduction

Work is part of everyone's daily life and is crucial to one's dignity, well-being and development as a human being. Economic development means not only creation of jobs but also working conditions in which one can work in freedom, safety and dignity. To improving the life and dignity of labour force of the country by protecting & safeguarding the interest of workers, promotion of their welfare and providing social security to the labour force both in Organized and Unorganized Sectors Parliament enacted various Labour Laws. These laws are meant to provide economic and social justice to workforce in any organisation.

Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment.

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:-(a) industrial relations; (b) wages; (c) social security; (d) safety; and (e) welfare and working conditions.

With the objective of strengthening the safety, security, health, social security for every worker and bringing ease of compliance for running an establishment to catalyze creation of employment opportunities/generation and as per the recommendations of the 2nd National Commission on Labour, Ministry of Labour and Employment has taken steps for codification of existing Central Labour Laws into 4 Codes by simplifying, amalgamating and rationalizing the relevant provisions of:

- The Code on Wages, 2019
- The Occupational Safety, Health And Working Conditions Code, 2020
- The Code on Social Security, 2020
- The Industrial Relations Code, 2020

The Labour Code is a means to consolidate various statutes into a pruned and uncomplicated form. The amalgamated form of multiple statutes thus obtained is called a labour code. This operation is done with a view to have a unified law which can be understood and implemented with ease.

* Directorate of Academics

Views expressed in the Article may not express the views of the Institute.

The Code on Wages, 2019 has been passed by both Houses of the Parliament and assented to by the President on 08.08.2019. The other three Labour Codes such as Code on Social Security, 2020, Industrial Relations Code, 2020 and Occupational Safety, Health and Working Conditions Code, 2020 received the assent of President on 28th September, 2020.

The Code on Wages, 2019

The Code on Wages, 2019 - amalgamates, simplifies and rationalises the relevant provisions of the following four central labour enactments relating to wages, namely:(a) The Payment of Wages Act, 1936;(b) The Minimum Wages Act, 1948;(c) The Payment of Bonus Act, 1965; and(d) The Equal Remuneration Act, 1976. The Code on Wages, 2019 is an Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

The salient features of the Code on Wages, 2019, inter alia, are as follows:—

- (a) It provides for all essential elements relating to wages, equal remuneration, its payment and bonus;
- (b) The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors;
- (c) The power to fix minimum wages continues to be vested in the Central Government as well the State Government in their respective sphere;
- (d) It enables the appropriate Government to determine the factors by which the minimum wages shall be fixed for different category of employees. The factors shall be determined taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other aspects which the appropriate Government considers necessary;
- (e) The provisions relating to timely payment of wages and authorised deductions from wages, which are presently applicable only in respect of employees drawing wages of twenty-four thousand rupees per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of such provisions to the Government establishments also;
- (f) It provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. However, the appropriate Government may specify the industrial or other establishment, where the wages are to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee;
- (g) It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage notified for that area by the Central Government;
- (h) In order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors, who would supply information and advice the employers and workers;
- (i) It empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus;

- (j) In the place of number of authorities at multiple levels, it empowers the appropriate Government to appoint one or more authorities to hear and decide the claims under the legislation;
- (k) It enables the appropriate Government to establish an appellate authority to hear appeals for speedy, cheaper and efficient redressal of grievances and settlement of claims;
- (l) It provides for graded penalty for different types of contraventions of the provisions of the legislation;
- (m) It provides that the Inspector-cum-Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention, so as to comply with the provisions of the legislation. However, in case of repetition of the contravention within a period of five years such opportunity shall not be provided;
- (n) It provides for the appointment of officers not below the rank of Under Secretary to the Government of India or an officer of equivalent level in the State Government to dispose off cases punishable only with fine up to fifty thousand rupees, so as to reduce the burden on subordinate judiciary;
- (o) It provides for compounding of those offences which are not punishable with imprisonment;
- (p) It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;
- (q) It enables the appropriate Government to constitute Advisory Boards at Central and State level to advice the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.;
- (r) The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.

The Occupational Safety, Health and Working Conditions Code, 2020

Occupational Safety, Health and Working Conditions Code, 2020 is an Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment.

Occupational Safety, Health and Working Conditions Code, 2020 amalgamate, simplifies and rationalise the relevant provisions of the following thirteen Central labour enactments relating to occupation, safety, health and working conditions of workers, namely:— 1. The Factories Act, 1948; 2. The Plantations Labour Act, 1951; 3. The Mines Act, 1952; 4. The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955; 5. The Working Journalists (Fixation of Rates of Wages) Act, 1958; 6. The Motor Transport Workers Act, 1961; 7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; 8. The Contract Labour (Regulation and Abolition) Act, 1970; 9. The Sales Promotion Employees (Condition of Service) Act, 1976; 10. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979; 11. The Cine Workers and Cinema Theatre Workers Act,

1981; 12. The Dock Workers (Safety, Health and Welfare) Act, 1986; and 13. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The salient features of the Occupational Safety, Health and Working Conditions Code, 2020 inter alia, are as under:—

- (i) to impart flexibility in adapting technological changes and dynamic factors, in the matters relating to health, safety, welfare and working conditions of workers;
- (ii) to apply the provisions of the Code for all establishments having ten or more workers, other than the establishments relating to mines and docks; more employees.
- (iii) to provide the concept of "one registration" for all establishments having ten or more employees. However, for the applicability of all other provisions of the Code in respect of factories, except registration, the threshold has been fixed twenty workers in a factory (with power) and forty workers (without power);
- (iv) to include the journalist working in electronic media such as in e-paper establishment or in radio or in other media in the definition of "working journalists";
- (v) to provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment;
- (vi) to provide free of cost annual health check-ups for employees above the specified age in all or certain class of establishments by which it would be possible to detect diseases at an early stage for effective and proper treatment of the employees;
- (vii) to make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months and also provide that a Inter-State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar;
- (viii) an Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess;
- (ix) to constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;
- (x) to constitute the State Occupational Safety and Health Advisory Board at the State level to advice the State Government on such matters arising out of the administration of the Code;
- (xi) to make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments;

- (xii) to employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent;
- (xiii) to make provision of "common license" for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour;
- (xiv) to enable the courts to give a portion of monetary penalties up to fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death;
- (xv) to provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or pandemic or disaster;
- (xvi) to make provision for Social Security Fund for the welfare of unorganised workers; and
- (xvii) to make provision for adjudging the penalties imposed under the Code.

The Code on Social Security, 2020

Code on Social Security, 2020 is an Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

Code On Social Security, 2020, amalgamates, simplifies and rationalises the relevant provisions of the following nine central labour enactments relating to social security, namely:—(i) The Employees' Compensation Act, 1923; (ii) The Employees' State Insurance Act, 1948; (iii) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; (iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; (v) The Maternity Benefit Act, 1961; (vi) The Payment of Gratuity Act, 1972; (vii) The Cine Workers Welfare Fund Act, 1981; (viii) The Building and Other Construction Workers Welfare Cess Act, 1996; and (ix) The Unorganised Workers' Social Security Act, 2008.

The salient features of the Code on Social Security, 2020, inter alia, are—

- (i) to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors;
- (ii) to provide for an establishment to be covered under Chapter III relating to Employees' Provident Fund (EPF) and under Chapter IV relating to Employees State Insurance Corporation (ESIC) on voluntary basis even if the number of employees in that establishment is less than the threshold. It further seeks to make those Chapters inapplicable to such establishments on fulfilment of certain conditions;
- (iii) to define various expressions used in the Code such as, "career centre", "aggregator", "gig worker", "platform worker", "wage ceiling", etc. Further, the definition of "employee" has been comprehensively elaborated to cover maximum number of employees and workers;

- (iv) to provide for registration, electronically or otherwise, of every establishment to which the Code applies, within such time and in such manner as the Central Government may by rules determine. It further provides for an option for cancellation of registration by any establishment whose business activities are in the process of closure, subject to the conditions as may be prescribed by the Central Government;
- (v) constitution of various social security organisations for the administration of the Code, namely, (a) the Central Board of Trustees of the Employees' Provident Fund (Central Board), (b) the Employees' State Insurance Corporation (Corporation), (c) the National Social Security Board for Unorganised Workers (National Social Security Board), (d) the State Unorganised Workers' Social Security Board and (e) the State Building Workers Welfare Boards;
- (vi) to provide that the medical education institutions and training institutes of the Employees' State Insurance Corporation may be run by the Corporation itself or on the request of the Corporation, by the Central Government, any State Government, any Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government;
- (vii) to empower the Central Government to frame schemes for unorganized workers, gig workers and platform workers and the members of their families for providing benefits relating to Employees' State Insurance Corporation;
- (viii) provisions for maternity benefits such as prohibition from work during certain periods, provision of nursing breaks, crèche facility, claim for maternity benefits, etc.;
- (ix) to empower the Central Government, by notification, to assign additional work, including administration of any other enactment or scheme relating to social security, to any of the social security organisations and the expenses towards such additional work shall be borne by the Central Government;
- (x) to empower the Central Government to frame schemes for the purposes of providing social security benefits to self-employed workers or any other class of persons;
- (xi) to empower the Central Government to specify by notification, rates of employees' contributions to the Employees' Provident Fund Scheme and the period for which such rates shall apply for any class of employee;
- (xii) to provide for appeal against an order passed by any authority in regard to determination and assessment of dues and levy of damages relating to Employees' Provident Fund by an employer only after depositing with Social Security Organisation concerned, twenty-five per cent. of the amount due from him as determined by the authority against whose order the appeal has been preferred;
- (xiii) to provide that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years;

- (xiv) to make provision for payment of cess by employer in case of building and other construction work, payable under Chapter VIII on the basis of his self-assessment;
- (xv) to provide for registration of every unorganised worker, gig worker or platform worker on the basis of self-declaration electronically or otherwise, along with such documents including Aadhaar number, in such form and in such manner, containing such information as may be prescribed by the Central Government;
- (xvi) to empower the Central Government by order, to defer or reduce employer's contribution, or employee's contribution, or both, payable under Chapter III or Chapter IV, as the case may be, for a period up to three months at a time, in respect of establishment to which Chapter III or Chapter IV, as the case may be, applies, for whole of India or part thereof in the event of pandemic, endemic or national disaster;
- (xvii) to provide for establishment and maintenance of separate accounts under social security fund, for the welfare of unorganised workers, gig workers and platform workers; and a separate account for the amount received from the composition of offences under the Code or under any other central labour laws.

The Industrial Relations Code, 2020

Industrial Relations Code, 2020 is an Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Industrial Relations Code, 2020 amalgamates, simplifies and rationalizes the relevant provisions of -- (a) the Trade Unions Act, 1926; (b) The Industrial Employment (Standing Orders) Act, 1946; and (c) The Industrial Disputes Act, 1947.

The salient features of the Industrial Relations Code, 2020, inter alia, are as follows:—

- (i) to define “workers” which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;
- (ii) to provide for fixed term employment with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation. The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector;
- (iii) to revise the definition of “industry” that any systematic activity carried on by co-operation between the employer and workers for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) with certain exceptions;
- (iv) to bring concerted casual leave within the ambit of the definition of strike;
- (v) to provide the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment;

- (vi) to provide for a new feature of recognition of negotiating union and negotiating council in an industrial establishment by an employer for the purpose of negotiations. The criterion for recognition of negotiating union has been fixed at fifty-one per cent. or more workers on a muster roll of that industrial establishment. As regards negotiating council, a Trade Union having support of every twenty per cent. of workers will get one seat in the negotiating council and the fraction above twenty per cent. shall be disregarded;
- (vii) to provide for appeal against non-registration or cancellation of registration of Trade Union before the Industrial Tribunal;
- (viii) to empower the Central Government and the State Governments to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or State Trade Unions, respectively;
- (ix) to provide for applicability of threshold of three hundred or more workers for an industrial establishment to obtain certification of standing orders, if the standing order differ from the model standing order made by the Central Government;
- (x) to provide that if the employer prepares and adopts model standing order of the Central Government with respect to the matters relevant to the employer's industrial establishment, then the model standing order would be deemed to be certified. Otherwise, the industrial establishment may seek certification of only those clauses which are different from the model standing orders;
- (xi) to set up Industrial Tribunal consisting of a Judicial Member and an Administrative Member, in place of only Judicial Member who presently presides the Tribunal. For certain specified cases, the matters will be decided by the two-member Tribunal and the remaining shall be decided by single-member Tribunal as may be provided for in the rules;
- (xii) to set up Industrial Tribunals in the place of existing multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts;
- (xiii) to remove the reference system for adjudication of Industrial Disputes, except the reference to the National Industrial Tribunal for adjudication;
- (xiv) to provide that the commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in an industrial dispute after the receipt of the notice of strike or lock-out by the conciliation officer;
- (xv) to prohibit strikes and lock-outs in all industrial establishments without giving notice of fourteen days;
- (xvi) to provide for the obligation on the part of industrial establishments pertaining to mine, factories and plantation having three hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification;
- (xvii) to set up a re-skilling fund for training of retrenched workers. The fund shall, *inter alia*, consist of the contribution of the employer of an amount equal to fifteen days wages last drawn by the worker immediately before the

retrenchment or such other number of days, as may be notified by the Central Government, in case of retrenchment only. The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of the retrenchment as may be provided by rules;

- (xviii) to provide for compounding of offences by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence punishable with fine only and for a sum of seventy-five per cent. provided for such offence punishable with imprisonment for a term which is not more than one year, or with fine;
- (xix) to provide for penalties for different types of violations to rationalise with such offences and commensurate with the gravity of the violations;
- (xx) to empower the appropriate Government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.

Role of Company Secretary under Labour law Reforms

Apart from Corporate Laws, Securities Laws, FEMA, IPR, etc. Companies Act, 2013, company secretary has to play an important role in the new regime of Labour Codes. He has to guide the top management on the new Labour Codes and impact thereof on the industries. The compliance of Labour Codes is as important for good corporate governance and Company Secretary by virtue of his knowledge to render value added services in ensuring the compliance of these new Labour Codes to protect and further the interests of labour, industry and all stakeholders at same time prevent undesirable lawsuits and penalty for non-compliance. Role of Company Secretary under Labour Code *inter-alia* is as under:

- To obtain registrations of the establishment under various applicable Labour Codes.
- Submission of returns on a regular basis to the Authorities established under the Code.
- Maintenance of appropriate records with regard to employees of the establishment under various Labour Codes like Employee register, register of attendance, wage, overtime, fine, deduction for damage and loss, wage slip etc.
- Display of various notices in the establishment like abstract of the code, minimum rate of wage, day, date and time of wage payment, name and address of the inspector-cum-facilitator etc.
- Ensure adequate facilities related to health, safety and welfare of the employees have been provided for the employees on behalf of the establishment under various codes.
- Drafting of various deeds and documents relating to employment like HR manual, offer /appointment letter, Non-disclosure agreement, transfer letter, warning letters, termination letter etc.
- Advisory services relating to salary structure and pay roll related compliances.
- Representations before authorities established under the Code.

- Periodical audits of the Companies/Firms and their contractors/vendors to ensure full compliance of the Code.
- Act as a conciliator to resolve disputes between employer and employee as per the provisions of the Code.
- Identify gaps and adequate measures to rectify the same.
- Implement an adequate system to ensure regular and timely compliance of the provisions of the code on wages.

Conclusion

Labour Code will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The Code would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. The facilitation for ease of compliance of Labour Code will promote in setting up of more enterprises thus catalyzing the creation of employment opportunities. In this backdrop, Company Secretaries by virtue of their professional knowledge and skills definitely render competent professional services and enable proactive compliance with the Labour Code, with utmost care and diligence in the best interest of the industries as well as stakeholders.

DEMYSTIFYING THE LEGAL CONUNDRUM OF “LIMITATION ON ACKNOWLEDGEMENT OF DEBT IN THE BALANCE SHEET OF CORPORATE DEBTOR”*

Introduction

The balance sheet is a financial statement that is often used to find the amount of debt due to be paid to the financial creditors of the company. Section 7 of the Insolvency and Bankruptcy Code¹ facilitates a financial creditor to file an application barred by limitation to initiate a Corporate Insolvency Resolution Process (CIRP) against the corporate debtor. However, the acknowledgement of debt or admission of existing liability in writing before the expiry of the limitation period extends the period of limitation under Section 18 of the Limitation Act, 1963².

The first part of this article dealt with the issue of applicability of Section 18 of the Limitation Act to the proceedings under the Insolvency and Bankruptcy Code. The question of law involved in this proposition is whether the acknowledgement of liability in the balance sheet of the corporate debtor before the expiry of the period of limitation amounts to an acknowledgement of debt under this Section? The author has delved into the conflicting position of law in this regard and also dealt with the issue of acknowledgement of debt in the balance sheet after the expiry of the limitation period and the effect of the Indian Contract Act on the same.

These issues are analysed after drawing inference from the recent judgement of *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr.*³ where the Hon'ble Supreme Court held the balance sheets can amount to an acknowledgement of debt under Section 18 of the Limitation Act for the purpose of extending the limitation period in matters related to Insolvency & Bankruptcy Code 2016. Further, the article discusses the compulsory nature of filing the balance sheet as a ground for acknowledgement of debt and contentious issues with an attempt to find a plausible solution to the question of law involved in this regard with respect to two scenarios.

* Written by Mr. Monish Raghuwanshi, Executive Student and reviewed by Chittaranjan Pal, Assistant Director, The ICSI

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

¹ The Insolvency and Bankruptcy Code, 2016 § 7, Acts of Parliament, No. 31 of 2016.

² The Limitation Act, 1963 § 18, Acts of Parliament, No. 36 of 1963.

³ *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.*, Civil Appeal No.323 of 2021.

Question of Application of Limitation Act on The Insolvency and Bankruptcy Code

In order to settle the debate on the question of application of provisions of the limitation act to the Code the legislature brought Insolvency and Bankruptcy Code (Second Amendment) Act, 2018⁴ and inserted Section 238A to the code which states that: *“Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be”*.⁵

Further, the Hon’ble Supreme Court in *B. K. Educational Services Pvt Ltd. v. Parag Gupta & Associates*⁶ held that *“the Limitation Act, 1963 is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted”*.⁷

Article 137 is Applicable

It is also pertinent to note that Article 137 of the Limitation Act applies to the provisions of the IBC. Article 137 of the Limitation Act prescribes a limitation period of 3 years for any other application for which no period of limitation is provided elsewhere. The Supreme Court in *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company*⁸ held that the application under Section 7 falls within the ambit of residuary Article 137 which prescribes the period of three years and the right to sue accrues from the date of default.

Applicability of Section 18 of The Limitation Act to the Proceedings Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Section 18 of the Limitation Act provides that where before the expiry of the period of limitation, an acknowledgement of liability is made in writing and signed by the debtor, a fresh period of limitation starts from the time when such acknowledgement was signed. The Hon’ble Supreme Court in *Jignesh Shah v. Union of India*⁹ on the issue of application of Section 18 of the Limitation Act to an application filed u/s 7 of the IBC held that:

“In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding-up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding-up proceeding”.¹⁰

Subsequently, the Apex Court in *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.*¹¹ observed that Section 18 of the Limitation Act is not applicable to proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.

⁴ Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, Acts of Parliament, No. 26 of 2018.

⁵ The Insolvency and Bankruptcy Code, 2016 § 238A, Acts of Parliament, No. 31 of 2016.

⁶ *B. K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates*, AIR 2018 SC 5601.

⁷ *Id.* ¶ 27.

⁸ *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company*, 2019 SCC 10 572.

⁹ *Jignesh Shah v. Union of India*, 2019 AIR SC 4758.

¹⁰ *Id.* ¶ 19.

¹¹ *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.*, 2020 SCC Online SC 647.

The apex court further emphasised that the limitation period cannot be extended in the application filed for CIRP, even if there is an acknowledgement of debt in writing by the corporate debtor, which would otherwise start a limitation period. The Hon'ble court relied on the judgement of *Swiss Ribbons Pvt. Ltd. v. Union of India*¹² which held that the legislative intent of the insolvency and bankruptcy is not a recovery mechanism for the creditors rather it is beneficial legislation to provide speedy Corporate Insolvency Resolution Process (hereinafter 'CIRP') to the corporate debtor.

However, the author opines that the said observation of the Hon'ble Court was an *obiter dictum* as the issue of the application of Section 18 of the Limitation Act to the CIRP never arose for consideration before the Supreme Court. Also, on the argument of the respondent on the applicability of Section 18 of the Limitation Act, 1963 to an application filed under Section 7 of IBC, the Hon'ble bench chose not to deal with the issue by stating that it did not arise in the peculiar facts and circumstances of that case.

The whole debate on this issue was finally settled in a recent judgement of the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.*¹³ held that Section 18 of the Limitation Act is applicable for extending the period of limitation to the proceedings under the Insolvency and Bankruptcy Code.

Scenario 1 - When the Acknowledgement of Debt in the Balance Sheet is within the Period of Limitation

The issue at hand here is whether the acknowledgement of liability in the balance sheet of the corporate debtor within the period of limitation is a valid acknowledgement of debt? The above-mentioned question of law traces back to 1949 in the common law case of *Jones v. Bellgrove Properties*¹⁴, where the King's Bench allowed the plaintiff to establish by evidence that his particular debt was included in the total sum of the acknowledged debt being due to the creditors.

Indian courts have also recognised this jurisprudence and the Calcutta High Court in *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*¹⁵ have held that the entry of the amount of debt due as creditors in the Balance Sheet amounts to valid acknowledgement under Section 18 of the Limitation Act. Thus, the statement in the balance sheet of a company presented to the creditors and the shareholder of the company and duly signed by the directors constitutes an acknowledgement of the debt.

However, in the case of *In Re Pandam Tea Co. Ltd.*¹⁶ where the language used in the directors' report was contrary to the balance sheet, the Calcutta High court in this regard held that this acknowledgement in the balance sheet is not absolute and is subject to the condition that the balance sheet along with the Directors' report must be taken into account to find out the true meaning and purport of the statements to acknowledge the debt.

Proceeding to the issue related to the nature of an acknowledgement, the Delhi High Court in the case of *Sheetal Fabrics v. Coir Cushions Ltd.*¹⁷ said that the statement in the

¹² *Swiss Ribbons Pvt. Ltd. v. Union of India*, 2019 AIR SC 739.

¹³ *Asset Reconstruction Company (India) Ltd.*, *supra* note 3.

¹⁴ *Jones v. Bellgrove Properties Ltd.*, (1949) 2KB 700.

¹⁵ *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, AIR 1962 Cal 115.

¹⁶ *In Re: Pandam Tea Co. Ltd.*, AIR 1974 Cal 170.

¹⁷ *Sheetal Fabrics v. Coir Cushions Ltd.*, 2005 DLT 120 693.

balance sheet need not indicate the exact nature of liability but it must relate to a present subsisting liability and indicate the existence of a jural relationship¹⁸ between the parties. This existence of a jural relationship means that there should be a relationship of a debtor and a creditor between the parties and the intention to admit such a jural relationship shall be evident in the balance sheet in order to constitute a valid acknowledgement.

Thus, under Section 18 of the Limitation Act, 1963, the balance sheet along with the director's report is to be considered to be a valid acknowledgement of the debt by the Corporate Debtor in respect of the recovery proceedings. The question put up here is whether this principle is applicable to insolvency proceedings?

The full bench of Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr*, in its judgement dated April 15, 2021, held that balance sheets can amount to an acknowledgement of debt under Section 18 of the Limitation Act for the purpose of extending limitation period in matters related to Insolvency & Bankruptcy Code, 2016.¹⁹

However, the contention against the above proposition is that the filing of financial statements is a statutory compulsion that does not amount to a valid acknowledgement of debt under Section 18 of the Limitation Act. The conflict here is that the balance sheet of the corporate debtor is prepared in accordance with Section 92 (Annual Return) of the Companies Act, 2013 which makes the filing of annual return mandatory failing which the penal provisions under Section 92 (5) of the Companies Act, 2013 get attracted.²⁰

This compulsory requirement of filing the balance sheet makes an obligation on part of the corporate debtor to include the debt payable to the financial creditor even if it is barred by limitation. The NCLAT in the matter of *Gautam Sinha v. UV Asset Reconstruction Company Limited*²¹ held that the nature of acknowledgement of debt should be voluntary and if there is any obligation then it cannot be termed as an acknowledgement.²²

To this, the Hon'ble Supreme Court set aside the NCLAT judgement in the matter of *V. Padmakumar v. Stressed Assets Stabilisation Fund & Anr.*²³ and stated that:

"There is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in

¹⁸ *Lakshmiratan Cotton Mills Co. Ltd. v. Aluminium Corporation of India*, 1971 AIR 1482.

¹⁹ *Asset Reconstruction Company (India) Ltd.*, *supra* note 3.

²⁰ The Companies Act, 2013 § 92, Acts of Parliament, No. 18 of 2013.

²¹ *National Company Law Appellate Tribunal (Principal Bench, New Delhi), Gautam Sinha v. UV Asset Reconstruction Company Limited*, (Feb 25, 2020).

²² *National Company Law Appellate Tribunal (Principal Bench, New Delhi), G. Eswara Rao v. Stressed Assets Stabilisation Fund & Anr.*, (Feb 7, 2020).

²³ *National Company Law Appellate Tribunal (Principal Bench, New Delhi), V. Padmakumar v. Stressed Assets Stabilisation Fund & Anr.*, (Mar 12, 2020).

*law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act”.*²⁴

Conclusively, on interpreting the above propositions of law, it is evident that mere acknowledgement of the debt by the corporate debtor in the balance sheet does not amount to valid acknowledgement as this does not show the intention to admit the debt due to the compulsory nature of filing the balance sheet. However, this balance sheet along with the director’s report and auditor’s report duly signed is evident in determining the intention of the corporate debtor and ascertaining a valid acknowledgement of debt under Section 18 of the Limitation Act.

Scenario 2 - When the Acknowledgement of Debt in the Balance Sheet is Time Barred

The issue at hand here is whether the acknowledgement of liability in the balance sheet of the corporate debtor after the expiry of the period of limitation amounts to a valid acknowledgement under Section 18 of the Limitation Act. The substantial law on this issue is that the acknowledgement of debt in the balance sheet after the expiry of the period of limitation is not covered within the meaning of Section 18 of the Limitation Act, 1963. This implies that the acknowledgement of liability in the balance sheet must be made before the expiry of the period of limitation.²⁵

This proposition further contends on the point that Section 25(3) of the Indian Contract Act prescribes a debtor to enter into an agreement to pay the whole or part of a debt which a creditor is unable to enforce due to the expiry of the period of limitation. Such an agreement is a promise to pay and this would constitute a novation.²⁶ This will give the creditor a right to form a promise to pay as a basis of an independent suit.²⁷ This means that the creditor can initiate an independent suit for the recovery of debt on the basis of an agreement for a promise to pay even after the expiry of the limitation period. The nature of this promise to pay a time-barred debt must be express and unequivocal under Section 25(3) of the Indian Contract Act. The issue that evolved on this point is whether the acknowledgement after the expiry of the period of limitation in the balance sheet along with the director’s report is an express and unequivocal promise to pay and whether the same would create a new right of action.

The current legal jurisprudence elucidates on this issue that the acknowledgement of debt need not be a promise to pay but it must relate to the present subsisting liability. The acknowledgement in the balance sheet of the debtor along with the director’s report shows the existence of subsisting liability and not a promise to pay. This merely extends the period of limitation and does not create a new right of action²⁸ as opposed to Section 25(3) of the Indian Contract Act, 1872.

²⁴ Asset Reconstruction Company (India) Ltd, *supra* note 3, ¶ 22.

²⁵ National Company Law Appellate Tribunal (Principal Bench, New Delhi), Akram Khan, Director *Poonam Drums & Containers Pvt. Ltd. v. Bank of India Ltd. and Anr.* (Dec 19, 2019).

²⁶ The Indian Contract Act, 1872 § 25(3), Acts of Parliament, No. 9 of 1872.

²⁷ *M/S Unitel Technology (India) Pvt. v. SMP International & Ors.*, 2014 SCC Online DEL 7118.

²⁸ *In Re: Pandam Tea Co. Ltd.*, *supra* note 16.

Concluding Remarks

The Full Judge Bench judgement in Asset Reconstruction Company is a welcome step as it well corrected the incorrect assumptions created by the Babulal Vardharji Gurjar judgement. The Supreme Court rightly cleared all the air on the issue of applicability of Section 18 of the Limitation Act to the proceedings under the Insolvency and Bankruptcy Code. The court also affirmed that the entries in the balance sheet can be considered in determining the admission of liability under Section 18 of the Limitation Act.

On the detailed perusal of the above-mentioned issues with respect to the effect of limitation on the acknowledgement of debt in the balance sheet, it is concluded that this acknowledgement of debt in the balance sheet along with the director's and auditor's report before the expiry of the period of limitation shall constitute a valid acknowledgement within the meaning of Section 18 of the Limitation Act. In relation to the issue of compulsory filing of the balance sheet, it is concluded that the company is free to exclude a time-barred debt from the balance sheet and declare it to be unacknowledged or barred by limitation in the director's report.

On the position of law on the acknowledgement of liability in the balance sheet after the expiry of the period of limitation, the author concludes that it is not a valid acknowledgement under Section 18 of the Limitation Act. Such acknowledgement merely shows the existence of subsisting liability and is not a promise to pay under Section 25(3) of the Indian Contract Act, 1872.

Henceforth, Section 18 of the Limitation Act is applicable to the proceedings under the Insolvency and Bankruptcy Code. In a scenario where the acknowledgement is within the period of limitation, the balance sheet along with the director's and auditor's report is evident to constitute a valid acknowledgement and in a scenario where this acknowledgement is done after the expiry of the limitation period, it does not amount to valid acknowledgement under the purview of Section 18 of the Limitation Act.



Practice Mentor

- **PROCEDURE FOR GST REGISTRATION IN INDIA**

PROCEDURE FOR GST REGISTRATION IN INDIA*

Goods and Services Tax (GST) is an Indirect Tax which is a destination-based tax on consumption of goods and services. GST Registration implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input Tax Credit (ITC).

Without registration, a business entity can neither collect tax from his customers nor claim any credit of tax paid by them. No GST registration fees is charged by the government. GST Registration is the process of registering with Taxes GST Department. The registration under GST is Permanent Account Number (PAN) based and state specific.

GST Identification Number (GSTIN) is a 15-digit number and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

GST NO. 22AAAAA0000A1Z5				
22	AAAAA0000A	1	Z	5
State code	PAN (Permanent Account No.)	Entity number of the same PAN holder in the state	Alphabet by default	Check sum digit

Documents Required for GST Registration

The documents requirement differs for individual and organization.

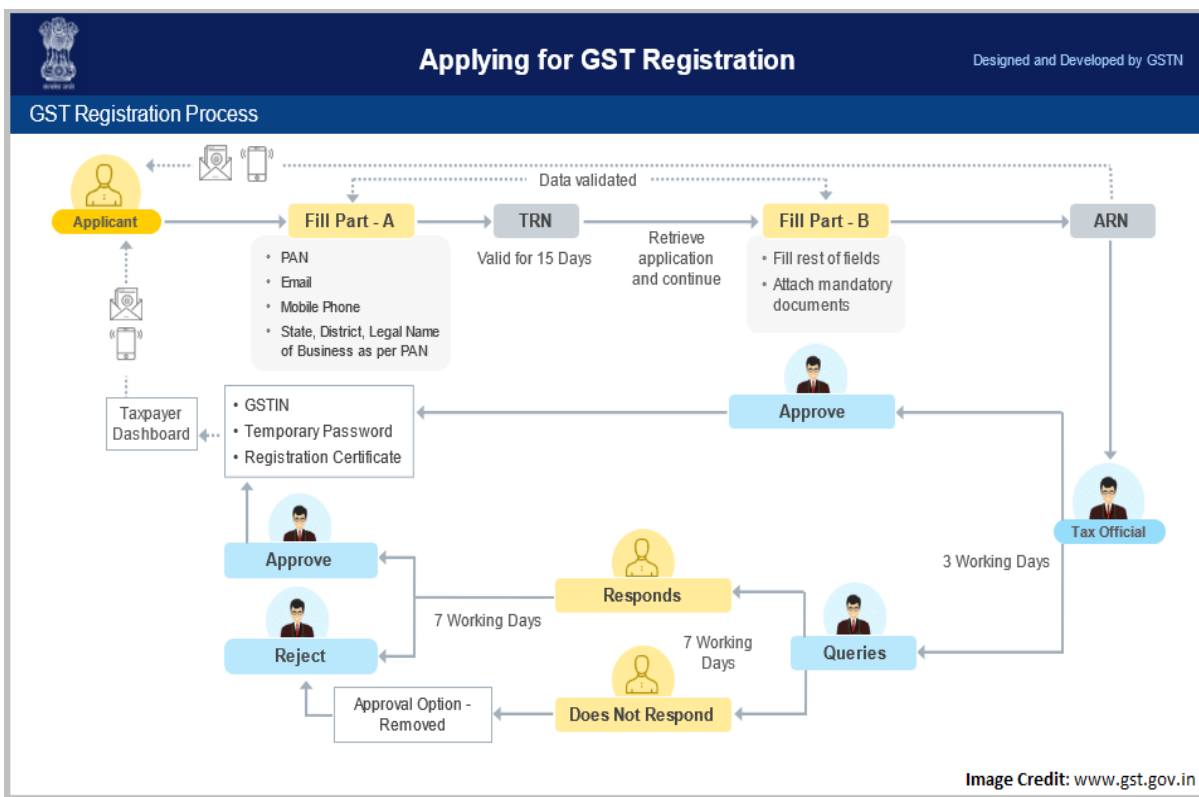
<i>Applicant</i>	<i>Documents Required</i>
Sole Proprietors and Individuals	<ul style="list-style-type: none"> Individual's or owner's PAN card Photograph of owner Address proof Bank account information Individual's or owner's Aadhaar card
Hindu Undivided Families	<ul style="list-style-type: none"> Bank detail Owner's photograph Address proof of the business HUF's PAN card Family patriarch's PAN card

* Prepared by CS Pankhuri Agrawal, Consultant, The ICSI and reviewed by CA Sarika Verma, Assistant Director, ICSI.

Views expressed in the Article are the sole expression of the Author(s) and may not express the views of the Institute.

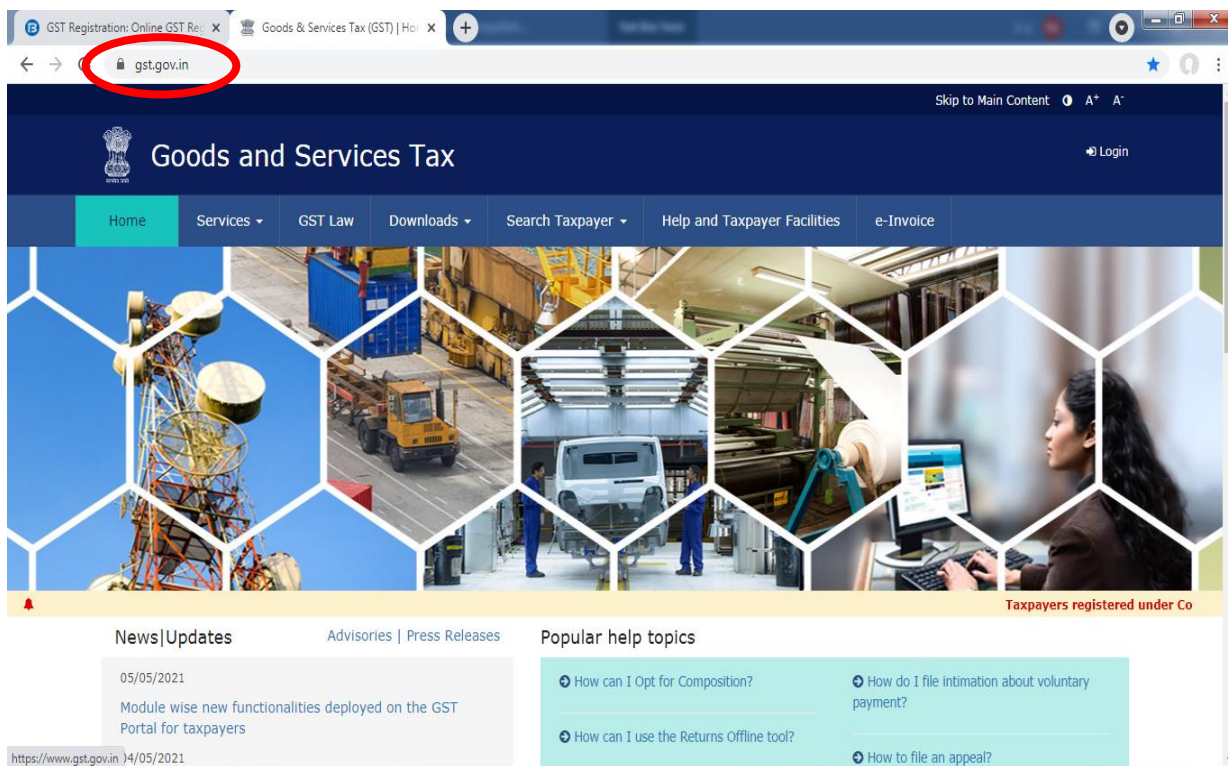
LLPs and Partnerships	<ul style="list-style-type: none"> ▪ Partners' address proof ▪ Bank details ▪ Partners' PAN card ▪ Deed declaring partnership ▪ Partners' photograph ▪ Proof of registration for the LLP ▪ Principal address proof for the business ▪ Proof of appointment for the signatory authority ▪ The authorised signatory's Aadhaar card
Company	<ul style="list-style-type: none"> ▪ PAN card belonging to the company ▪ PAN card of all company directors ▪ Company's primary address proof ▪ Company's bank account details ▪ Proof of signatory's appointment ▪ PAN card belonging to the signatory ▪ Articles of Association and Memorandums ▪ Signatory's Aadhaar card ▪ Incorporation certificate from the Ministry of Corporate Affairs. ▪ All directors' address proof ▪ Board resolution appointing authorised signatory / Any other proof of appointment of authorised signatory

How to apply for GST Registration in India



The detailed Procedure for GST Registration is explained below:

Step 1: To get registration under GST online, firstly the applicant needs to visit GST portal i.e. <https://www.gst.gov.in/>.



Step 2: Applicant has to click on 'Register now' link under 'Taxpayers' tab (Normal/TDS/TCS).

The screenshot shows the GST Registration portal (gst.gov.in). The 'Taxpayers (Normal/TDS/TCS)' section is visible, with the 'Register Now' link highlighted by a red circle. The 'Upcoming Due Dates' section lists the following due dates:

Return Type	Due Date
GSTR-3B (Apr, 2021)	May 20th, 2021
GSTR-3B (Apr-Jun, 2021)	Jul 22, 24 2021
GSTR-1 (Apr, 2021)	May 26th, 2021
IFF (Optional) (Apr, 2021)	May 28th, 2021
GSTR-1 (Apr-Jun, 2021)	Jul 13th, 2021
CMP-08 (Apr-Jun, 2021)	Jul 18th, 2021

Step 3 : The applicant will reach at <https://reg.gst.gov.in/registration/>. Now Select 'New Registration' and fill the below-mentioned details and click on 'Proceed'.

Goods and Services Tax

Home Services GST Law Downloads Search Taxpayer Help e-Way Bill System

Home > Registration

1 User Credentials 2 OTP Verification

New Registration indicates mandatory fields

☒ New Registration ☐ Temporary Reference Number (TRN)

I am a

State / UT

District

Legal Name of the Business (As mentioned in PAN)

Permanent Account Number (PAN)

Email Address

OTP will be sent to this Email Address

Mobile Number

Separate OTP will be sent to this mobile number

PROCEED

Step 4 : On the subsequent OTP Verification page, enter the OTP you received on your mobile number and that on your email address. Please note that this OTP is valid only for only 10 minutes.

Home Services Notifications & Circulars Acts & Rules Grievance

Home Registration Verify English

Verify OTP

Indicates mandatory fields

Mobile OTP *

Enter OTP sent to your mobile number

Email OTP *

Enter OTP sent to your Email Address

Need OTP to be resent? [Click here](#)

BACK PROCEED

Step 5 : OTP (One Time Password) verification is done and the applicant receive the Temporary Reference Number (TRN) on mobile and e mail.

Home Services Notifications & Circulars Acts & Rules Grievance

Home Registration Verify English

You have successfully submitted Part A of the registration process. Your Temporary Reference Number (TRN) is 291700001721TRN.

Using this TRN you can access the application from My saved Applications and submit on GST Portal. Part B of the application form needs to be completed within 15 days, i.e. by '09/07/2017' using this TRN.

PROCEED

Step 6 : The Applicant again receives an OTP on mobile / email id. Enter the OTP and click on proceed after which applicant can see the status of application.

Home Services Notifications & Circulars Acts & Rules Grievance

Home Registration Verify English

User Credentials OTP Verification

Verify OTP

Mobile / Email OTP *

Fill OTP sent to Mobile and Email

Need OTP to be resent? Click here

BACK PROCEED

Step 7 : After clicking edit Icon, the applicant can go on Part B which has various sections. The Applicant fills all the details and submits with appropriate documents.

Home Services Notifications & Circulars Acts & Rules Grievance

Home Registration English

User Credentials OTP Verification

New Registration

New Registration Temporary Reference Number (TRN)

Temporary Reference Number (TRN)*

Enter Temporary Reference Number (TRN)

Type the characters you see in the image below*

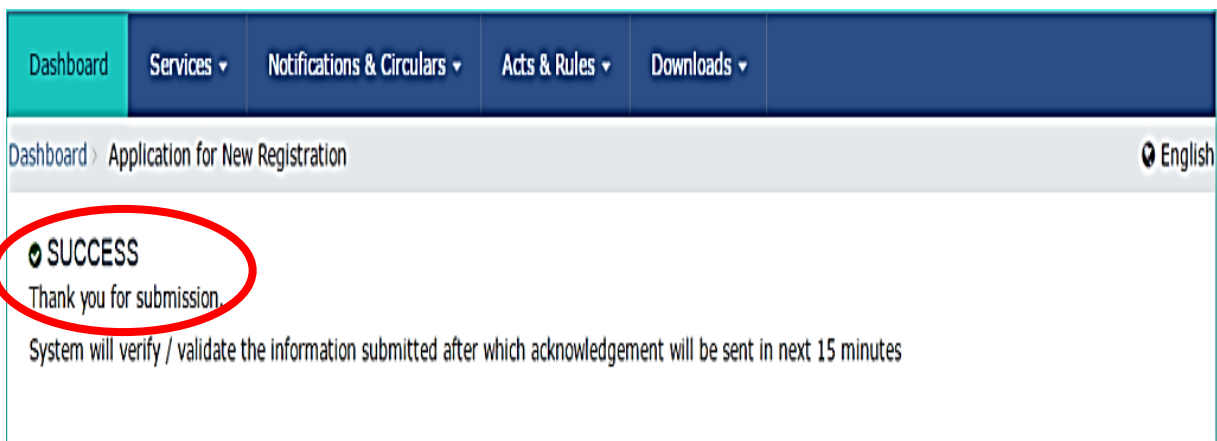
Enter characters as displayed in the CAPTCHA image

PROCEED

Step 8 : Once all the details are filled, applicant needs to go to the Verification Page and tick on the declaration and submit the application using any of the following ways:

- Companies must submit application using DSC (Digital Signature Certificate).
- Using e-sign : OTP will be sent to Aadhaar registered number.
- Using EVC (Electronic Verification Code): OTP will be sent to the registered mobile.

Step 9 : A success message is displayed and Application Reference Number (ARN) is sent to registered email id and mobile. We can check the ARN status of our registration by entering the ARN in GST portal.



REGULATORY UPDATE

COMPANY LAW

1. **Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities-reg. (General Circular No. 05/2021, dated April 22, 2021)**

In continuation to General Circular No. 10/2020 dated March 23, 2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

The companies may undertake the aforesaid activities in consultation with State Governments subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by MCA from time to time.

For details: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo5_22042021.pdf

2. **Relaxation on levy of additional fees in filing of certain Forms under the Companies Act, 2013 and LLP Act, 2008 (General Circular No. 06/2021, dated May 03, 2021)**

The MCA on account of resurgence of COVID-19 pandemic, has decided to grant additional time upto July 31, 2021 for Companies / LLPs to file such forms (other than Form CHG-1, CHG-4 and CHG-9) without any additional fees.

Accordingly, no additional fees shall be levied upto July 31, 2021 for the delayed filing of forms (other than charge related forms referred above) which were/would be due for filing during April 01, 2021 to May 31, 2021. For such delayed filings upto July 31, 2021 only normal fees shall be payable.

For details: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf

3. **Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 (General Circular No. 07/2021, dated May 03, 2021)**

In exercise of its powers under section 460 read with section 403 of the Companies Act, 2013 and the Companies (Registration Offices and Fees) Rules, 2014, the MCA has allowed relaxation of time and condone the delay in filing forms related to creation / modification of charges under the Companies Act, 2013, on account of the resurgence of COVID-19 pandemic.

Applicability

This relaxation is provided in respect of following forms whether filed by a company or a Charge holder:

- Form CHG-1- Application for registration of creation, modification of charge (other than those related to debentures)
- Form CHG-9- Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures.

Relaxation of time:

- (i) **If the date of creation or modification of charge is before April 01, 2021 but the timeline for filing such form had not expired under section 77 of the Companies Act, 2013 as on April 01, 2021 :**

The period beginning from April 01, 2021, and ending on May 31, 2021, shall not be reckoned for the purpose of counting the number of days under section 77 or 78 of the Companies Act, 2013. In case, the form is not filed within such period, the first day after March 31, 2021 shall be reckoned as June 01, 2021 for the purpose of counting the number of days within which the form is required to be filed under section 77 or 78 of the Companies Act, 2013.

Applicable fees:

- Form is filed on or before May 31, 2021: fees payable under the Fees Rules as on March 31, 2021 shall be charged.
- If the form is filed thereafter the applicable fees shall be charged under the Fees Rules after adding the number of days beginning from June 01, 2021 and ending on the date of filing plus the time period lapsed from the date of the creation of charge till March 31, 2021.

- (ii) **If the date of creation or modification of charge falls on any date between April 01, 2021, to May 31, 2021 (both days inclusive) :**

The period beginning from the date of creation/modification of charge to May 31, 2021, shall not be reckoned for the purpose of counting of number of days under section 77 or 78 of the Companies Act, 2013. In case, the form is not filed within such period, the first day after the date of creation/modification of charge shall be reckoned as June 01, 2021 for the purpose of counting the number of days within which the form is required to be filed under section 77 or 78 of the Companies Act, 2013.

Applicable Fees:

- Form is filed before May 31, 2021: normal fees shall be payable under the Fees Rules.
- If the form is filed thereafter :the first day after the date of creation/modification of charge shall be reckoned as June 01, 2021 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees under the Fees Rules.

Non-Applicability**The Circular shall not apply, in case:**

- a. The forms i.e.CHG-1 and CHG-9 had already been filed before the date of issue of this Circular.
- b. The timeline for filing the form has already expired under section 77 or section 78 of the Companies Act, 2013 prior to April 01, 2021.
- c. The timeline for filing the form expires at a future date, despite exclusion of the time provided in this circular.
- d. Filing of Form CHG-4 for satisfaction of charges.

For details:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo7_03052021.pdf

4. Gap between two board meetings under section 173 of the Companies Act, 2013-Clarification-reg. (General Circular No. : 08/2021, dated May 03, 2021)

In view of the difficulties arising due to resurgence of Covid-19 and requests received from stakeholders, MCA has given clarification that the requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (120 days) stands extended by a period of 60 days for first two quarters of Financial Year 2021-22.

Accordingly, the gap between two consecutive meetings of the Board may extend to 180 days during the Quarter — April to June 2021 and Quarter— July to September, 2021, instead of 120 days as required in the Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf

5. MCA Update (May 03, 2021)

The MCA has issued General Circular Number 06/2021 and 07/2021 on May 03, 2021 allowing stakeholders to file various forms due for filing during April 01, 2021 to May 31, 2021 under the Companies Act, 2013 / LLP Act, 2008 by July 31, 2021 without payment of additional fees. The changes required in the MCA-21 system to implement this decision are being made and stakeholders would be informed in this regard in due course through a similar Notice.

For details: <http://www.mca.gov.in/>

6. Clarification on spending of CSR funds for ‘creating health infrastructure for COVID care’, ‘establishment of medical oxygen generation and storage plants’ etc. - reg. (General Circular No. : 09/ 2021, dated May 05, 2021)

In continuation to General Circular No. 10/2020 dated March 23, 2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for ‘creating health infrastructure for COVID care’, ‘establishment of medical oxygen generation and storage plants’, ‘manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by the MCA from time to time.

For details: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo9_05052021.pdf

7. List of forms providing waiver of additional fee as per MCA Circular No. 06/2021 and 07/2021 (Dated, May 13, 2021)

The MCA has issued list of forms for which additional fee waiver is made available as per Circular no. 06/2021 and 07/2021 due to COVID-19 Pandemic, namely:

S.No.	Form ID	Form description
1	Form CHG-1	Application for registration of creation, modification of charge (other than those related to debentures)
2	Form CHG-9	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures
3	Form ADT-1	Information to the Registrar by company for appointment of auditor
4	Form INC-22	Notice of Situation or Change of situation of Registered Office of the Company
5	FORM NDH-3	Return of Nidhi Company for the half year ended

6	FORM FC-4	Annual Return of a Foreign Company
7	FORM MSC-3	Return of dormant companies
8	FORM INC-27	Conversion of public company into private company or private company into public company
9	FORM NDH-2	Application for extension of time
10	FORM-IEPF-3	Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund

For details:

http://www.mca.gov.in/Ministry/pdf/FeeWaiver_13052021.pdf

SECURITIES LAWS AND CAPITAL MARKETS

1. **Securities Contracts (Regulation) Act, 1956 [As amended by the Finance Act, 2021 (13 of 2021) w.e.f. April 1, 2021]**

The Finance Bill, 2021 proposed to amend the Securities Contracts (Regulation) Act, 1956 ("SCRA") which brings in a new concept of 'pooled investment vehicle'

The Finance Bill proposed to insert clause (da) to Section 2 of the SCRA, 1956 defining the expression 'pooled investment vehicle' as under:

'Pooled Investment Vehicle' means a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund, collective investment scheme or a business trust as defined in sub-section (13A) of section 2 of the Income tax Act, 1961 and registered with the Securities and Exchange Board of India, or such other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as may be made by the Securities and Exchange Board of India in this behalf.

In addition to the above definition the term "securities" under Section 2(h) of the SCRA has been amended as under: -

2(h) "securities" include

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a **pooled investment vehicle or other body corporate;**
- (ida) **units or any other instrument issued by any pooled investment vehicle;**

The term "securities" for purpose of 'pooled investment vehicles' would now include the units issued by pooled investment vehicles.

The Finance Bill further proposed to insert Section 30B in the SCRA providing for special provisions relating to the 'pooled investment vehicle' as under:

- "30B. (1) Notwithstanding anything contained in the Indian Trust Act, 1882 or in any other law for the time being in force or in any judgment, decree or order of any Court, Tribunal or any other authority, a pooled investment vehicle, whether constituted as a trust or otherwise, and registered with the Securities and Exchange Board of India shall be eligible to borrow and issue debt securities in such manner and to such extent as may be specified under the regulations made by Securities and Exchange Board of India in this behalf.
- (2) Every pooled investment vehicle referred to in subsection (1) shall, subject to the provisions of the trust deed, be permitted to provide security interest to lenders in terms of the facility documents entered into by such pooled investment vehicle.
- (3) Where any pooled investment vehicle referred to in sub-section (1) defaults in repayment of principal amount or payment of interest or any such

amount due to the lender, the lender shall recover the defaulted amount and enforce security interest, if any, against the trust assets, by initiating proceedings against the trustee acting on behalf of such pooled investment vehicle in accordance with the terms and conditions specified in the facility documents:

Provided that on initiation of the proceedings against the trust assets, the trustee shall not be personally liable and his assets shall not be utilised towards recovery of such debt.

(4) The trust assets, which remain after recovery of defaulted amount, shall be remitted to the unit holders on proportionate basis.”

These amendments to SCRA shall take effect from April 01, 2021.

For details:

<https://www.sebi.gov.in/legal/acts/apr-2021/securities-contracts-regulation-act-1956-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-49750.html>

2. **Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds**

(SEBI Circular No. SEBI/HO/IMD/IMD-1 DOF2/P/CIR/2021/0548 dated April 06, 2021)

Background

SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/17 dated February 2, 2021 prescribed the modalities for contribution of AMCs towards share capital of LPCC. In this regard, it was prescribed, *inter alia*, that the contribution from AMCs shall be in proportion to the Average assets under management (AUM) of open ended debt oriented mutual fund schemes (excluding overnight, gilt fund and gilt fund with 10-year constant duration but including conservative hybrid schemes) managed by them for the Financial Year (FY) 2019-20.

Brief of the Circular

Paragraph 4 of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/17 dated February 2, 2021 has been modified to the effect that the contribution of AMCs shall be based on Average AUM of debt oriented schemes, as detailed above, for the Financial Year (FY) 2020-21.

This comes following representation from industry body the Association of Mutual Funds in India (AMFI).

The LPCC is an entity established to undertake the activity of clearing and settlement of repo transactions. The decision to allow the MF industry to set up LPCC was based on recommendation of a working group set up by the mutual fund advisory committee. Market experts believe that LPCC would help fund houses in tackling with redemption pressure and settle transactions in corporate bond markets.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/setting-up-of-limited-purpose-clearing-corporation-lpcc-by-asset-management-companies-amcs-of-mutual-funds_49770.html

3. Regulatory reporting by AIFs

(SEBI Circular No. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549 dated April 07, 2021)

Brief of the Circular

In terms of AIF Regulations and Circular No. CIR/IMD/DF/10/2013 dated July 29, 2013, AIFs are required to submit periodical reports to SEBI relating to their activity. AIFs are funds established or incorporated in India for the purpose of pooling in capital from Indian and foreign investors.

To provide ease of compliance, SEBI has decided to review and rationalize the existing regulatory reporting requirements. Accordingly, based on consultation with various stakeholders and recommendation of the Alternative Investment Policy Advisory Committee, the SEBI has decided that-

- for quarter ending December 31, 2021 onwards, all AIFs shall submit reports on their activity as an AIF to SEBI on a quarterly basis within 10 calendar days from the end of each quarter in the revised formats as specified in circular annexed to it. Further, Category III shall also submit reports on leverage undertaken, on quarterly basis in the revised formats as specified in circular annexed to it.
- Further, any changes in terms of private placement memorandum and in the documents of the fund/ scheme should be intimated to investors and SEBI on a consolidated basis, within 1 month from the end of a financial year. Such intimation shall specifically mention the changes carried-out in the private placement memorandum and the documents of the fund/ scheme, along with the relevant pages of revised sections/ clauses. The provisions would be effective immediately.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-regulatory-reporting-by-aifs_49788.html

4. Circular on Reporting Formats for Mutual Funds

(SEBI Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2021/550 dated April 12, 2021)

SEBI came out with fresh guidelines on reporting formats for mutual funds. The formats for the reports to be submitted by asset management companies (AMCs) to trustees, by AMCs to SEBI and by trustees to SEBI have been reviewed and revised on the basis of consultation from the industry.

1) Reporting by AMCs to Trustees

- **Bi-monthly Compliance Certificate (BCC)**

The Compliance Certificate to be submitted by the AMC to the Trustees on a Bi-monthly basis shall be discontinued.

- **Half yearly Compliance Certificate (HYCC) by AMC to Trustees**

The Compliance Certificate to be submitted by the AMC to the Trustees on a half yearly basis shall be discontinued.

The contents of both BCC and HYCC have been suitably incorporated in the Quarterly Report by AMC to Trustees.

- **Quarterly Report by AMC to Trustees (QR)**

The AMC shall submit QR to the trustees, as required in sub-regulation (4) of Regulation 25 of MF Regulations, on its activities and the compliance with MF Regulations and various circulars issued thereunder. The prescribed format of QR is annexed to this circular. The same shall be submitted by AMC to Trustees by 21st calendar day of succeeding month for the quarters ending March, June, September and December.

2) Reporting by AMCs to SEBI

- **Compliance Test Report by AMC to SEBI (CTR)**

To synchronize the frequency of submission of the CTR and QR, SEBI modified guidelines to the extent that, instead of exceptional reporting, complete CTR shall be submitted by AMC to SEBI on a quarterly basis, by 21st calendar day of succeeding month for the quarters ending March, June, September and December. The revised prescribed format of CTR is prescribed annexed to this circular.

3) Reporting by Trustees to SEBI

- **Half Yearly Trustee Report by Trustees to SEBI (HYTR)**

- a) The HYTR containing the broad coverage of report of trustees to SEBI has been revised & prescribed in the circular annexed to it.
- b) Trustees, shall submit corrective steps taken with respect to the non-compliance reported in the HYTR.
- c) Trustees shall continue to submit HYTR for the half year ending September and March within two month from the end of the half year.

Applicability

1. For QR and CTR reports, the circular shall come into effect for reporting from the quarter ending June, 2021;
2. For HYTR report, the circular shall come into effect for reporting from the half year ended March, 2021;
3. BCC and HYCC shall be discontinued subsequent to the effective date of the QR report as mentioned at paragraph (1) above.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-reporting-formats-for-mutual-funds_49813.html

5. Guidelines for warehousing norms for agricultural/agri-processed goods and non-agricultural goods (only base/industrial metals) underlying a commodity derivatives contract having the feature of physical delivery

(SEBI Circular No. SEBI/HO/CDMRD/DMP/P/CIR/2021/551 dated April 16, 2021)

Background

Warehousing or Storage infrastructure and its ancillary services play a critical role in the delivery mechanism of the Commodity Derivatives Market. A robust and credible warehousing infrastructure is *sine qua non* for an effective Commodity Derivatives Market that can inspire confidence amongst the market participants and other stakeholders.

With this objective, Regulation 43A of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ("SECC Regulations") provides, *inter-alia*, that every recognized Clearing Corporation (hereinafter referred to as "CCs") providing clearing and settlement services for commodity derivatives shall ensure guarantee for settlement of trades including good delivery.

To fulfil this obligation, it is imperative on the part of the Clearing Corporations to ensure that their accredited storage facilities exercise due diligence for safety and quality of the goods deposited with them for the purpose of delivery on exchange platform.

Brief of the Circular

It is incumbent upon the Clearing Corporations to put in place a comprehensive framework of norms for adherence by the Warehouse Service Providers (hereinafter referred to as "WSP/s"), assayers and other allied service providers engaged by them for ensuring good delivery as mandated under the SECC Regulations.

At the outset, it is clarified that the norms prescribed in this Circular are the minimum requirements/standards which the Clearing Corporation will set out for compliance by its accredited WSPs and assayers and are to be complied with in conjunction with the applicable norms laid down by Warehousing Development and Regulatory Authority (WDRA) or any other government authority overseeing the warehousing or storage infrastructure and its ancillary services for the respective goods.

The Clearing Corporations are at liberty to prescribe additional norms/guidelines for compliance by their accredited WSPs, warehouses and assayers, if they deem so fit, for ensuring good delivery of commodities by them. However, it must be ensured by the Clearing Corporations that such additional norms specified are not in contravention with the provisions of this Circular.

The Clearing Corporations shall put in place necessary arrangements for ensuring compliance with the provisions of Regulation 43A of SECC Regulations. Further, the

Clearing Corporations shall have necessary arrangements to ensure that in the event of bankruptcy or insolvency of the WSP or other such contingency, there must be no restrictions placed upon owners/depositors of the commodity desiring to take possession of their individually identified commodity and remove it from the accredited Warehouse(s).

On the basis of various observations, inputs/feedback received during visits to different warehouses, meetings held with the WSPs, stock exchanges, Clearing Corporations and other stakeholders, it has been decided that the Clearing Corporations shall frame guidelines in accordance with the revised norms as per the circular annexed to it.

With this Circular, there will be uniformity in requirements for agricultural and agri-processed commodities and base/industrial metals, ease of doing business, rationalised regulatory compliance costs etc.

The norms laid down in this Circular shall come into effect from June 01, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-guidelines-for-warehousing-norms-for-agricultural-and-agri-processed-goods-and-non-agricultural-goods-only-base-and-industrial-metals_49838.html

6. Relaxations relating to procedural matters –Issues and Listing

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/552 dated April 22, 2021)

SEBI vide Circular no. SEBI/HO/CFD/DIL2/ CIR/P/ 2020/78 dated May 06, 2020 granted one time relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening.

To ease and facilitate investors, the relaxation mentioned in point (iv) of the said SEBI Circular dated May 06, 2020 is further extended and shall be applicable for Rights Issues opening upto **September 30, 2021** provided the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the said SEBI Circular dated May 06, 2020.

In respect to mechanism and compliance requirements at point (iv) and (v) of the SEBI Circular dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:

- a. Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).
- b. Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/relaxations-relating-to-procedural-matters-issues-and-listing_49900.html

7. **SEBI (Portfolio Managers) (Second Amendment) Regulations, 2021 (April 26, 2021)**

SEBI vide its notification dated April 26, 2021, amends the provisions of SEBI (Portfolio Managers) Regulations, 2020, which shall come into force on the date of their publication in the Official Gazette.

The amendment has added a clause under conditions of registration mentioning that the portfolio manager shall obtain prior approval of the SEBI in case of change in control in such manner as may be specified by SEBI.

For details:

https://www.sebi.gov.in/legal/regulations/apr-2021/securities-and-exchange-board-of-india-portfolio-managers-second-amendment-regulations-2021_49943.html

8. **Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments**

(SEBI Circular No. SEBI/ HO/ MIRSD/ MIRSD_CRADT/ P/ CIR/ 2021/ 554 dated April 27, 2021)

SEBI came out with new framework to strengthen policies on provisional rating by credit rating agencies (CRAs) for debt instruments.

Under the new framework, all provisional ratings ('long term' or 'short term') for debt instruments need to be prefixed as 'provisional' before the rating symbol in all communications viz. rating letter, press release / rating rationale, etc. Further, a rating shall be considered as provisional and not final in cases where certain compliances that are crucial to the assignment of credit rating are yet to be complied with or certain documentations remain to be executed at the time of rating. These documents or compliances include execution of guaranteed deed, opening of escrow account and setting up of debt service reserve account.

With regard to validity period, the provisional rating will be converted into a final rating within 90 days from the date of issuance of the debt instrument. The final rating assigned after the end of 90 days will be consistent with the available documents. An extension of 90 days may be granted on a case-to-case basis by the CRA's rating committee(s), in accordance with the policy framed by the credit rating agency in this regard. Also, no CRA shall assign any provisional rating to a debt instrument upon the expiry of 180 days from the date of its issuance.

In addition to the disclosures already made by Credit Rating Agencies, the following disclosures shall be included in press release / rating rationale while assigning provisional ratings:

- a) Pending steps / documentation considered while assigning provisional rating.
- b) Risks associated with the provisional nature of the credit rating, including risk factors that are present in the absence of completed documentation / steps.
- c) Rating that would have been assigned in absence of the pending steps/ documentation considered while assigning provisional rating. In cases

where the absence of said steps/ documentation would not result in any rating being assigned by the CRA (for instance, in case of provisional rating for REIT/ InvIT – pending formation of trust), the CRA shall specify the same in the press release.

- d) While assigning provisional rating to a debt instrument proposed to be issued, the press release shall specify that in case the debt instrument is subsequently issued, the provisional rating would have to be converted into final rating as per the validity period prescribed above.
- e) While assigning provisional rating to an issued debt instrument, the press release shall specify the rating and timeline implications as per the validity period prescribed above.
- f) Furthermore, in case of provisional ratings for cases mentioned in Para 2.2(f) above, the following disclosures shall also be required, wherever applicable:
 - i. the broad details of the assets that are proposed to be held by the REIT/ InvIT, the proposed capital structure, etc.
 - ii. the rating rationale should disclose that the CRA has taken an undertaking from the sponsor stating that the key assumptions (relating to the assets, capital structure, etc.) are in consonance with the details filed by the sponsor with SEBI.
 - iii. in case of change in provisional rating due to change in aforesaid key assumptions, the press release shall state that the rating by the CRA is based on a declaration from the issuer that similar changes have been made in the filing with SEBI.

In case the provisional rating assigned is not accepted by the issuer (or sponsor, in case of REITs/InvITs), then in the "non-accepted ratings" published by credit rating agencies on their website the following supplementary disclosures shall be provided:

- a) the details of the steps taken for assigning the provisional rating. For instance, in case of REITs/ InvITs, such disclosure shall contain the broad details of the assets to be housed under the Trust, the proposed capital structure, etc.
- b) the rating referred to in Para 4 (c), viz. rating that would have been assigned in absence of the said steps/ documentation.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/standardizing-and-strengthening-policies-on-provisional-rating-by-credit-rating-agencies-cras-for-debt-instruments_49951.html

9. Alignment of interest of Key Employees of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes

(SEBI Circular No. SEBI/HO/IMD/IMD-I/DOF5/P/CIR/2021/553 dated April 28, 2021)

In order to align the interest of the Key Employees of the AMCs with the unitholders of the mutual fund schemes, SEBI has decided that a minimum of 20% of the salary/ perks/ bonus/ non-cash compensation (gross annual CTC) net of income tax and

any statutory contributions (i.e. PF and NPS) of the Key Employees of the AMCs shall be paid in the form of units of Mutual Fund schemes in which they have a role/oversight. The compensation in units shall be paid proportionately over 12 months. It was also decided that the compensation paid as mutual fund units will be locked-in for a minimum period of three years or tenure of the scheme, whichever is less. Exchange Traded Funds (ETFs), Index Funds, Overnight Funds and existing close ended schemes have been excluded.

Key Employees of the AMCs shall include:

- i. Chief Executive Officer (CEO), Chief Investment Officer (CIO), Chief Risk Officer (CRO), Chief Information Security Officer (CISO), Chief Operation Officer (COO), Fund Manager(s), Compliance Officer, Sales Head, Investor Relation Officer(s) (IRO), heads of other departments, Dealer(s) of the AMC;
- ii. Direct reportees to the CEO (excluding Personal Assistant/Secretary);
- iii. Fund Management Team and Research team;
- iv. Other employees as identified & included by AMCs and Trustees.

Further, with a view to allow the Key Employees to diversify their unit holdings, in case of dedicated fund managers managing only a single scheme / single category of schemes, 50% of the aforementioned compensation shall be by way of units of the scheme/category managed by the fund manager and the remaining 50% can, if they so desire, be by way of units of those schemes whose risk value as per the risk-o-meter is equivalent or higher than the scheme managed by the fund manager.

No redemptions of the said units shall be allowed during the lock-in period. However, AMC may have provision of borrowing against such units as per policy. Further, no redemption of such units shall be allowed within the lock-in period in case of resignation or retirement before attaining the age of superannuation as defined in the AMC service rules.

The provisions of this circular shall be applicable with effect from July 01, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/alignment-of-interest-of-key-employees-of-asset-management-companies-amcs-with-the-unitholders-of-the-mutual-fund-schemes_49979.html

- 10. Disclosure of the following only w.r.t schemes which are subscribed by the investor: a. risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme vis-à-vis benchmark and b. Details of the portfolio**

(SEBI Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/555 dated April 29, 2021)

Based on the recommendation of Mutual Fund Advisory Committee (MFAC) and to enhance the quality of disclosure w.r.t. risk and performance and portfolio of the schemes, without creating information overload on the investor, SEBI decided that the following disclosures shall be made to the investor only for the schemes in

which the unitholders are invested as on the date on which the disclosures are stipulated:

- a) Mutual Fund/AMCs shall also disclose risk-o-meter of the scheme and benchmark while disclosing the performance of scheme vis-à-vis benchmark and
- b) Mutual Funds/ AMCs shall send the details of the scheme portfolio while communicating the fortnightly, monthly and half-yearly statement of scheme portfolio via email.

This circular shall be applicable with effect from June 1, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/disclosure-of-the-following-only-w-r-t-schemes-which-are-subscribed-by-the-investor-a-risk-o-meter-of-the-scheme-and-the-benchmark-along-with-the-performance-disclosure-of-the-scheme-vis-vis-ben_49992.html

11. Comprehensive Frequently Asked Questions (FAQs) on SEBI (Prohibition of Insider Trading) Regulations, 2015 (April 29, 2021)

1. In order to keep pace with the evolving market dynamics, SEBI (Prohibition of Insider Trading) Regulations, 2015 have been amended from time to time. With an objective to provide greater clarity on several concepts related to the SEBI (PIT) Regulations, 2015, as also to shed more light on the nuances of various requirements of the regulations, SEBI has been issuing guidance note and frequently asked questions (FAQs). Therefore, these comprehensive FAQs are being issued, to further the above objective.
2. These comprehensive FAQs have been prepared based on the feedback received from various stakeholders. These FAQs include all previous guidance note and FAQs issued till date and also provides clarification on several evolving issues. References to all the previous FAQs and guidance note have been indicated appropriately.
3. With a view to provide more clarity and ease of reference, these FAQs have been classified under various headings, namely, trading, structured digital database, disclosures, pledge, trading plan, pre-clearance, trading window closure, contra-trade, etc.

For details:

https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/apr-2021/comprehensive-faqs-on-sebi-pit-regulations-2015_49999.html

12. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the CoVID-19 pandemic

(SEBI Circular No. SEBI/HO/CFD/CMD1/P/CIR/2021/556 dated April 29, 2021)

Due to ongoing second wave of the CoVID-19 pandemic and restrictions imposed by various state governments, SEBI has granted the following relaxations from compliance with certain provisions of the LODR Regulations:

Sl. No.	Regulation	Requirement	Due Date	Extended deadline for the quarter / half year / year ending March 31, 2021
1.	Regulation 24A read with circular No. CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Annual Secretarial Compliance report	Sixty days from end of the financial year	May 30, 2021	June 30, 2021
2.	Regulation 33 (3) - Quarterly financial results / Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
3.	Regulation 32 (1) read with SEBI circular No. CIR/CFD/CMD1/162/2019 dated December 24, 2019 on Statement of deviation or variation in use of funds	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021

Listed entities are permitted to use digital signature certifications for authentication/ certification of filings/submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until December 31, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_50000.html

13. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 / other applicable circulars due to the CoVID-19 pandemic

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2021/557 dated April 29, 2021)

Due to ongoing second wave of the CoVID-19 pandemic and restrictions imposed by various state governments, SEBI has granted the following relaxations from compliance with certain provisions of the LODR Regulations / other applicable circulars:

Sl.No.	Regulation	Requirement	Due Date	Extended deadline for the quarter / half year / year ending March 31, 2021
For entities that have listed their debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-convertible Redeemable Preference Shares Regulations, 2013, and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008				
1.	Regulation 52 (1) - Half-yearly financial results Regulation 52 (2) - Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
2.	Regulation 52 (7) read with SEBI circular no. SEBI/HO/DDHS/08/2020 dated January 17, 2020 on Statement of deviation or variation in use of funds	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021
For entities that have listed their bonds under the SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015				
3.	Requirements as per circular no. SEBI/HO/DDHS/CIR/P/134/20			

	19 dated November 13, 2019 Annual audited financial results	Sixty days from end of the financial year	May 30, 2021	June 30, 2021
	For entities that have listed Commercial Paper			
4.	Requirements as per SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 Half Yearly financial results Annual audited financial results	Forty-five days from end of the Half Year / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021

Listed entities are permitted to use digital signature certifications for authentication/ certification of filings/submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until December 31, 2021.

Entities that have listed their municipal bonds may also opt to use digitally signed documents for making filings with Stock Exchanges in terms of SEBI circulars CIR/IMD/DF1/60/2017 dated June 19, 2017 and SEBI/HO/DDHS/CIR/P/134/2019 dated November 13, 2019.

Entities that have listed Commercial Paper may also opt to use digitally signed documents for making filings with Stock Exchanges in terms of SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-disclosure-requirements-regulations-2015-other-applicable-circulars-due-to-the-covid-19-pandemic_50001.html

14. Addendum to SEBI Circular on “Relaxation in adherence to prescribed timelines issued by SEBI due to Covid 19” dated April 13, 2020

(SEBI Circular No. SEBI/HO/MIRSD/RTAMB/P/CIR/2021/558 dated April 29, 2021)

In view of Covid-19 pandemic, the SEBI had provided relaxations in timelines to RTAs for regulatory filings containing the list of 12 items during April, 2020. Now, SEBI has added one more item 'Processing of the demat requests' to this list.

SEBI has given relaxation to intermediaries / market participants w.r.t. compliance with the prescribed timelines which has been extended to July 31, 2021 in view of the Covid-19 situation. The aforesaid relaxation shall be applicable for items No. 1-13.

Additionally, regarding the half-yearly Internal Audit Report (IAR) to be submitted by RTAs within 45 days from the closure of the half year as mandated by NSDL and CDSL, it has now been decided that the timeline of May 15, 2021 for submission of IAR by RTAs for half year ended March 31, 2021 has been extended to July 31, 2021 in view of the Covid-19 situation.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/addendum-to-sebi-circular-on-relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19-dated-april-13-2020_50006.html

15. Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)

(SEBI Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2021/0560 dated April 30, 2021)

SEBI vide circular no. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021 has prescribed the procedure for updation of SID and KIM of Mutual Fund schemes. In this regard, based on the feedback received, it has been decided to modify paragraph 11 of the aforesaid circular as follows:

1. Paragraph 11.1 (i) shall be read as under :

“11.1 (i) For the open ended and interval schemes, the SID shall be updated within next six months from the end of the 1st half or 2nd half of the financial year in which schemes were launched, based on the relevant data and information as at the end of previous month. Subsequently, SID shall be updated within one month from the end of the half-year, based on the relevant data and information as at the end of September and March respectively.”

2. Paragraph 11.1 (iv) shall be read as under :

“11.1 (iv) KIM shall be updated at least once in half-year, within one month from the end of the respective half-year, based on the relevant data and information as at the end of September and March and shall be filed with SEBI forthwith through electronic mode only.”

Taking into account the difficulties expressed by the industry in light of continuing COVID 19 scenario, SEBI vide this circular has provided that the updation of SID and KIM for the half-year ended March, 2021 shall be completed by **May 31, 2021**.

SID and KIM are among the important documents which are prepared by asset management companies (AMCs) to provide information about a particular mutual fund scheme.

For details:

https://www.sebi.gov.in/legal/circulars/apr-2021/timelines-for-updation-of-scheme-information-document-sid-and-key-information-memorandum-kim_50020.html

INDIRECT TAX LAWS

Goods and Services Tax

1. Notification to make second amendment (2021) to CGST Rules (Notification No. 07/2021 – Central Tax, dated April 27, 2021)

The government notified the Central Goods and Services Tax (Second Amendment) Rules, 2021 which seek to amend CGST Rules, 2017. A registered person registered under the provisions of the Companies Act, 2013, during the period from April 27, 2021 to May 31, 2021, will be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-07-central-tax-english-2021.pdf;jsessionid=58F786481E5EDCA9913B5345EADE8995>

2. Lowering of interest rate for the month of March and April, 2021 (Notification No. 08/2021 – Central Tax, dated May 01, 2021)

Particulars	Tax Period	Interest Relief from the due date
Aggregate Turnover > 5 crores in preceding FY (Monthly Returns)	March 2021	First 15 days: 9%
	April 2021	After 15 days: 18%
Aggregate Turnover < 5 crores in preceding FY (Quarterly Returns, Monthly Payments)	March 2021	First 15 days: Nil
	April 2021	Next 15 days: 9%
Composition scheme	Quarter Ending March 2021	After 30 days: 18%
		First 15 days: Nil
		Next 15 days: 9%

This notification shall come into effect from April 18, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-08-central-tax-english-2021.pdf>

3. Waiver of Late Fees for filing Form GSTR -3B(Notification No. 09/2021 – Central Tax, dated May 01, 2021)

No late fees will be charged if the return Form GSTR – 3B is filed within 30 days of the original due date for the quarter ending March 31, 2021 for delayed return filing for March and April. This notification shall come into effect from the April 20, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-09-central-tax-english-2021.pdf>

4. Extension in the due date for filing FORM GSTR-4 (Notification No. 10/2021 – Central Tax, dated May 01, 2021)

The due date for filing FORM GSTR-4 for financial year 2020-21 is extended up to May 31, 2021. This notification shall come into effect from the April 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-central-tax-english-2021.pdf>

5. Extension in the due date for filing FORM ITC-04 (Notification No. 11/2021 – Central Tax, dated May 01, 2021)

This notification seeks to extend the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till May 31, 2021. This notification shall come into effect from the April 25, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-central-tax-english-2021.pdf>

6. Extension in the due date for filing FORM GSTR -1 (Notification No. 12/2021 – Central Tax, dated May 01, 2021)

This notification seeks to extend the due date for furnishing of FORM GSTR -1 for the tax period April, 2021 till May 26, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-central-tax-english-2021.pdf>

7. Third Amendment (2021) to CGST Rules (Notification No. 13/2021 – Central Tax, dated May 01, 2021)

A proviso has been entered in sub-rule (4) of rule 36 of the CGST Rules which is to be checked cumulatively for the tax period April 2021 and May 2021. Any adjustment for the said periods shall be made in Return in Form GSTR 3B to be furnished for the month of May 2021. A registered person may furnish details, for the month of April, 2021, using IFF from the 1st day of May 01, 2021 till May 28, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-13-central-tax-english-2021.pdf>

CUSTOMS

1. **Exemption of Customs duty and health cess on import of Oxygen and Oxygen related equipment and COVID-19 vaccines (Notification No. 28/2021 - Customs, dated April 24, 2021)**

CBIC has notified the exemption of customs duty and health cess on import of oxygen, oxygen related equipment and COVID-19 vaccines, up to July 31, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs28-2021.pdf>

2. **Ad hoc Exemption from IGST on imports of specified COVID-19 relief material donated from abroad (May 03, 2021)**

In view of the COVID-19 pandemic, the Central Government has issued notifications exempting Basic Customs Duty and/or Health cess on imports of a number of COVID-19 related relief materials, for a limited period. These include-Remdesivir injection/ API and Beta Cyclodextrin (SBEB CD), Inflammatory diagnostic (markers) kits and Medical grade Oxygen, oxygen therapy related equipment such as oxygen concentrators, cryogenic transport tanks, etc, and COVID-19 vaccines. The Central Government has granted exemption from IGST on import of such goods received free of cost for free distribution for covid relief. This exemption shall apply till June 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/AdHoccs04-2021.pdf>

DIRECT TAX LAWS

1. **New reporting requirements in Form 3CD & Revision (Notification No. 28 Dated April 1, 2021)**

CBDT has vide Notification No. 28 inserted new clauses in Form 3CD (Tax Audit Report) and also notified that Tax Audit Report under Rule 6G can be revised if there is payment by Assessee after furnishing of report which necessitates recalculation of disallowance under section 40 or section 43B of the Income tax Act, 1961.

For details:

<http://egazette.nic.in/WriteReadData/2021/226351.pdf>

2. **CBDT notifies 'Norfund, Government of Norway' as sovereign wealth fund [Notification No. 33 Dated April 19, 2021]**

The Central Government specifies the sovereign wealth fund, namely, the Norfund, Government of Norway, (hereinafter referred to as "the assessee") as the specified person for the purposes of sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961, in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 subject to the fulfilment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_33_2021.pdf

3. **Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Dividend income [Notification No. 1 Dated April 20, 2021]**

The Central Board of Direct Taxes (CBDT) notified the Format, Procedure, and Guidelines for submission of Statement of Financial Transactions (SFT) for Dividend income. Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish SFT.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_1_2021_dividend_income.pdf

4. **Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Interest income [Notification No. 2 Dated April 20, 2021]**

The Central Board of Direct Taxes (CBDT) notified the Format, Procedure, and Guidelines for submission of Statement of Financial Transactions (SFT) for Interest income. Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish SFT.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_2_2021_interest_income.pdf

5. CBDT notifies 'Canada Pension Plan Investment Board' u/s 10(23FE) of the Income Tax Act, 1961 [Notification No. 34 Dated April 22, 2021]

The Central Government hereby specifies the pension fund, namely, the Canada Pension Plan Investment Board, (hereinafter referred to as "the assessee") as the specified person for the purposes of sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfilment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_34_2021.pdf

6. CBDT notifies 'Canada Pension Plan Investment Board Private Holdings (4) Inc' u/s 10(23FE) of the Income Tax Act, 1961 [Notification No. 35 Dated April 22, 2021]

The Central Government hereby specifies 'Canada Pension Plan Investment Board Private Holdings (4) Inc', as the specified person for the purposes of sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 22nd April 2021 but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfilment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_35_2021.pdf

7. Government extends certain timelines in light of the raging pandemic [PIB Dated April 24, 2021]

In the light of several representations received and to address the hardship being faced by various stakeholders, the Central Government has decided to extend the time limits to 30th June, 2021 in the following cases where the time limit was earlier extended to 30th, April 2021 through various notifications issued under the Taxation and Other Laws (Relaxation) and Amendment of Certain Provisions Act, 2020, namely:

- i. Time limit for passing of any order for assessment or reassessment under the Income-tax Act, 1961, the time limit for which is provided under section 153 or section 153B thereof;
- ii. Time limit for passing an order consequent to direction of DRP under sub-section (13) of section 144C of the Act;
- iii. Time limit for issuance of notice under section 148 of the Act for reopening the assessment where income has escaped assessment;
- iv. Time Limit for sending intimation of processing of Equalisation Levy under sub-section (1) of section 168 of the Finance Act 2016

It has also been decided that time for payment of amount payable under the Direct Tax Vivad se Vishwas Act, 2020, without an additional amount, shall be further extended to 30th June, 2021.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1713723>

8. CBDT notifies Income-tax (11th Amendment) Rules, 2021 [Dated April 26, 2021]

The Central Board of Direct Taxes 'CBDT' vide Notification No. 37/2021 issued the Income-tax (11th Amendment) Rules, 2021 to further amend the Income-tax Rules, 1962 ("Income-tax Rules") with regard to conditions to be satisfied by the Pension Fund, in a following manner:

- i. Inserted a proviso to Rule 2DB(ii) with respect to condition of assets being administered or invested by Pension Fund as mention in clause (ii) shall be deemed to be satisfied if certain condition specified therein are satisfied.
- ii. Inserted a second proviso to Rule 2DB (iii) of the Income-tax Rules stating that provisions of clause (iii) shall not apply to earnings from assets referred in clause (ii), if the earning are credited either to the account of the Government of foreign country or to any other account designated by such Government so that no portion of the earnings inures any benefit to any private person.
- iii. Substituted Form No. 10BBA (Application for notification under Explanation 1(c)(iv) to Section 10(23FE) of the Income-tax Act, 1961)

For details:

https://incometaxindia.gov.in/communications/notification/notification_37_2021.pdf

9. Government extend the time for payment under Vivad se Vishwas scheme to June 30, 2021 [Notification No. 39 Dated April 27, 2021]

Government extends time for payment of amount payable under the Direct Tax Vivad se Vishwas Act, 2020, without an additional amount, to 30th June, 2021 vide Notification No. 39/2021-Income Tax, Dated: 27th April, 2021.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_39_2021.pdf

10. Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Depository Transactions [Notification No. 3 Dated April 30, 2021]

Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish statement of financial transaction (SFT). For the purposes of pre-filling the return of income, CBDT has issued Notification No. 16/2021 dated 12.03.2021 to include reporting of information relating to Capital gains on transfer of listed securities or units of Mutual Funds. The new sub rule 5A of rule 114E specifies that the information shall be furnished in such form, at such frequency, and in such manner, as may be specified. Accordingly, the guidelines for preparation and submission of Statement of Financial Transactions (SFT) information, format of control statement to be submitted by the Designated Director and data structure and validation rules have been prescribed.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification-3_2021_depository_transaction.pdf

11. Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Mutual Fund Transactions by Registrar and Share Transfer Agent [Notification No. 4 Dated April 30, 2021]

Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish statement of financial transaction (SFT). For the purposes of pre-filing the return of income, CBDT has issued Notification No. 16/2021 dated 12.03.2021 to include reporting of information relating to Capital gains on transfer of units of Mutual Funds. The new sub rule 5A of rule 114E specifies that the information shall be furnished in such form, at such frequency, and in such manner, as may be specified. Accordingly, the guidelines for preparation and submission of Statement of Financial Transactions (SFT) information, format of control statement to be submitted by the Designated Director and data structure and validation rules have been prescribed.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_4_2021_mutual_fund_transaction.pdf

12. Income Tax (12th Amendment) Rules, 2021 [Notification No. 40 Dated April 30, 2021]

The Central Board of Direct Taxes vide its notification dated 30th April 2021 has published the Income-tax (12th Amendment) Rules, 2021 through which it has notified new rule 44DA which prescribes the manner for making application to withdraw pending application filed before Settlement Commission.

As per the new rule, the exercise of the option by an assessee to withdraw his pending application under sub-section (1) of section 245M shall be in Form No. 34BB and it shall be verified by the person who is authorised to verify the return of income of the assessee. Further the form 34BB shall be furnished electronically in accordance with the procedures, formats and standards specified by the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, and thereafter signed printout of the said form shall be uploaded in the manner specified by the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems).

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_%2040_2021.pdf

13. Extension of time lines related to certain compliances by the Taxpayers under the Income-tax Act, 1961 [Circular No. 08 Dated April 30, 2021]

In view of severe pandemic, the Central Board of Direct Taxes provides following relaxation in respect of Income-tax compliances by the taxpayers:

- i. Filing Belated Return and Revised Return for AY 2020-21 (FY 2019-20) – Extended to 31st May, 2021 (which ended on 31st March, 2021)
- ii. Filing SFT (Form 61) extended to 31st May, 2021 (where the due date was 30th April, 2021)
- iii. Return filed in response to 148 of the Income Tax Act – where return of income had to be filed on or after 1st April, 2021 - can now be filed upto 31st May, 2021
- iv. Relaxation of Filing Appeal dates for Appeals to CIT (Appeals) extended to 31st May, 2021 (where such last date was 1st April, 2021 or after)
- v. Payments of TDS deducted u/s 194IA, 194IB and 194M and filing of challan-cum-statement on the same may be furnished on or before 31st May, 2021 (earlier date 30th April, 2021)
- vi. Objections to Dispute Resolution Panel (DRP) for which the last date of filing is 1st April 2021 or thereafter, may be filed within the time provided under that Section or by 31st May 2021 , whichever is later;

For details:

https://www.incometaxindia.gov.in/communications/circular/circular_no_8_2021.pdf

BANKING LAWS

1. **Gold Monetization Scheme (GMS), 2015 (Notification No. RBI/2021-22/13DoR.AUT.REC.2/23.67.001/2021-22 dated April 05, 2021)**

In exercise of the powers conferred on the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949, the RBI makes few amendments and new insertions in the Reserve Bank of India (Gold Monetization Scheme, 2015) Master Direction No.DBR.IBD.No.45/23.67.003/2015-16 dated October 22, 2015, with immediate effect.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12067&Mode=0>

2. **External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilised ECB proceeds in term deposits [Notification No. RBI/2021-22/16A.P. (DIR Series) Circular No. 01 dated April 07, 2021]**

Based on requests from stakeholders, including Industry associations, and with a view to providing relief to the ECB borrowers affected by the Covid-19 pandemic, it has been decided to relax the above stipulation as a one-time measure. Accordingly, unutilised ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to March 01, 2022.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12070&Mode=0>

3. **Enhancement of limit of maximum balance per customer at end of the day from ₹1 lakh to ₹2 lakh – Payments Banks (PBs) [Notification No. RBI/2021-22/20DoR.LIC.REC.5/16.13.218/2021-22 dated April 8, 2021]**

In terms of paragraph 4(i) of the 'Guidelines for Licensing of Payments Banks' (Licensing Guidelines) dated November 27, 2014, PBs were restricted to hold a maximum balance of ₹1 lakh per individual customer at the end of the day. It was also indicated in the guidelines that after gauging the performance of the PBs, RBI may consider increasing the maximum balance limit.

Considering the progress made by PBs in furthering financial inclusion and with the objective of giving more flexibility to the PBs, it has been decided to enhance the limit of maximum balance at the end of the day from ₹1 lakh to ₹2 lakh per individual customer of PBs with immediate effect.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12074&Mode=0>

4. **Declaration of dividends by banks (Notification No. RBI/2021-22/23 DOR.ACC.REC.7/21.02.067/2021-22 dated April 22, 2021)**

In view of the continuing uncertainty caused by the ongoing second wave of COVID-19 in the country, it is crucial that banks remain resilient and proactively raise and conserve capital as a bulwark against unexpected losses. Therefore, while allowing

banks to pay dividend on equity shares, it has been decided to review the dividend declaration norms for the year ended March 31, 2021.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12077&Mode=0>

5. Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board - (Notification No. RBI/2021-22/24 DOR. GOV.REC.8/29.67.001/2021-22 dated April 26, 2021)

A Discussion Paper on 'Governance in Commercial Banks in India' was issued by the Reserve Bank on June 11, 2020 to review the framework for governance in the commercial banks. Based on the feedback received, a comprehensive review of the framework has been done. In order to address a few operative aspects received through such feedback, it has been decided to issue instructions with regard to the Chair and meetings of the board, composition of certain committees of the board, age, tenure and remuneration of directors, and appointment of the whole-time directors (WTDs).

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12078&Mode=0>

6. Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs) (Notification No. RBI/2021-22/25 Ref. No. DoS.CO. ARG/ SEC.01/08.91.001/2021-22 dated April 27, 2021)

These guidelines will be applicable to the Commercial Banks (excluding RRBs), UCBs and NBFCs including HFCs for Financial Year 2021-22 and onwards in respect of appointment/reappointment of SCAs/SAs¹ of the Entities. However, non-deposit taking NBFCs with asset size² below ₹1,000 crore have the option to continue with their extant procedure. As RBI guidelines regarding appointment of SCAs/SAs shall be implemented for the first time for UCBs and NBFCs from FY 2021-22, they shall have the flexibility to adopt these guidelines from H2 (second half) of FY 2021-22 in order to ensure that there is no disruption.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12079&Mode=0>

7. Priority Sector Lending (PSL) - On-lending by Small Finance Banks (SFBs) to NBFC-MFIs (Notification No. RBI/2021-22/27 FIDD.CO. Plan. BC. No.10/ 04.09.01/ 2021-22 dated May 5, 2021)

As per extant guidelines, lending by Small Finance Banks (SFBs) to Micro-Finance Institutions (MFIs) for on-lending is not reckoned for priority sector lending (PSL) classification. In view of the fresh challenges brought on by the COVID-19 pandemic and to address the emergent liquidity position of smaller MFIs, it has been decided to allow PSL classification to the fresh credit extended by SFBs to registered NBFC-MFIs and other MFIs (Societies, Trusts etc.) which are members of RBI recognised 'Self-Regulatory Organisation' of the sector and which have a 'gross loan portfolio' of upto ₹500 crore as on 31 March 2021, for the purpose of on-lending to individuals. Bank credit as above will be permitted up to 10% of the bank's total priority sector portfolio as on 31 March, 2021.

The above dispensation shall be valid upto March 31, 2022. However, loans thus disbursed will continue to be classified under Priority Sector till the date of repayment/maturity whichever is earlier.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12081&Mode=0>

8. Utilisation of Floating Provisions/Counter Cyclical Provisioning Buffer (Notification No. RBI/2021-22/28DOR.STR.REC.10/21.04.048/2021-22 dated May 5, 2021)

In order to mitigate the adverse impact of COVID 19 related stress on banks, as a measure to enable capital conservation, it has been decided to allow banks to utilise 100 per cent of floating provisions/ countercyclical provisioning buffer held by them as on December 31, 2020 for making specific provisions for non-performing assets with prior approval of their Boards. Such utilisation is permitted with immediate effect and upto March 31, 2022.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12082&Mode=0>

9. Periodic Updation of KYC - Restrictions on Account Operations for Non-compliance - (Notification No. RBI/2021-22/29DOR. AML.REC 13/ 14.01.001/ 2021-22 dated May 5, 2021)

Keeping in view the current COVID-19 related restrictions in various parts of the country, REs are advised that in respect of the customer accounts where periodic updation of KYC is due and pending as on date, no restrictions on operations of such account shall be imposed till December 31, 2021, for this reason alone, unless warranted under instructions of any regulator/ enforcement agency/court of law, etc.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12083&Mode=0>

10. Credit to MSME Entrepreneurs - (Notification No. RBI/2021-22/30 DoR.RET.REC.09/ 12.01.001/ 2021-22 dated May 05, 2021)

The Scheduled Commercial Banks were earlier allowed to deduct the amount equivalent to credit disbursed to new MSME borrowers from their Net Demand and Time Liabilities (NDTL) for calculation of the Cash Reserve Ratio (CRR). This exemption was available up to ₹ 25 lakh per borrower for the credit disbursed up to the fortnight ending October 1, 2021. It has been decided to extend this exemption for such credits disbursed up to the fortnight ending December 31, 2021. All other instructions contained in the circular *ibid* remain same.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12084&Mode=0>

11. Resolution Framework - 2.0: Resolution of Covid-19 related stress of Individuals and Small Businesses (Notification No. RBI/2021-22/31DOR.STR.REC.11/21.04.048/2021-22 dated May 5, 2021)

The resurgence of Covid-19 pandemic in India in the recent weeks and the consequent containment measures to check the spread of the pandemic may impact the recovery process and create new uncertainties. With the objective of alleviating the potential stress to individual borrowers and small businesses, the following set of measures are being announced. These set of measures are broadly in line with the contours of the Resolution Framework - 1.0, with suitable modifications.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12085&Mode=0>

12. Resolution Framework 2.0 - Resolution of Covid-19 related stress of Micro, Small and Medium Enterprises (MSMEs) (Notification No. RBI/2021-22/32 DOR.STR.REC.12/ 21.04.048/2021-22 dated May 5, 2021)

In view of the uncertainties created by the resurgence of the Covid-19 pandemic in India in the recent weeks, it has been decided to extend the above facility for restructuring existing loans without a downgrade in the asset classification subject to the certain conditions.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12086&Mode=0>

INSURANCE LAWS

1. Standard Technical Note (Template) - Motor Insurance (Circular No. IRDAI/ACT/CIR/MISC/070/04/2021 dated April 01, 2021)

In order to expedite the product clearance process, it has been decided to standardize the Technical Note so that insurers can provide all necessary details in a prescribed standard format. This will help to ensure uniformity amongst insurers in the matter of filing pricing and product related information for general insurance products. Insurers shall submit Technical Note providing complete information and duly signed by the Appointed Actuary as per the prescribed format.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4436&flag=1

2. Standard Technical Note (Template) - Health Insurance (Circular No. IRDAI/ACT/CIR/MISC/069/04/2021 dated April 01, 2021)

In order to expedite the product clearance process, it has been decided to standardize the Technical Note so that insurers can provide all necessary details in a prescribed standard format. This will help to ensure uniformity amongst insurers in the matter of filing pricing and product related information for health insurance products. Insurers shall submit Technical Note providing complete information and duly signed by the Appointed Actuary as per the prescribed format.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4434&flag=1

3. Investment in Alternative Investment Fund (AIFs) (Circular No. IRDAI/F&I/CIR/INV/074/04/2021 dated April 08, 2021)

The Insurance Regulatory and Development Authority of India (IRDAI) has specified the conditions applicable for Insurers Investment in Alternative Investment Fund (AIF). Some of the conditions are: no investment is permitted which undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted under SEBI (Alternative Investment Funds) Regulations, 2012; investments only into Fund of Funds (FoF) which comply requirement of Section 27E of the Insurance Act, 1938; compliance of clause related to fund offer document executed by FoF u/s 27E; no investment in AIF if insurer has exposure in FoF; and insurer obtain and file a quarterly certificate to be issued by the Concurrent Auditor for compliance of above specified conditions with periodical returns.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4441&flag=1

4. IRDAI (Insurance Advertisements and Disclosure) Regulations, 2021 (Regulation no. F. No. IRDAI / Reg / 2 / 174 / 2021 dated April 12, 2021)

The Insurance Regulatory and Development Authority of India (IRDAI) has issued above guidelines to ensure that the insurers, intermediaries or insurance intermediaries adopt fair, honest and transparent practices while issuing advertisements and avoid practices that tend to impair the confidence of the public

and the advertisement is relevant, fair and in simple language enabling informed decision making.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4444&flag=1

5. Facilitation by the Insurers for Cashless services at network hospitals (Circular no. IRDAI/HLT/MISC/CIR/ 99 /04/2021 dated April 22, 2021)

It has been brought to the notice of the Authority that some hospitals are denying cashless facility to policyholders for treatment of COVID-19 treatment despite having cashless arrangement with the Insurers. As per the provision of cashless facility to the policyholders where in it was specified that the Insurers shall ensure that where the policyholder is notified about availability of cashless facility at the empanelled network provider, the cashless facility at such network provider shall be made available to the policyholders in accordance to the terms and conditions of the policy contract and as per the terms agreed in Service Level Agreement (SLA).

Therefore, general and health Insurers shall ensure that all such network provider hospitals extend cashless facility for any treatment to the policyholder including COVID-19 treatment in accordance with agreed provisions of SLA and terms and conditions of the policy contract.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4455&flag=1

6. Communication on settlement of Health Insurance Claims (Circular no. IRDAI/HLT/MISC/CIR/102/04/2021 dated April 23, 2021)

In order to ensure that all network providers extend cashless services to policyholders and to address any issues causing inconvenience to policyholders while availing cashless service, the Insurers are advised to put in place an effective communication channel with all the network providers for prompt resolution of grievances of policyholders. Insurers are advised to report levying of excess charges or denial of cashless facility to the respective State Governments for appropriate action.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4457&flag=1

7. IRDAI (Manner of Assessment of Compensation to Shareholders or Members on Amalgamation) Regulations, 2021 (Regulation no. IRDAI/Reg/4/176/2021 dated April 26, 2021)

The Insurance Regulatory and Development Authority of India (IRDAI) has issued above regulations to provide for the manner of assessment of compensation for the shareholders or members whose interests in, or rights against, the transferee insurer resulting from amalgamation are less than his interest in, or rights against the original insurer.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4461&flag=1

INSOLVENCY LAW & PRACTICE

1. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021

Insolvency and Bankruptcy Board of India(IBBI) vide its notification dated 27th April, 2021 amended the Regulation 7 & 13 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 respectively.

The Amendment provides that:

- For the financial year 2020-2021, an insolvency professional shall pay the fee under Regulation 7 (2) (ca) on or before the 30th June, 2021.
- When an individual ceases to be its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021 and ending on the 31st December 2021, the insolvency professional entity shall inform the Board, within thirty days of such cessation.
- When an individual joins as its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021 and ending on the 31st December 2021, the insolvency professional entity shall inform the Board, within thirty days of such joining.
- For the financial year 2020-2021, an insolvency professional entity shall pay the fee under Regulation 13(2)(ca) on or before the 30th June, 2021.

For details:

<https://ibbi.gov.in/uploads/legalframework/c91c364ba5f65d67f1fd3c1e8e3cf4df.pdf>

2. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021

Insolvency and Bankruptcy Board of India(IBBI) vide its notification dated 27th April, 2021 amended the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

The Amendment *inter-alia* provides that:

- For an application received on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 and ending on the 31st October 2021, if the authorisation for assignment is not issued, renewed or rejected by the Agency within thirty days of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be, by the Agency.

- Where an application for issue of authorisation for assignment has been rejected by an insolvency professional agency, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 and ending on the 31st October, 2021, the applicant aggrieved of an order of rejection may appeal to the Membership Committee within thirty days from the date of receipt of order.

For details:

<https://ibbi.gov.in/uploads/legalframework/cc46284330f773a4c2e4515c03d78d6d.pdf>

3. **Insolvency and Bankruptcy Board of India notifies the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021**

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 promulgated on 4th April, 2021 provides for pre-packaged insolvency resolution process (PPIRP) for corporate debtors classified as micro, small and medium enterprises.

The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (PPIRP Regulations) to enable operationalisation of PPIRP.

The PPIRP Regulations detail the Forms that stakeholders are required to use, and the manner of carrying out various tasks by them as part of the PPIRP. These provide details and manner relating to:

- (a) Eligibility to act as resolution professional, and his terms of appointment;
- (b) Eligibility of registered valuers and other professionals;
- (c) Identification and selection of authorised representative;
- (d) Public announcement and claims of stakeholders;
- (e) Information memorandum;
- (f) Meetings of the creditors and committee of creditors;
- (g) Invitation for resolution plans;
- (h) Competition between the base resolution plan and the best resolution plan;
- (i) Evaluation and consideration of resolution plans;
- (j) Vesting management of corporate debtor with resolution professional;
- (k) Termination of PPIRP.

For details:

<https://ibbi.gov.in/uploads/press/2c3259202fdd122cab6ef77d88c994c.pdf>

4. **Ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor**

Ministry of Corporate Affairs vide notification S.O. 1543(E) dated 9th April, 2021 and in exercise of the powers conferred by the second proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, specified ten lakh rupees as the

minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

For details:

<https://ibbi.gov.in/uploads/legalframework/e9b1c4b3489e51213db701b27222b474.pdf>

5. **Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021**

The President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Cabinet had approved on 31st March 2021 the proposal to make amendments in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The amendments aims to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses and which preserves jobs. The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens and the company remains with them.

It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

The Amendment Ordinance seeks to amend sections such as 4, 5, 11, 33, 34, 61, 65, 77, 208, 239, 240 & insert new sections such as 11A, 67A, 77A and a new chapter as IIIA on Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).

For detail:

<https://ibbi.gov.in/uploads/press/c4ca4238a0b923820dcc509a6f75849b.pdf>

ECONOMIC, BUSINESS AND COMMERCIAL LAWS

Duration of the Foreign Trade Policy (FTP) - 2015-2020

In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy (FTP) - 2015-2020, the Director General of Foreign Trade vide its public notice dated 31st March, 2021 amended in the Handbook of Procedures (HBP), 2015-20.

According to the Amendment, the Foreign Trade Policy (FTP), 2015-2020, (as updated) incorporating provisions relating to export and import of goods and services, shall remain in force until 30th September, 2021.



Company Law Corner

ALL ABOUT BOARD COMMITTEES

A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

However, the Board of Directors are ultimately responsible for the acts of the committee. Board is responsible for defining the committee role and structure. The structure of a board and the planning of the board's work are key elements to effective governance. Establishing committees is one way of managing the work of the board, thereby strengthening the board's governance role. Board should regularly review its own structure and performance and whether it has the right committee structure and an appropriate scheme of delegation from the board.

Power of the Board of Directors to form a Committee

- The Board of Directors of the Company derive powers from Article of Association of the Company [Table F (Limited by shares) & H (Limited by Guarantee and not having share capital)] under the Companies Act, 2013:
 - (i) The Board may, subject to the provisions of the Companies Act, 2013 delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
 - (ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- Under Regulation 4 of the SEBI (LODR) Regulations, 2015
When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.

Board Committees

Following are some of the important Committees required to be constituted by the Board:

Audit Committee

Audit Committee is one of the main pillars of the corporate governance mechanism in any company. Charged with the principal oversight of financial reporting and disclosure, the Audit Committee aims to enhance the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems.

Applicability:

Section 177(1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the Board of Directors of following companies are required to constitute an Audit Committee of the Board-

- (i) Every Listed Public Company
- (ii) Public Companies having paid up share capital of Rs. 10 Crore or more; or
- (iii) Public Companies having turnover of Rs. 100 Crore or more; or
- (iv) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 Crore

The paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account for the purposes of this rule.

The following classes of unlisted public company shall not be covered for above purpose: -

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Companies Act, 2013.

➤ **Composition of Audit Committee:**

Under the Companies Act, 2013:

- The Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.
- The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statements.

Under Regulation 18 of the SEBI (LODR) Regulations, 2015:

- The audit committee is required to have minimum 3 directors as members.
- Two-thirds of the members of audit committee shall be independent directors.
- In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation: "financially literate" shall mean the ability to read and understand basic financial statements i.e., balance sheet, profit and loss account, and statement of cash flows.

Explanation: a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- The chairperson of the audit committee shall be an independent director.
- The Company Secretary shall act as the secretary to the audit committee.

➤ **Meetings of the Audit Committee**

Under the Companies Act, 2013

- The Companies Act 2013 does not provide for Frequency of meeting of the Audit Committee. However, as per SS-1, Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.
- The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
- Quorum for Audit Committee meeting – As per SS-1, the quorum for meetings of the committee constituted by the Board shall be as specified by the Board. If no such quorum is specified, the presence of all the members of any such committee is necessary to form the quorum.
- Regulations framed under any other law may contain provisions for the quorum of a committee and such stipulations shall be followed.

Under the SEBI (LODR) Regulations, 2015

- The audit committee shall meet at least 4 times in a year and not more than one hundred and twenty days shall elapse between two meetings.
- The quorum for audit committee meeting shall either be 2 members or 1/3 of the members of the audit committee, whichever is greater, with at least 2 independent directors.
- The chairperson of the audit committee is required to be present at Annual General Meeting to answer shareholder queries.
- The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee. However, occasionally the audit committee may meet without the presence of any executives of the listed entity.

➤ **Functions of the Audit Committee**

Section 177(4) of the Companies Act, 2013 provides that every audit committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, –

- the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- review and monitor the auditor's independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors' report thereon;

- approval or any subsequent modification of transactions of the company with related parties;

The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed under rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014.

Further in case of transaction, other than transactions referred to in section 188 (Related Party Transactions), and where audit committee does not approve the transaction, it shall make its recommendations to the Board.

In case any transaction involving any amount not exceeding Rs. 1 Crore is entered into by a director or officer of the company without obtaining the approval of the audit committee and it is not ratified by the audit committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the audit committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it.

However, the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- valuation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

The Role of Audit Committee and the review of information by Audit Committee is prescribed under Part C of Schedule II of SEBI (LODR) Regulation, 2015. The role of Audit Committee under the Regulation 18 is wider than the Companies Act, 2013, which includes:

- Oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
- Recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;
- Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
- Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the Board for approval, with particular reference to:
 - (a) Matters required to be included in the Director's responsibility statement to be included in the Board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

- (b) Changes, if any, in accounting policies and practices and reasons for the same;
 - (c) Major accounting entries involving estimates based on the exercise of judgment by management;
 - (d) Significant adjustments made in the financial statements arising out of audit findings;
 - (e) Compliance with listing and other legal requirements relating to financial statements;
 - (f) Disclosure of any related party transactions;
 - (g) Modified opinion(s) in the draft audit report;
- Reviewing, with the management, the quarterly financial statements before submission to the Board for approval;
 - Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilization of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;
 - Reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
 - Approval or any subsequent modification of transactions of the listed entity with related parties;
 - Scrutiny of inter-corporate loans and investments;
 - Valuation of undertakings or assets of the listed entity, wherever it is necessary;
 - Evaluation of internal financial controls and risk management systems;
 - Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
 - Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
 - Discussion with internal auditors of any significant findings and follow up there on;
 - Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board;
 - Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
- To review the functioning of the whistle blower mechanism;
- Approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;
- Carrying out any other function as is mentioned in the terms of reference of the audit Committee.
- Reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding Rs.100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision.
- Consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation etc., on the listed entity and its shareholders

The Audit Committee shall mandatorily review the following information:

- Management discussion and analysis of financial condition and results of operations;
- Statement of significant related party transactions (as defined by the audit Committee), submitted by management;
- Management letters / letters of internal control weaknesses issued by the statutory auditors;
- Internal audit reports relating to internal control weaknesses; and
- The appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
- Statement of deviations:
 - ✓ Quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1) of the SEBI (LODR) Regulations, 2015.
 - ✓ Annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7) of the SEBI (LODR) Regulations, 2015.

➤ **Powers of the Audit Committee**

The Audit committee has the following powers under the section 177(5) of the Companies Act, 2013:

- The Audit Committee has the power to call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory

auditors and the management of the company.

- The Audit Committee has authority to investigate into any matter in relation to the items specified in terms of reference or referred to it by the Board and for this purpose the Committee has power to obtain professional advice from external sources.
- The Committee for this purpose shall have full access to information contained in the records of the company.

As per the SEBI (LODR) Regulations, 2015, the Audit Committee shall have the powers to:

- investigate any activity within its terms of reference;
- seek information from any employee;
- obtain outside legal or other professional advice;
- secure attendance of outsiders with relevant expertise, if it considers necessary.

➤ **Disclosure in Board Report**

The Board's report of the Company is required to disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

Vigil Mechanism

Sub-sections (9) and (10) of section 177 of the Companies Act, 2013 read with rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 provide that:

Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

- the Companies which accept deposits from the public;
- the Companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Crore.

The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the audit committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

The vigil mechanism provides adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee or the director nominated to play the role of audit committee, as the case may be, in appropriate or exceptional cases.

In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

The details of establishment of such mechanism are required to be disclosed by the company on its website, if any, and in the Board's report.

Nomination and Remuneration Committee

➤ **Applicability**

As per section 178 of the Companies Act, 2013 read with rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, the Board of directors of every listed public company and the following classes of companies are required to constitute a Nomination and Remuneration Committee of the Board-

- Public companies with a paid-up share capital of Rs. 10 Crore or more;
- Public companies having turnover of Rs.100 Crore or more;
- Public companies, having in aggregate, outstanding loans debentures and deposits, exceeding Rs.50 Crore.

The paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account for the above purpose.

The following classes of unlisted public company shall not be covered for above purpose:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Companies Act, 2013.

➤ **Composition of the Nomination and Remuneration Committee:**

Under the Companies Act, 2013

The Committee so constituted by the Board shall consist of

- 3 or more non-executive directors out of which not less than one-half shall be independent directors.
- The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

Under Regulation 19 of the SEBI(LODR) Regulations, 2015

Additionally, for listed Companies, SEBI (LODR) Regulations, 2015 provides that the nomination and remuneration Committee shall comprise of:

- (a) At least three Directors.
- (b) All Directors of the Committee shall be non-executive Directors; and
- (c) At least fifty percent of the Directors shall be Independent Directors; and
- (d) In case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration Committee shall comprise of Independent Directors.

The Chairman of the committee shall be an independent director.

➤ **Meeting of the Nomination and Remuneration Committee**

As per SS-1, Nomination and Remuneration Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.

The chairperson of the committee or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Quorum of Nomination and Remuneration Committee meeting – As per SS-1, the quorum for meetings of the committee constituted by the Board shall be as specified by the Board. If no such quorum is specified, the presence of all the members of any such Committee is necessary to form the quorum.

Regulations framed under any other law may contain provisions for the quorum of a committee and such stipulations shall be followed.

Under SEBI (LODR) Regulations, 2015,

- the nomination and remuneration committee shall meet at least once in a year.
- the quorum for a meeting of the nomination and remuneration committee shall be either 2 members or one third of the members of the committee, whichever is greater, including at least 1 independent director in attendance.
- the Chairman of the committee may be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who shall answer the queries.

➤ **Functions of the Nomination and Remuneration Committee**

Sub- sections (2), (3) and (4) of section 178 deal specifically with the functions of the Nomination and Remuneration Committee, which include:

- Identification of persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down,
- Recommendation to the Board regarding their appointment and removal.
- Specification of the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.
- Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.
- While formulating the policy, the Committee shall consider the following:
 - (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- (c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

Such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

Functions of the Nomination and Remuneration committee as specified in Part D of the Schedule II of SEBI (LODR) Regulation, 2015

- Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
- Formulation of criteria for evaluation of Independent Directors and the Board;
- Devising a policy on Board diversity;
- Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal.
- Whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
- Recommend to the board, all remuneration, in whatever form, payable to senior management.

Stakeholders Relationship Committee

➤ **Applicability**

Sub-Section (5) of section 178 provides that the Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.

➤ **Composition of Stakeholders Relationship Committee**

It shall consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

Under Regulation 20 of SEBI (LODR) Regulations, 2015

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

It shall consist of:

- At least 3 directors, with at least 1 being an independent director, who shall be the members of the Committee
- In case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors.
- The chairperson of this committee shall be a non-executive director.

➤ **Meeting of the Stakeholders Relationship Committee**

As per SS-1, Stakeholders Relationship Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.

The chairperson of the committee or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Quorum for Stakeholders Relationship Committee meeting – As per SS-1, the quorum for meetings of the committee constituted by the Board shall be as specified by the Board. If no such quorum is specified, the presence of all the members of any such committee is necessary to form the Quorum.

Regulations framed under any other law may contain provisions for the quorum of a committee and such stipulations shall be followed

Under SEBI (LODR) Regulations, 2015

- The Stakeholders Relationship Committee shall meet at least once in a year.
- The Chairperson of the Stakeholders Relationship Committee is mandatorily required to be present at the Annual General Meetings to answer queries of the security holders.

➤ **Functions of the Stakeholders Relationship Committee**

The main function of the committee is to consider and resolve the grievances of security holders of the company. On similar terms Part D of the Schedule II of the SEBI (LODR) Regulations, 2015 provides the role of the committee which *inter-alia* include the following:

- Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.
- Review of measures taken for effective exercise of voting rights by shareholders.
- Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

- Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

Corporate Social Responsibility Committee

➤ Applicability

- Every company having net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more or a net profit of Rs.5 Crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.
- A Company which ceases to be a company covered under the above three threshold requirement to constitute CSR Committee for three consecutive financial years shall not be required to constitute CSR Committee and comply with the provisions contained in sub-section (2) to (6) of Section 135 of Companies Act, 2013 till such time it meets the threshold as specified above. [Rule 3(2) of Companies (Corporate Social Responsibility Policy) Rules, 2014].
- Where the CSR obligation of the company does not exceed Rs.50 Lakhs, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under section
- 135 shall, in such cases, be discharged by the Board of Directors of such company.

➤ Composition of CSR Committee

- The CSR Committee shall consist of 3 or more directors, out of which at least 1 director shall be an Independent Director.
- However, where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee 2 or more directors.
- A private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors.
- With respect to a foreign company, the CSR Committee shall comprise of at least 2 persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Companies Act, 2013 and another person shall be nominated by the foreign company.

➤ Meeting of the CSR Committee

- As per SS-1, the committee shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.
- Quorum of CSR Committee meeting – As per SS-1, the quorum for meetings of the committee constituted by the Board shall be as specified by the Board. If

no such quorum is specified, the presence of all the members of any such committee is necessary to form the quorum.

- Regulations framed under any other law may contain provisions for the quorum of a committee and such stipulations shall be followed.

➤ **Functions of CSR Committee**

- formulating and recommending to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject as specified in Schedule VII of the Companies Act, 2013;
- recommending the amount of expenditure to be incurred on the CSR activities.
- monitoring the Corporate Social Responsibility Policy of the company from time to time.
- Further the CSR rules provide that the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely: -
 - (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Companies Act, 2013;
 - (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4 of CSR Rules;
 - (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
 - (d) monitoring and reporting mechanism for the projects or programmes; and
 - (e) details of need and impact assessment, if any, for the projects undertaken by the company.

However, Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

➤ **Disclosure related to CSR Committee**

- The Board of Directors of every company after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as prescribed;
- The Board of Directors of the Company are mandatorily required to disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

Risk Management Committee

A Risk Management Committee fosters an integrated, enterprise-wide approach to identify and manage risk and provides an impetus toward improving the quality of risk reporting and monitoring, both for management and the Board.

In addition to the requirement of the Companies Act 2013 as well as the SEBI (LODR) Regulations, 2015, the audit committee evaluates internal financial controls and risk management systems of the company.

Regulation 21 of the SEBI (LODR) Regulations, 2015 requires that the company through its Board of Directors shall constitute a Risk Management Committee.

➤ **Applicability**

The provisions of this regulation shall be applicable to top 1000 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

➤ **Composition of Risk Management Committee**

- The Risk Management Committee shall have minimum 3 members with majority of them being members of the board of directors, including at least one independent director.
- In case of a listed entity having outstanding SR equity shares, at least two-thirds of the Risk Management Committee shall comprise independent directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

➤ **Meeting of Risk Management Committee**

- The risk management committee shall meet at least twice in a year.
- The quorum for a meeting of the Risk Management Committee shall be either 2 members or one-third of the members of the committee, whichever is higher, including at least 1 member of the board of directors in attendance.
- The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than 180 days shall elapse between any two consecutive meetings.

➤ **Functions of Risk Management Committee**

The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit, such function shall specifically cover cyber security.

The role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II of SEBI (LODR) Regulations, 2015.

The role of the committee shall, inter alia, include the following:

- To formulate a detailed risk management policy which shall include:
 - (a) A framework for identification of internal and external risks specifically faced by the listed entity, in particular including financial, operational, sectoral, sustainability (particularly, ESG related risks), information, cyber security risks or any other risk as may be determined by the Committee.
 - (b) Measures for risk mitigation including systems and processes for internal control of identified risks.
 - (c) Business continuity plan.
- To ensure that appropriate methodology, processes and systems are in place to monitor and evaluate risks associated with the business of the Company;
- To monitor and oversee implementation of the risk management policy, including evaluating the adequacy of risk management systems;
- To periodically review the risk management policy, at least once in two years, including by considering the changing industry dynamics and evolving complexity;
- To keep the board of directors informed about the nature and content of its discussions, recommendations and actions to be taken;
- The appointment, removal and terms of remuneration of the Chief Risk Officer (if any) shall be subject to review by the Risk Management Committee.
- The Risk Management Committee shall coordinate its activities with other committees, in instances where there is any overlap with activities of such committees, as per the framework laid down by the board of directors.

➤ **Power of the Risk Management Committee**

The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

➤ **Disclosure of Risk Management Committee**

The Companies Act, 2013 provides that a disclosure to be made in the board report with a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company

Conclusion

Board Committees are the pillars of Corporate Governance. As the responsibilities of directors have become more demanding, Boards have increasingly formed committees to deal with some of their more detailed work. As the needs of the Board change, the need for committees may also change. Hence, it is essential that committees and their role be subject to periodic review. Board members should be aware that Board responsibilities remain, when serving on a Board committee, and may be enhanced. To be more effective, Board committees should have the appropriate balance of skills, experience,

independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.

In general, Board committees focus on specific areas allowing the Board to concentrate on broader issues and directions. The work of the committees should be directed by the Board. Board committees should have their own charter setting out their roles and responsibilities, for example, in the area of membership (including succession planning), meeting frequency and core agenda, committee authority, reporting obligations etc. committees should be appropriately constituted, taking into account any relevant legislation and the objectives of the company. Day by day, the role of independent director is gaining importance in the effect functioning of the Board committees. Board committees with formally established terms of reference, criteria for appointment, life span, role and function constitute an important element of the governance process and should be established with clearly agreed reporting procedures and a written scope of authority. Board committees should be free to take independent outside professional advice when necessary, at the cost of the company, subject to a proper process being followed.



Legal Maxims

<i>S.No.</i>	<i>Legal Maxim</i>	<i>Meaning</i>	<i>Usage & Example</i>
1.	<i>Dies non</i>	Day on which work is not performed.	<i>If the last day of filling the form is dies non, the next working day will be considered last day.</i>
2.	<i>Fatum</i>	Beyond human foresight.	The nearest pond is <i>Fatum</i> .
3.	<i>Misnormer</i>	A wrong name	The letter was having <i>Misnormer designation</i> .
4.	<i>Usufructuary</i>	One who has the use and reaps the profits of property, but not ownership.	Once the <i>usufructuary</i> mortgage discharges, the property will be reverted back.
5.	<i>Vice versa</i>	The order being reversed; other way round	In this contract, Mr. A shall indemnify Mr. B in case of loss due to the fault of former and <i>vice versa</i>



Legal World

CORPORATE LAWS

TATA CONSULTANCY SERVICES LTD v. CYRUS INVESTMENTS PVT. LTD. & ORS [SC]

Civil Appeal No. 440 - 441 of 2020 with connected appeals

A.S.Bobde, A.S. Bopanna & V. Ramasubramanian, JJ. [Decided on 26/03/2021]

Companies Act, 2013 - section 242 - oppression and mismanagement - removal of chairman - minority group alleges acts of oppression and mismanagement - NCLT dismissed the petition - NCLAT allowed the appeal of the minority group - Whether correct - Held, No.

Brief facts : This is the final match between Tata Sons and SP group in the fight in which CPM was removed from the Chairman post. NCLT upheld the action taken by Tata sons while, NCLAT on appeal, turned down the decision of the NCLT. Both the groups i.e., Tata and Tata trust companies on one hand and SP Group on the other hand challenged the decision of NCLAT. In total there were 15 Civil Appeals, 14 of which are on Tata's side, assailing the Order of NCLAT in entirety. The remaining appeal is filed by the opposite SP group, seeking more reliefs than what had been granted by the Tribunal.

Decision : Tata Sons appeals are Allowed. SP group appeals are dismissed.

Reason : The first question of law arising for consideration is whether the formation of opinion by the Appellate Tribunal that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground, is in tune with the well settled principles and parameters, especially in the light of the fact that the findings of NCLT on facts were not individually and specifically overturned by the Appellate Tribunal ?

Ans: But all these arguments lose sight of the nature of the company that Tata Sons is. As we have indicated elsewhere, Tata Sons is a principal investment holding Company, of which the majority shareholding is with philanthropic Trusts. The majority shareholders are not individuals or corporate entities having deep pockets into which the dividends find their way if the Company does well and declares dividends. The dividends that the Trusts get are to find their way eventually to the fulfilment of charitable purposes. Therefore, NCLAT should have raised the most fundamental question whether it would be equitable to wind up the Company and thereby starve to death those charitable Trusts, especially on the basis of uncharitable allegations of oppressive and prejudicial conduct. Therefore, the finding of NCLAT that the facts otherwise justify the winding up of the Company under the just and equitable clause, is completely flawed.

The second question of law arising for consideration is as to whether the reliefs granted, and directions issued by NCLAT including the reinstatement of CPM into the Board of Tata Sons and other Tata Companies are in consonance with (i) the pleadings made, (ii) the reliefs sought and (iii) the powers available under Sub-Section (2) of Section 242.

Ans: As we have seen already, the original motive of the complainant companies, was to restrain Tata Sons from removing CPM as Director. Subsequently, there was a climb down and the complainant companies sought what they termed as "reinstatement" of a

representative of the complainant companies. Thereafter, it was modulated into a cry for proportionate representation on the Board.

In other words, the purpose of an order both under the English Law and under the Indian Law, irrespective of whether the regime is one of “oppressive conduct” or “unfairly prejudicial conduct” or a mere “prejudicial conduct”, is to bring to an end the matters complained of by providing a solution. The object cannot be to provide a remedy worse than the disease. The object should be to put an end to the matters complained of and not to put an end to the company itself, forsaking the interests of other stakeholders. It is relevant to point out that once upon a time, the provisions for relief against oppression and mismanagement were construed as weapons in the armory of the shareholders, which when brandished in terrorem, were more potent than when actually used to strike with. While such a position is certainly not desirable, they cannot today be taken to the other extreme where the tail can wag the dog.

The Tribunal should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions. It is on the touchstone of the objective behind these provisions that the correctness of the four reliefs granted by the Tribunal should be tested. If so done, it will be clear that NCLAT could not have granted the reliefs of (i) reinstatement of CPM (ii) restriction on the right to invoke Article 75 (iii) restraining RNT and the Nominee Directors from taking decisions in advance and (iv) setting aside the conversion of Tata Sons into a private company.

The third question of law to be considered is as to whether NCLAT could have, in law, muted the power of the company under Article 75 of the Articles of Association, to demand any member to transfer his shares, by injuncting the company from exercising the rights under the Article, even while refusing to set aside the Article.

Ans: It was contended that Article 75 was repugnant to Sections 235 and 236 of the Companies Act, 2013. We do not know how these provisions would apply. Section 235 deals with a scheme or contract involving transfer of shares in a Company called the transferor company, to another called the transferee company. Similarly, Section 236 deals with a case where an acquirer acquired or a person acting in concert with such acquirer becomes the registered holder of 90% of the equity share capital of the Company, by virtue of amalgamation, share exchange, conversion of securities etc. These provisions have no relevance to the case on hand.

Even the contention revolving around Section 58(2) is wholly unsustainable, as Section 58(2) deals with securities or other interests of any member of a Public Company. Therefore, the order of NCLAT tinkering with the power available under Article 75 of the Articles of Association is wholly unsustainable. It is needless to point out that if the relief granted by NCLAT itself is contrary to law, the prayer of the S.P. Group in their Appeal C.A. No.1802 of 2020 asking for more, is nothing but a request for aggravating the illegality.

The fourth question of law to be considered is whether the characterisation by the Tribunal, of the affirmative voting rights available under Article 121 to the Directors nominated by the Trusts in terms of Article 104B, as oppressive and prejudicial, is justified especially after the challenge to these Articles have been given up expressly and whether the Tribunal could have granted a direction to RNT and the Nominee directors virtually nullifying the effect of these Articles.

Ans: Affirmative voting rights for the nominees of institutions which hold majority of shares in companies have always been accepted as a global norm. As a matter of fact, the affirmative voting rights conferred by Article 121 of the Articles of Association, confers only

a limited right upon the Directors appointed by the Trusts under Article 104B. Article 121 speaks only about the manner in which matters before any meeting of the Board shall be decided. If it is a General Meeting of Tata Sons, the representatives of the two Trusts will actually have a greater say as the Trusts have 66% of shares in Tata Sons. Therefore, if we apply Section 152(2) strictly, the Trusts which own 66% of the paid-up capital of Tata Sons will be entitled to pack the Board with their own men as Directors. But under Article 104B, only a minimum guarantee is provided to the two Trusts, by ensuring that the Trusts will have at least 1/3 rd of the Directors, as nominated by them so long as they hold 40% in the aggregate of the paid-up share capital.

Under Section 10(1) of the Companies Act, 2013, the Articles of Association bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member. However, this is subject to the provisions of the Act. Article 94 of the Articles of Association of Tata Sons is in tune with Section 47(1)(b), as it says that upon a poll, the voting rights of every member, whether present in person or by proxy shall be in proportion to his share of the paid-up capital of the company. Therefore, a shareholder or a group of shareholders who constitute majority, can always seek to be in the driving seat by reserving affirmative voting rights. So long as these special rights are incorporated in the Articles of Association and so long as they are not in contravention of any of the provisions of the Act, the same cannot be attacked on these grounds.

Coming to the argument revolving around the duty of a Director, it is necessary that we balance the duty of a Director, under Section 166(2) to act in the best interests of the company, its employees, the shareholders, the community and the protection of environment, with the duties of a Director nominated by an Institution including a public charitable trust. They have fiduciary duty towards 2 companies, one of which is the shareholder who nominated them and the other, is the company to whose Board they are nominated. If this is understood, there will be no confusion about the validity of the affirmative voting rights. What is ordained under Section 166(2) is a combination of private interest and public interest. But what is required of a Director nominated by a charitable Trust is pure, unadulterated public interest. Therefore, there is nothing abhorring about the validity of the affirmative voting rights.

The claim for proportionate representation can also be looked at from another angle. RNT who was holding the mantle as the Chairman of Tata Sons for a period of 21 years from 1991 to 2012, actually conceded a more than proportionate share to the S.P. Group by nominating CPM as his successor. Accordingly, CPM was also crowned as Executive Deputy Chairman on 16.3.2012 and as Chairman later. CPM continued as Executive Chairman till he set his own house on fire in 2016. If the company's affairs have been or are being conducted in a manner oppressive or prejudicial to the interests of the S.P. group, we wonder how a representative of the S.P. Group holding a little over 18% of the share capital could have moved up to the topmost position within a period of six years of his induction. Therefore, we are of the considered view that the claim for proportionate representation on the Board is neither statutorily or contractually sustainable nor factually justified. Placing reliance upon section 163 of the Companies Act, 2013, it was contended that proportionate representation is statutorily recognised. But this argument is completely misconceived. Section 163 of the Companies Act, 2013 corresponds to section 265 of the erstwhile Companies Act, 1956. It enables a company to provide in their Articles of Association, for the appointment of not less than two thirds of the total number of Directors in accordance with

the principle of proportionate representation by means of a single transferable vote. First of all, proportionate representation by means of a single transferable vote, is not the same as representation on the Board for a group of minority shareholders, in proportion to the percentage of shareholding they have. It is a system where the voters exercise their franchise by ranking several candidates of their choice, with first preference, second preference etc. Moreover, it is only an enabling provision, and it is up to the company to make a provision for the same in their Articles, if they so choose. There is no statutory compulsion to incorporate such a provision.

Therefore, the fourth question of law is also to be answered in favour of the Tata group and the claim in the cross appeal relating to affirmative voting rights and proportionate representation are liable to be rejected.

The 5th question of law formulated for consideration is as to whether the reconversion of Tata Sons from a public company into a private company, required the necessary approval under section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT ?

Ans : Interestingly, it is not disputed by anyone that today Tata Sons satisfy the parameters of section 2(68) of the Companies Act, 2013. The dispute raised by the S.P. Group and accepted by NCLAT is only with regard to the procedure followed for reconversion. NCLAT was of the opinion that Tata Sons ought to have followed the procedure prescribed in Section 14(1)(b) read with Subsections (2) and (3) of Section 14 of the Companies Act, 2013 for getting an amended certificate of incorporation. NCLAT was surprised (quite surprisingly) that Tata Sons remained silent for more than 13 years from 2000 to 2013 without taking steps for reconversion in terms of Section 43A(4) of the 1956 Act. While on the one hand, NCLAT took note of the “lethargy” on the part of Tata Sons in taking action for reconversion, NCLAT, on the other hand also took adverse notice of the speed with which they swung into action after the dismissal of the complaint by NCLT.

But what NCLAT failed to see was that Tata sons did not become a public company by choice but became one by operation of law. Therefore, we do not know how such a company should also be asked to follow the rigors of Section 14(1)(b) of the 2013 Act. As a matter of fact, Section 14(1) does not ipso facto deal with the issue of conversion of private company into a public company or vice versa. Primarily, Section 14(1) deals with the issue of alteration of Articles of Association of the company. Incidentally, Section 14(1) also deals with the alteration of Articles “having the effect of such conversion”.

By virtue of the proviso to sub-section (1A) of Section 43A of the Companies Act, 1956, Tata Sons continued to have articles that covered the matters specified in sub clauses (a), (b) and (c) of Clause(iii) of Subsection(1) of Section 3 of the Companies Act, 1956. Though it did not have the additional stipulation introduced by Act 53 of 2000, namely the stipulation relating to acceptance of deposits from public, this additional requirement disappeared in the Companies Act, 2013. Therefore, Tata Sons wanted a mere amendment of the Certificate of Incorporation, which is not something that is covered by Section 14 of the Companies Act, 2013. NCLAT mixed up the attempt of Tata Sons to have the Certificate of Incorporation amended, with an attempt to have the Articles of Association amended. Since Tata Sons satisfied the criteria prescribed in Section 2(68) of the Companies Act, 2013, they applied to the Registrar of companies for amendment of the certificate. The certificate is a mere recognition of the status of the company, and it does not by itself create one.

The only provision that survived after 13.12.2000 was Sub-section (2A) of Section 43A. It survived till 30.01.2019 until the whole of the Companies Act, 1956 was repealed. There are two aspects to Sub-section (2A). The first is that the very concept of “deemed to be public company” was washed out under Act 53 of 2000. The second aspect is the prescription of certain formalities to remove the remnants of the past. What was omitted to be done by Tata Sons from 2000 to 2013 was only the second aspect of Sub-section (2A), for which Section 465 of the 2013 Act did not stand as an impediment. Section 43A (2A) continued to be in force till 30.01.2019 and hence the procedure adopted by Tata Sons and the RoC in July/August 2018 when section 43A(2A) was still available, was perfectly in order.

Therefore, question of law No. 5 is accordingly answered in favour of Tata Sons and as a consequence, all the observations made against the appellants and the Registrar of companies in Paragraphs 181, 186 and 187 (iv) of the impugned judgment are set aside.

Thus, in fine, all the questions of law are liable to be answered in favour of the appellants - Tata group and the appeals filed by the Tata Group are liable to be allowed and the appeal filed by S.P. Group is liable to be dismissed.

BRILLIO TECHNOLOGIES PVT. LTD. v. REGISTRAR OF COMPANIES & ANR [NCLAT]

Company Appeal (AT) No. 293 of 2019

Jarat Kumar Jain & Kanthi Narahari. [Decided on 19/04/2021]

Companies Act, 2013- section 66- reduction of share capital- scheme envisaged reduction of capital by way of reducing promoter shares - NCLT rejected the petition - whether correct- Held, Yes.

Brief facts : The Board of Directors of the Company resolved to reduce the equity share capital, by reducing 89,52,637/-equity shares of Re. 1/-each from non- promoter equity shareholders for a consideration of Rs. 5,61,33,034/- being 89,52,637/- equity shares of Re. 1/- each with premium of Rs. 5.27/- per share paid out of the Securities Premium Account. The Security Premium Account of Rs. 15,24,81,955/- shall accordingly be reduced to Rs. 10,53,01,558/-. Thereafter, an Extraordinary General Meeting was held on 04.02.2019, wherein by special resolution duly passed in accordance Section 66(1) read with Section 114 of the Act, the 100% members present, voted in favour of the resolution for reduction of share capital of the Company.

NCLT observed that no objections have been received from creditors and consent affidavits on their behalf has not been produced. Ld. Tribunal held that as per Section 52 (2) of the Act, Security Premium Account may be used only for the purpose specifically provided under Section 52 (2) of the Act. Selective reduction in equity share capital to a particular group involving non-promoter shareholders and bringing the company as a wholly owned subsidiary of its current holding company and also return excess of capital to them. This is an arrangement between the company and shareholders or a class of them and hence, it is not covered under Section 66 of the Act. However, the case may be covered under Sections 230-232 of the Act. Wherein compromise or arrangement between the Company and its creditors or any class of them or between a Company and its members or any class of them is permissible. Therefore, the Company failed to make out any case under Section 66 of the

Act and thus, the petition is dismissed with the liberty to file appropriate application as per extant provisions of the Act.

Decision : Appeal allowed.

Reason : The grounds of dismissal of the Petition and issues raised by the Respondents were answered by the Appellate Tribunal as under:

Ground (i) : No proper genuine reason has been given for reduction of share capital.

Ans : The non-promoter shareholders requested the company to provide them an opportunity to dispose of their shareholding in the petitioner company. There is no law that a Company can reduce its capital only to reduce any kind of accumulated loss. With the aforesaid it cannot be said that the Appellant Company has not given any genuine reason for reduction of share capital.

Ground (ii) : Consent affidavit from creditors has not been obtained.

Ans : Admittedly, after service of notice, no representation has been received from the creditors within three months. Therefore, as per proviso to Section 66(2) of the Act, it shall be presumed that they have no objection to the reduction. Thus, we are of the view that the observation of Ld. Tribunal in Para 11 of the impugned order "It is observed that while objections have not been received from creditors, neither has any consent affidavits on their behalf been produced, with regard to reduction of share capital." is erroneous.

Ground (iii): Security Premium Account cannot be utilized for making payment to the non-promoter shareholders.

Ans : The argument of the Regional Director (NR) is that the "Securities Premium Account" can be applied only for the specific four purposes mentioned in Section 78(2) of the Act and for no other purpose. In my view, the interpretation advanced by learned counsel for the Regional Director (NR) is not correct. If the interpretation as advanced by the Regional Director (NR) is accepted, it would render otiose the provisions contained in Sub-section (1) of Section 78. The entire Section 78 has to be read as a whole and all the Sub-sections of this Section have to be read and interpreted so as to give a meaningful interpretation.

(After discussing various judgements) In the light of the aforesaid Judgments, we are of the view that the SPA can be utilized for making payment to non-promoter shareholders. We are unable to convince with the submissions made by Ld. Counsel for the Respondents that the amount lying in the SPA can be applied by the company, only for the purposes which are specifically provided in sub-Section 2 of Section 52 of the Act and for no other purpose.

Ground (iv) : Selective reduction of shareholders is not permissible.

Ans : It is clear, that majority shareholders have decided to reduce the share capital. Normally, decision of the majority is to prevail. It is also their right to decide the manner in which the shareholding is to be reduced and, in the process, they can decide to target a particular group (of course it is to be seen that this is not with mala fide and unfair motive which aspect is discussed hereinafter). Thus, such a step cannot be treated as buying back the shares and the provisions of Section 77A of the Act would not be attracted. Similarly, there is no question of following provisions of Section 391 of the Act, although in the instant case even the procedure prescribed therein has been substantially followed. Likewise, provisions of Article 300A of the Constitution of India would not be attracted.

In the light of aforesaid proposition of law, we can safely hold that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares. In the present case, none of the non-promoter shareholders of the Company have raised objection about the valuation of their shares. It is nobody's case that the proposed reduction is unfair or inequitable. It is also made clear that the proposed reduction is for whole non-promoter shareholders of the company.

Ground (v) : The Petition for reduction of capital under Section 66 of the Act, is not maintainable. However, it may be filed under Section 230-232 of the Act.

Ans : With the aforesaid citation, we hold that Section 66 of the Companies Act, 2013 makes provision for reduction of share capital simpliciter without it being part of any scheme of compromise and arrangement. The option of buyback of shares as provided in Section 68 of the Act, is less beneficial for the shareholders who have requested the exit opportunity.

Admittedly, there is a provision in Article 45 and 47 of the Article of Association that the company may by special resolution reduced its capital and, in the EGM, held on 04.02.2019 a special resolution was duly passed for reduction of share capital. The Appellant Company has pleaded the genuine reason for reduction of share capital and has secured the rights of 171 non-promoter shareholders who are not traceable.

With the aforesaid we are of the view that the Tribunal has erroneously held that the Application for reduction of share is not maintainable under Section 66 of the Act, consent affidavits from the creditors is mandatory for reduction of share capital, SPA cannot be utilized for making payment to non-promoter shareholders, consent from 171 non-promoter shareholders who are not traceable is required, selective reduction of shareholders of non-promoter shareholders is not permissible. The Tribunal has dismissed the Application on untenable grounds. Therefore, we hereby set aside the impugned order passed by the Tribunal and the reduction of equity share capital resolved by the special resolution set out in Paragraph 11 of the Petition is hereby confirmed.

COMPETITION LAW

S. KANNAN & ANR v. ASIAN PAINTS LTD & ORS [CCI]

Case No. 53 of 2020

A.K. Gupta, Sangeeta Verma & B. S. Bishnoi. [Decided on 12/04/2021]

Competition Act, 2002 - sections 3 & 4 - filing of criminal complaint by OP - whether constitutes abuse of dominance - Held, No.

Brief facts : The Informant was aggrieved by the conduct of Asian Paints, which has allegedly lodged a false criminal case against the Informant's partnership firm M/s Arcus Enterprises, which is engaged in the business of manufacturing of primers and paints under the brand-name 'Arcus'. It has been alleged that the Opposite Parties lodged a false complaint with the police authorities, which resulted in a criminal case being filed against M/s Arcus Enterprises. It has been alleged in complaint that M/s Arcus Enterprises is selling damaged products stating these were sold as 'Asian Paints'. This has been alleged to be false and being filed by Asian Paints in abuse of its dominant position to drive competition out of

the market and deny access to competitors. Further, it has been stated that Asian Paints is using its status as one of the largest manufacturers of paints to harass, humiliate and drive competitors out of the market and is in contravention of provisions of Sections 4 and 3(4) of the Act.

Decision : Dismissed.

Reason : Upon consideration of the facts and circumstances of the matter and other material on record, the Commission observes that the allegations in the instant matter relate to a criminal complaint being instituted against the Informant by Asian Paints, in which investigation is underway. The Commission is in agreement with the submissions made by Opposite Parties that no facts or evidence has been brought on record which indicate violation of either of the provisions of Section 3 or Section 4 of the Act. In fact, there is no relationship either of horizontal or vertical nature between Asian Paints and M/s Arcus Enterprises which can be examined under Section 3 of the Act. Further, the information fails to disclose as to how the provisions of Section 4 have been attracted in the present case. It cannot be said that filing of criminal complaint is with a view to oust competition in the present case and such an action is an abuse under provisions of Section 4 of the Act. Accordingly, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case, and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act.

The Commission observes that it has expressed no opinion on the merits of the criminal case filed against M/s Arcus Enterprises, save to the extent of analysis undertaken in the foregoing paragraphs in light of the provisions of the Competition Act, 2002.

A hand is shown pointing at a central button labeled 'Training'. The button is rectangular with rounded corners and a glowing effect. Surrounding this central button are several other similar rectangular buttons, some of which are slightly out of focus, creating a sense of depth. The background is a dark, textured blue-grey.

Training



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ICSI/Trg/2021

24th April, 2021

Circular No. Trg/10/2021

Temporary Relaxation in the Training Guidelines for conducting all types of training programme through online mode instead of physical batches (classroom mode) due to persistent rise of COVID 19 cases in India.

Due to recent surge of Covid 19 cases in India, many states have imposed night curfew and also imposed partial/complete lock down in many cities where the number of covid cases are more. Many State Governments have imposed restrictions in organising social, cultural, political, academic, sports, and religious gatherings. The schools, colleges, training centres, coaching institutions have been directed to be closed by the respective State Governments to a certain period of time.

In view of the above, all the physical batches of training programmes which are being organised by ICSI Regional Offices, CCGRT, CoE, and various chapters are hereby suspended with immediate effect. However, the students could avail the following “online” training facilities till 30th September 2021.

- a. The students can attend **15 days classroom mode Executive Development Programme (EDP)** under the new Training Structure, **15 days Academic Development Programme (ADP)** under the Modified Training Structure, **8 days EDP & 24 hours Professional Development Programme (PDP)** under the Earlier Training Structure, being organized On-line by Regional offices, CCGRT, CoEs and all eligible chapters of ICSI.
- b. All the newly registered Executive Students are required to undergo **One Day Orientation Programme (ODOP)** being organized by the Regional offices and Chapters. The students can either complete it Online on ICSI e learning portal or can attend the On-line ODOP being organized by Regional offices, and all eligible chapters of ICSI through virtual mode.
- c. The students under the earlier and modified training structure who have completed their practical training and other applicable training can undergo **e MSOP** organized by the Institute on its e learning portal. The eligible students can register through <https://www.icsi.edu/student/e-msop>

- d. Further, the students can also enrol for **online MSOP** being organized by the Regional offices of ICSI through virtual mode.
- e. The relaxation in the eligibility criteria for applying e MSOP, i.e- 'temporary removal of requirement of two years' time bar between passing Professional Programme Examination and e-MSOP registration', is further relaxed upto 30th September 2021. Hence, all the eligible students under earlier and modified training structure irrespective of their date of passing could register in e MSOP subject to fulfilment of other conditions.
- f. The candidates who have got exemption in Practical Training after 3rd February 2021 are required to complete **Corporate Leadership Development Program (CLDP)** on residential mode not less than one month. However, such candidates are given relaxation to attend the CLDP online through webinar mode to be organized by CCGRT/CoE as a temporary relaxation in the CLDP Guidelines.

The attendance during online/ virtual training programme is mandatory for the registered students in all the sessions for getting the Completion Certificate. The students can visit the ICSI stimulate portal from time to time in order to know the schedule of training program.



(CS Asish Mohan)
Secretary, ICSI

Copy to :

1. All Regional offices, CCGRT, CoE, Chapters with an advice to suspend all types of physical batches training programme with immediate effect and to switchover to online/Virtual mode training till 30th September 2021.
2. The President, ICSI, New Delhi
3. The Vice President, ICSI and Chairman, TEFC
4. The Chairman of the Regional Councils of ICSI
5. The Chairman of the Management Committee of the Chapters
6. The Director(Training), ICSI, New Delhi.



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Report of ICSI Samadhan Diwas held on Thursday, 15th April 2021

The Samadhan Diwas is an initiative by the ICSI towards on the spot solution of the grievances of the trainees and trainers.

The ICSI has successfully organized Third Samadhan Diwas on Thursday, 15th April 2021.

Glimpses of the ICSI Samadhan Diwas



Total 43 student attended and the Institute resolve all the issues on the spot. The Director (Training & Placement), ICSI along with other officials of the Directorate of Training had interacted, listened to the pending issues / grievances of the students and resolved the same , the students were having queries in the following areas:

1. Issues relating to Switchover from Old training to New Training Structure
2. Pending registration in Classroom EDP, e-EDP, e-MSOP
3. Instant issue of sponsorship letters for Practical Training
4. Exemption related matters in Practical Training
5. Resolving the issues of Training Completion Certificate

The students appreciated the efforts of the institute for creating a platform for direct interaction to solve their matter on the spot and requested to continue the same for the benefit of the stakeholders.

Team ICSI



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Prof. (Dr.) Achyuta Samanta
Hon'ble Member of Parliament (Lok Sabha)
& Founder, KIIT-DU and KISS-DU



CS Nagendra D. Rao
President, the ICSI



CS Devendra V Deshpande
Vice President, the ICSI

CS Deepak Kumar Khaitan
Central Council Member, the ICSI

CS Ashish Mohan
Secretary, the ICSI

CS Sudhir Kumar Banthiya
Chairman, EIRC of the ICSI

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Dr. S K Jena
Director, the ICSI



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"To be a global leader in promoting
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सत्यं वद। धर्मं चर। इत्येकं तेन त्वात्ते कोट्येते ह्यु तेन ज्ञान।

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MoU Signing Ceremony for Academic Collaboration with CNLU



CS Nagendra D. Rao
President, ICSI



CS Devendra V. Deshpande
Vice President, ICSI

CS Deepak Kumar Khaitan
Central Council Member, ICSI

CS Asish Mohan
Secretary, ICSI

CS Sudhir Kumar Banthiya
Chairman, ICSI-EIRC

CS Puja Kasera
Chairperson, ICSI Patna Chapter

Dr. S. K. Jena
Director, the ICSI



About ICSI

The Institute of Company Secretaries of India (ICSI) is the only recognized professional body in India to develop and regulate the profession of Company Secretaries in India. It is a premier national professional body set up under an act of Parliament, the Company Secretaries Act, 1980. ICSI functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India.

About CNLU

Chanakya National Law University, Patna is the 8th NLU in India established in year 2006, under the Chanakya National Law University Act, 2006 (Bihar Act No. 24 of 2006) and included in section 2(f) & 12(B) of the U.G.C. Act, 1956 and NACC Accredited 'A'. Centre for Advanced Research in Corporate and Insolvency Laws (CARCIL) which is a self-financed Centre is established in the university to be the key facilitator and reference Point for highest standards of research in Corporate Law, Governance and Insolvency in India under the able guidance of Justice. Mridula Mishra, Vice Chancellor and M.P Shrivastava, Registrar.



Smt. Mridula Mishra
Hon'ble Justice (Retd.);
Vice-Chancellor (I/C),
Chanakya National Law University



Shri Manoranjan Prasad Srivastava
(Retired District Judge)
Acting Registrar
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Prof. Nandita S Jha
Asst. Professor
Chanakya National Law University

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