



LEGAL UPDATES – CORPORATE LAW

for the month of April 2021



INSOLVENCY & BANKRUPTCY BOARD OF INDIA

NOTIFICATIONS & CIRCULARS

1. The Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 (9th April)

The Ministry of Corporate Affairs has notified the rules for the matters relating to the pre-packaged insolvency resolution process. In particular, they provide for the detailed pre-requisites for the initiation of pre-packaged insolvency resolution process under chapter III-A of the IBC.

(Notification available [here](#))

2. 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 (9th April)

Ministry of Corporate Affairs has specified Rs. 10,00,000/- 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.

(Notification available [here](#))



3. Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 (9th April)

The Insolvency and Bankruptcy Board of India has notified regulations regarding pre-packaged insolvency resolution process (PPIRP) for the stakeholders (corporate debtors classified as micro, small and medium enterprises) to use, and the manner of carrying out various tasks by them as part of the PPIRP such as the general meetings and communication, essential supplies, extortionate credit transaction, pre-packaged insolvency resolution process costs, eligibility and appointment of resolution professional, initiation of process, termination of PPIRP etc.

(Notification available [here](#))

4. Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 (13th April)

The Insolvency and Bankruptcy Board of India made regulations to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017. It inserted clauses with regard to minimum service quality standards for registration of users, issuance of record of



default, and issuance of annual statement to registered users. It also inserted regulation 36A (Publication of statistical information) in the principal regulations, after regulation 36. It requires the statistics relating to debt related information such as distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default to be published quarterly.

(Notification available [here](#))

5. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 (27th April)

The IBBI vide has notified regulations to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. In clause 12A sub-clause (5), the IBBI added proviso regarding the situation when authorisation for assignment is not issued, renewed or rejected by the Agency and in sub-clause (7).

(Notification available [here](#))



6. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021 (27th April)

The IBBI has amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. It has inserted proviso under the principal regulations, in regulation 13(2), clause (b) wherein if an individual ceases to be its director or partner, as the case may be, the insolvency professional entity shall inform the Board, within thirty days of such cessation.

(Notification available [here](#))

7. President promulgates an Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (4th April)

The President promulgated an ordinance to further amend the Insolvency and Bankruptcy Code, 2016 keeping in view of the impacts COVID-19 pandemic has had on businesses, financial markets and economies all over the world, including India, and the business operations of micro, small and medium enterprises exposing financial distress. It introduced Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).

(Ordinance detail available [here](#))



CASES

1. Union of India vs. Vijaykumar V. Iyer [Company Appeal (AT) (Insolvency) No. 733 of 2020] (13th April)

The Hon'ble NCLAT considered and answered all the questions framed by the Hon'ble Supreme Court in Union of India vs. Association of Unified Telecom Service Providers of India, etc. and decided that Spectrum is a natural resource and the Government is holding the same as *cestui que trust*. Further it was ruled, *inter alia*, that Spectrum, being intangible asset of the Licensee/ TSPs/ TelCos/ Corporate Debtor, can be subjected to insolvency/liquidation proceedings and the dues of Central Government/ DOT under the Licence along with deferred/ default payment instalments of spectrum acquisition fall within the ambit of Operational Dues under I&B Code. However, the Hon'ble NCLAT went on to rule that triggering of Corporate Insolvency Resolution Proceedings under IBC with the object of wiping off of such dues, not being for insolvency resolution, but with malicious or fraudulent intention, would be impermissible. Additionally, the spectrum cannot be utilized without payment of requisite dues which cannot be wiped off by triggering CIRP under IBC subjecting the Central Government to be contended with the peanuts



offered to it as ‘Operational Creditor’ within the ambit of distribution mechanism contemplated under Section 53 of IBC .

(Order available [here](#))

2. Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. [Civil Appeal No. 8129 of 2019] (13th April)

In this landmark judgment the Hon’ble Supreme Court clarified the position of law with respect to the fate of dues after the approval of the resolution plan. The Apex Court reiterated that once a resolution plan is approved, the claims provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders and all other claims shall stand extinguished. Further, the Apex Court held that the 2019 amendment to Section 31 of the IBC is clarificatory and declaratory in nature and therefore will be effective from the date on which the IBC has come into effect.

(Order available [here](#))



3. Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal & Anr. [Civil Appeal No. 323 of 2021] (15th April)

The Hon'ble Supreme Court set aside the majority judgment of the Full Bench of the NCLAT in V. Padmakumar vs. Stressed Assets Stabilisation Fund dated 12.03.2020 while ruling that entries in balance sheets would amount to acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act.

(Order available [here](#))

4. Technology Development Board Vs. Mr. Anil Goel Liquidator of Gujarat Oleo Chem Limited (GOCL) [Company Appeal (AT) (Insolvency) No.731 of 2020] (5th April)

The Hon'ble NCLAT, New Delhi ruled that first charge holder will have priority in realising its security interest if it elects to realize its security interest and does not relinquish the same. However, once a Secured Creditor opts to relinquish its security interest, the distribution of assets would be governed by the provision engrafted in Section 53(1)(b)(ii) where under all Secured Creditors having relinquished security interest rank equally and in the waterfall mechanism are second only to the insolvency resolution process costs and the liquidation costs.



(Order available [here](#))

5. The Directorate of Enforcement Vs. Sh Manoj Kumar Agarwal, Resolution Professional [Company Appeal (AT)(Insolvency) No. 575/2019] (9th April)

The Hon'ble NCLAT, New Delhi ruled that there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A. Thus if the Authorities under PMLA on the basis of the attachment or seizure done or possession taken under the said Act resist handing over the properties of the Corporate Debtor to the IRP/RP/Liquidator the consequence of which will be hindrance for them to keep the Corporate Debtor a going concern till resolution takes place or liquidation proceedings are completed, the obstructions will have to be removed.

(Order available [here](#))



SECURITIES AND EXCHANGE BOARD OF INDIA

ORDERS

1. SEBI fines the Ambanis for irregularities in RIL shareholding (7th April)

SEBI has penalized Mukesh Ambani, Anil Ambani, Nita and Tina Ambani and a few others for the violation of Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

The penalty has been imposed over the irregularities relating to the issue of 12 crore equity shares in January 2000 by RIL allotted to 38 entities who were Persons Acting in Concert with RIL. However, 6.83% shares that were acquired by RIL promoters together with PACs, were alleged to be in excess of ceiling of 5% prescribed in regulation 11(1) of Takeover Regulations. It was alleged that RIL failed the obligation to make a public announcement for the acquisition of more than the 5% ceiling defeated Regulation 11(1) of the Takeover Regulations.

The Adjudicating Officer observed that RIL's failure to make a public announcement deprived the shareholders of statutory rights and opportunity to exit from the company.

(Adjudication Order available [here](#).)



2. SEBI penalizes Yes Bank in the matter of AT1 Bonds of Yes Bank Limited (12th April)

SEBI imposed a fine of Rs. 25 crores on Yes Bank and Rs. 50 lakh and 1 crore respectively on its senior executives alleging the violations of Regulations 3(a), 3(c), 3(d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 in regards to Yes Bank's AT1 Bonds.

The matter was taken up by SEBI after receiving several complaints from AT1 bond investors raising questions about the selling of the instrument. After an investigation SEBI found that the individual investors to the AT1 Bonds were not provided with all the information including the Term Sheet and that Yes Bank failed to appraise them of all the risks involved in subscription of AT1 Bonds.

(Order available [here](#).)

3. SEBI slapped a fine of Rs. 1 crore Aptech Ltd for violating insider trading norms (28th April)

SEBI after investigating to ascertain whether there were any disclosure lapses and violations under the SEBI PIT Regulations by Aptech, observed that Aptech had failed to close the trading window in relation to Unpublished Price Sensitive Information pertaining to a press release related to foraying into pre-school segment.

Amit Pradhan, the Adjudicating Officer noted that "Aptech



effectively used the trading window mechanism as an instrument for preventing insider trading by designated persons and their immediate relative who were “insiders”, such wrongful gains made by them could be averted”.
(Order available [here](#).)

4. Japanese Firm Minebea Mitsumi settles takeover norms violation case with SEBI paying 17 lakhs (19th April)

Minebea Mitsumi Inc, a Japanese Firm filed a *suo moto* settlement application for the violation of Regulations 3(1), 4, 5(1), 13(2)(e) and 15(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 for a delay by Minebea in making public offer in respect of Jay Ushin Limited.

SEBI in exercise of its powers conferred under Section 15JB of the SEBI Act, 1992 and in terms of Regulation 23 read with 28 of the SEBI (Settlement Proceedings), Regulation, 2018 ordered for the matter to be settled.

Click [here](#).

5. SEBI clarifies crucial aspects of Investment Advisers Regulations under Informal Guidance sought by Paytm (16th April)

SEBI through its interpretive letter under the SEBI



(Informal Guidance) Scheme, 2003 sought by Paytm Money Limited has made several clarifications. In response to Paytm's queries SEBI clarified that the Investment Advisers registered under the SEBI (Investment Advisers) Regulations, 2013 may not (i) seek electronic consent from clients instead of a signed investment advisory agreement while rendering any investment advice; (ii) be reimbursed from asset management companies for any expenses incurred while rendering service to clients; (iii) appoint a department head, who is not an MD or a designated director or managing chairman or executive chairman or any other equivalent management body of the Investment Adviser, as its 'principal officer'.

(Informal Guidance available [here](#).)

CIRCULARS

1. Circular on Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds (6th April)

The circular prescribes modalities for contribution of AMCs towards share capital of LPCC. The contribution from AMCs shall be in proportion to the Average AUM of open-ended debt oriented mutual fund schemes.



(Circular available [here](#))

2. Circular on Regulatory reporting by AIFs (7th April)

The circular prescribes that AIFs are required to submit periodical reports to SEBI relating to their activity.

(Circular available [here](#))

3. Circular on Reporting Formats for Mutual Funds (12th April)

The reports to be submitted by AMCs to Trustees, by AMCs to SEBI and by Trustees to SEBI have been reviewed and revised under this circular. The bi-monthly Compliance Certificate, half yearly Compliance Certificate has been discontinued. The format for Quarterly reports to AMCs and the Compliance Test Reports to SEBI have been revised.

(Circular available [here](#))

4. Circular on Alignment of interest of Key Employees of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes (28th April)

While SEBI has taken steps to standardize the scheme categories and characteristics of each category, the management of risk return profile of the scheme's rests with the AMCs and the Key Employees. In order to align the interest of the Key Employees of the AMCs with the



unitholders of the mutual fund schemes, it has been decided that a part of compensation of the Key Employees of the AMCs shall be paid in the form of units of the scheme through the guidelines provided in the circular.

(Circular available [here](#))

5. Circular on 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 (29th April)

Based on the recommendation of Mutual Fund Advisory Committee AMCs shall disclose risk-o-meter of the scheme and send in details of the scheme portfolio. This circular shall be applicable with effect from June 1, 2021.

(Circular available [here](#))

6. Circular on Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the CoVID-19 pandemic (29th April)

In lieu of the second wave of The COVID 19 pandemic, SEBI has decided to grant relaxations from compliance with certain provisions of the LODR Regulations.

(Circular available [here](#))



7. Circular on Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM) (30th April)

Considering the difficulties expressed by the industry in light of continuing COVID-19 scenario, it has been decided by SEBI that the updation of SID and KIM for the half-year ended March, 2021 shall be completed by May 31, 2021. (Circular available [here](#))

8. Circular on Guidelines for warehousing norms for Agricultural and Agri-processed goods and non-agricultural goods (16th April)

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

The Circular noted that 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.

(Circular available [here](#).)

9. Relaxations relating to procedural matter – Issues Listing (22nd April)

SEBI extended the validity of relaxations for Rights Issue



up to September 30, 2021.

SEBI had previously issued similar orders in its Circular dated May 6, 2020 granting one-time relaxations from strict enforcement of certain regulations of the SEBI (Issue of Capital and Disclosure Requirements), Regulations, 2018.

(Circular available [here](#).)

10. Circular on Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies for Debt Instruments (27th April)

This circular strengthened and standardized the policies on provisional rating, subsequent to consultation with various stakeholders.

SEBI under a Circular dated November 1, 2016 had advised Credit Rating Agencies to frame detailed policies on provisional rating. The strengthened policy prescribes Rating Symbol, Standardized Team, a validity period and certain disclosures in the press release by Credit Rating Agencies.

(Circular available [here](#).)



MINISTRY OF CORPORATE AFFAIRS

AMENDMENTS

1. Companies (Accounts) Second Amendment Rules, 2021 (1st April)

The MCA vide its notification amended Rule 3(1) of the Companies (Account) Rules, 2014. This provides that the book of accounts and other relevant books and papers maintained in electronic modes and hence made accessible in India for subsequent reference.

(Notification available [here](#))

2. The Companies (Audit and Auditors) Second Amendment Rules, 2021 (1st April)

The MCA vide its notification amended Rule 11(g) Companies (Audit and Auditors) Rules, 2014. This amendment substitutes the phrase, 'Whether the company,' with 'Whether the company, in respect of financial years commencing on or after the 1st April, 2022'

(Notification available [here](#))

NOTIFICATIONS

1. Clarifications on the spending of CSR funds (22nd April)

The MCA issued a circular to clarify on the spending of



CSR funds for setting up makeshift hospitals and temporary COVID care facilities, and that spending of the CSR funds in this regard is an eligible CSR activity under Schedule VII of the Companies Act, 2013.

(Notification available [here](#))

UPDATES

1. Engagement of Young Professionals in MCA on contract basis

MCA has opened applications to engage the services of Young Professionals on contract basis.

(Notice available [here](#))

CASES

1. In Re Cognizance for Extension of Limitation

In exercise of its powers under Articles 142 read with 141 of the Constitution of India, the apex court extended the limitation period for filing of cases in courts and tribunals with effect from 14th March 2021 in lieu of the second wave of the COVID 19 pandemic. The court noted that this pandemic has put litigants in a difficult position. It further clarified that till further orders this stands excluded from the sections included within the Commercial Courts Act, 2015.

(Judgement Available [here](#))