



# MONTHLY CORPORATE LAW UPDATES

## JULY, 2022

- **INSOLVENCY & BANKRUPTCY LAW**
- **SECURITIES LAW**
- **COMPANY LAW**
- **ARBITRATION LAW**
- **MISCELLANEOUS**

## **1. Interest on delayed payments can be included with the principal debt for initiating Corporate Insolvency Resolution Process (“CIRP”) [*Prashat Agarwal v. Vikash Parasrampuria and Ors.*] [\[Link\]](#)**

In this case, the operational creditor raised invoices against the Corporate Debtor (“CD”) which remained unpaid. These invoices include interest on delayed payments. The National Company Law Appellate Tribunal (“NCLAT”) held that this interest on delayed payments entails a right of payment to the operational creditor. Therefore, the Adjudicating Authority (“AA”) allowed its inclusion along with the principal debt to meet the threshold for filing a CIRP application.

## **2. NCLAT holds that ‘related parties’ of the CD cannot become financial creditors. [*IDBI Trusteeship v. Mr. Abhinav Mukherji and Ors.*] [\[Link\]](#)**

The NCLAT has reiterated that the ‘related parties’ of the CD as defined under the Insolvency and Bankruptcy Code (“IBC”) cannot be termed as financial creditors. It was observed that the party in this case had an active role in determining the policies of the CD. The AA concluded that such parties cannot participate in the CIRP.

## **3. The National Company Law Tribunal (“NCLT”) can exercise discretion while deciding CIRP applications under Section 7 of the IBC [*Vidarbha Industries Power Limited v. Axis Bank Limited*] [\[Link\]](#)**

The SC held that the AA has the discretion to consider factors such as the CD’s financial stability and viability for initiating CIRP apart from other requirements of the IBC. It opined that this discretion must be exercised with caution and in a non-arbitrary manner. The Court also emphasized upon the word ‘may’ in Section 7, and concluded that this gave the AA discretion in admitting or rejecting the CIRP application.

## **4. Claim for non-payment of license fees can be termed as operational debt. [*Jaipur Trade Expocentre Pvt Ltd v. M/s Metro Jet Airways Training Pvt Ltd*] [\[Link\]](#)**

In the present case, The NCLAT referred to the terms of the license agreement and the NCLAT concluded that the claim for payment of license fee was an ‘operational debt.’ This was because the agreement included provisions that mandated the licensee to pay GST and other government taxes. The Court held that this was a type of ‘service’ as mentioned in the definition of ‘operational debt’ in the IBC. And concluded that the claim for non-payment of license fee was an operational debt.

## **5. Insolvency and Bankruptcy Board of India (“IBBI”) amends Insolvency Professional (“IP”) Regulations: Disclosure norms introduced. [\[Link\]](#)**

As per the new amendment, disciplinary proceedings against IPs will be performed as per the IBBI (Inspection and Investigation) Regulations, 2017. As per the new norms, IPs will be required to disclose their relationship with the CD, financial creditors, interim finance providers, etc. within three days of their appointment/constitution.

The amendment specifies four types of relationships that need to be disclosed. Additionally, the IP has to ensure that the CD has complied with every applicable law and cannot include any loss from such non-compliance in the CIRP cost.

## **6. The Resolution Professional (“RP”) cannot dismiss creditor’s belated claims, without presenting the complete facts to the Committee of Creditors (“CoC”). *[Sumat Kumar Gupta v. M/s Vardhman Industries Limited]* [\[Link\]](#)**

The NCLAT has held that the RP cannot dismiss belated claims simply because the claims were rejected earlier on grounds of insufficient proof. The RP has to analyze and present complete facts on the admission of claims, to the CoC. Additionally, the AA ruled that the creditors can get a refiling extension in order to substantiate their claims.

## **1. Zero Coupon Zero Principal Bonds (“ZCZP”): Newly referred as Securities; Finance Ministry. [\[Link\]](#)**

The Finance Ministry has declared ZCZP as Securities under Social Stock Exchanges (“SSE”). ZCZPs are such kind of bonds where neither interest is paid nor principal is repaid. Now, these bonds will be regulated by the Securities and Exchange Board of India (“SEBI”). This will help Not-for-Profit Organizations and for-Profit social organizations to raise funds.

## **2. New Regulatory Framework for SSEs; SEBI. [\[Link\]](#)**

SEBI has introduced amendments to the Issue of Capital and Disclosure Requirements (“ICDR”) Regulations to recognise SSEs as a separate segment within the existing stock exchanges. Not- For Profit Organizations and For-Profit Social Enterprises will be eligible to participate in the SSEs. For-Profit Social Enterprises shall have to establish primacy of their social intent to be eligible for an SSE.

## **3. SEBI’s power under Section 11B cannot be used to impose penalties; Securities Appellate Tribunal. [\[Link\]](#)**

SEBI can issue directions only in the form of orders under Section 11B of the SEBI Act and cannot use it to impose penalties. In case of non-compliance of these directions, the amount can be recovered under Section 28A of the act. Additionally, the bench specifically mentioned that such a penalty cannot be imposed under Section 15 HB of the act.

## **4. Online Bond Platforms : Regulatory Framework proposed; SEBI. [\[Link\]](#)**

SEBI has proposed a regulatory framework for online bond platforms which sell debt securities particularly to retail investors. The platforms will have to register as stock brokers or operate through registered brokers if the proposal is implemented. This move will help SEBI to maintain a uniform code of conduct and enhance investor confidence.

## **5. Fees payable to SEBI: Subject to Goods and Service Tax (“GST”); GST Council. [\[Link\]](#)**

SEBI has notified the recommendations by GST council on GST chargeable on services by SEBI. Now, Market Infrastructure Institutions, listed companies, intermediaries and persons dealing in the securities market shall have to pay 18% GST on the fees payable to SEBI.

## 6. Investor Grievance Redressal: Steps taken to expedite mechanism; SEBI. [\[Link\]](#)

SEBI has taken steps to expedite the grievance redressal mechanism (“**GRM**”) for complaints by investors. All recognised stock exchanges shall design a web-based redressal system to enable investors to lodge and follow up on their complaints online. Further, SEBI has decided to continue with the hybrid mode of GRM and arbitration.

## 1. 'Deposit' as per Companies Act (“CA”), 2013 does not apply retrospectively. [*Nitin Rekhan v. Union of India*] [[Link](#)]

The Delhi HC held that ‘deposits’ defined under CA, 2013 cannot be applied retrospectively. The CA, 2013 read along with Companies (Acceptance of Deposit) Rules, 2014 will not apply as the agreement in the case dates back to 2010. Therefore, the CA, 1956 and Companies (Acceptance of Deposit) Rules, 1975 would operate. Additionally, the share application money of the petitioner cannot be considered as a 'deposit' under the CA,1956. As a result, penal interest does not arise

## **1. Enabling Clause in an agreement: Cannot bind parties to arbitration; Bombay High Court (“HC”) [*Derivados Consulting Pvt.Ltd. v. Pramara Promotions Pvt. Ltd*] [\[Link\]](#)**

The Bombay HC has ruled that an enabling clause does not bind the parties to an arbitration agreement. Hence, the clause cannot be construed as an arbitration clause. Each party has the discretion to accept or reject the request of arbitration by the other in pursuance of the enabling clause.

## **2. Rejection of an application to set aside arbitral award: Not a concurring judgement by the Court; Delhi HC [*Glitter Overseas ORS. v. MMTC Limited*] [\[Link\]](#)**

The Delhi HC has ruled that merely because the Court rejected the challenge to an award by Arbitral Tribunal does not imply that the Court has concurred with the view of the Tribunal. There may be other grounds as to why the Court may have rejected the challenge.

## **3. Questions of non-arbitrability and jurisdiction by Court: Allowed at stage of appointing arbitrators. [*Indian Oil Corporation Ltd v. NCC Ltd*] [\[Link\]](#)**

Even after insertion of Section 11(6A) of the A&C Act, Courts can decide upon the issues of non-arbitrability and jurisdiction at the stage of application for appointing arbitrators. At such a stage, Section 11(6A) does not confine the Courts to only decide if the arbitration agreement is binding between the parties.

## **4. Arbitrator cannot alter express terms of an agreement using Penta test and Business Efficacy Test; Delhi HC [*Food Corporation of India v. Adani Agri Logistics Ltd. O.M.P.*] [\[Link\]](#)**

The Penta test is used to determine the intention of the parties within an agreement. The Delhi HC has ruled that the test can be applied only when the terms of the agreement are implied or silent on any aspect in consideration. The test’s application is limited to interpreting the terms of the contract for the parties to be able to achieve business efficacy and the Court categorically observed that the test cannot be used to alter the terms of the agreement so as to work out an equitable arrangement between the parties.

## 1. CCI rejects Udaan's plea to procure Parle-G directly. [*Hiveloop Technology Pvt. Ltd v. Parle Products Pvt. Ltd.*] [\[Link\]](#)

Parle Products refused to sell its products directly to Udaan, a Business-to-Business e-commerce platform. Udaan argued that Parle-G has a dominant in the glucose biscuits market segment (83% share). Additionally, it has abused this dominance by refusing to sell directly to Udaan. The CCI rejected these arguments and stated that Parle-G had no obligation to deal with Udaan as long as they accrue benefits to the consumers.

## 2. SC grants two-month window to taxpayers for claiming transitional tax credit. [*Union of India v. M/s Filco Trade Centre Pvt. Ltd. and Anr.*] [\[Link\]](#)

When India switched to the GST regime in 2017, many businesses missed out on claiming transitional tax credits. These credits are a component of a company's tax payment that can be applied to offset a subsequent tax obligation. Recently, this issue was brought in front of the SC. Accordingly, it directed the government to facilitate taxpayers by allowing them to file the relevant forms for a period of two months from 1st September, 2022.

## 3. Reserve Bank of India ("RBI") announces additional specified securities under Fully Accessible Route ("FAR") for investment by non-residents in Government Securities. [\[Link\]](#)

Previously, the RBI had introduced the FAR scheme after the Union Budget 2020-21 to allow non-resident investors to invest in certain specified government bonds without any restrictions. Now, two more securities have been added to this Scheme. Additionally, all new issuances of government securities that have 7 and 14-year tenors will be designated as 'specified securities' under this Scheme.





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