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**LEGAL UPDATES – CORPORATE LAW**

*for the month of March 2021*

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## **INSOLVENCY & BANKRUPTCY BOARD OF INDIA**

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### **NOTIFICATIONS & CIRCULARS**

#### **1. Filing of list of stakeholders under clause (d) of sub-regulation (5) of regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 (4<sup>th</sup> March)**

To improve transparency and enable stakeholders to ascertain the details of their claims at a central platform, the Insolvency and Bankruptcy Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) require that the liquidator shall verify every claim as on the liquidation commencement date, and thereupon prepare a list of stakeholders, with specified details which shall, inter-alia, be displayed on the website, if any, of the corporate debtor.

(Circular available [here](#))

#### **2. Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (9<sup>th</sup> March)**



Regulations provide for appointment of Insolvency Professionals (IPs) as Administrators for the purposes specified therein. A copy of the said Regulations is at 'Annexure A'. The IBBI and the SEBI have mutually agreed upon to use a Panel of IPs for appointment as Administrators for effective implementation of the Regulations. The IBBI shall prepare a Panel of IPs keeping in view the requirements of SEBI and the Regulations and the SEBI shall appoint the IPs from the Panel as Administrators, as per its requirement in accordance with the Regulations. A Panel shall be valid for six months and a new Panel will replace the earlier Panel every six months.

(Circular available [here](#))

### **3. Reporting of status of ongoing corporate insolvency resolution processes (CIRPs) through Form CIRP 7 (18<sup>th</sup> March)**

In exercise of the powers under clauses (aa), (g), (h), (k) of sub-section (1) of section 196 of the Insolvency and Bankruptcy Code, 2016, and regulation 40B of the CIRP Regulations, it is required to filing of Form CIRP 7 within three days of due date of completion of any activity requiring filing of Form CIRP 7 stated in circular when delayed, and continue to file Form CIRP 7 every 30 days, until the said activity remains incomplete.

(Circular available [here](#))



## NOTIFICATIONS

### **1. Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021 (4<sup>th</sup> March)**

The IBBI vide its notification published certain regulations further to amend the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(Notification available [here](#))

### **2. Appointment of Executive Director (ED) on deputation (10<sup>th</sup> March)**

The IBBI vide its notice invited applications for 02 (Two) posts of Executive Director (ED) on deputation from eligible officers currently working in Central Government, State Governments, Public Sector Units or Autonomous Organizations. The eligibility criteria for the post and other details for submitting applications are given in the Annexure-A. The last date to apply for the said posts is April 9, 2021.

(Notification available [here](#))

### **3. IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021 (15<sup>th</sup> March)**

The IBBI vide its notification published certain regulations referred to as the principal regulations that shall be inserted,



namely “12A. Updation of claim” to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016). These regulations may be called the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021.

(Notification available [here](#))

## **CASES**

### **1. P. Mohanraj & Ors. vs. M/s. Shah Brothers Ispat Pvt. Ltd.** **[Civil Appeal No. 10355 of 2018] (1<sup>st</sup> March)**

The Hon’ble Supreme Court decided on the question as to whether the institution or continuation of a proceeding under Section 138/141 of Negotiable Instruments Act can be said to be covered by Section 14 of the IBC and ruled that the moratorium under Section 14 of IBC would apply only to the corporate debtor. However, the natural persons mentioned in Section 141 of the Negotiable Instruments Act would continue to be liable under Chapter XVII of the Negotiable Instruments Act.

(Order available [here](#))

**2. Gujrat Urja Vikas Nigam Limited vs. Mr. Amit Gupta & Ors**  
**[Civil Appeal No. 9241 of 2019] (8<sup>th</sup> March)**

The Hon'ble Supreme Court ruled that the Resolution Professional can approach the NCLT for the adjudication of disputes that are related to the insolvency resolution process, however, for the adjudication of disputes that arise *dehors* the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. Further, the Hon'ble Court observed that the legislature needs to provide concrete guidance on the validity of *ipso facto* clauses.

(Order available [here](#))

**3. Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd.**  
**& Anr [Civil Appeal No. 9664 of 2019] (15<sup>th</sup> March)**

The Hon'ble Supreme Court ruled that the prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the IBC must also attach itself to a scheme of compromise or arrangement under Section 230 of the Act of 2013, when the company is undergoing liquidation under the auspices of the IBC. Further, the Apex court also ruled that Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B(1), is constitutionally valid.

(Order available [here](#))



**4. Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd And Anr. [Civil Appeal No. 9198 of 2019] (22<sup>nd</sup> March)**

The Hon'ble Supreme Court ruled that since the provisions of the Limitation Act 1963 have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

(Order available [here](#))

**5. Laxmi Pat Surana Vs. Union Bank Of India & Anr. [Civil Appeal No. 2734 of 2020] (26<sup>th</sup> March)**

The Hon'ble Supreme Court ruled that the financial creditor has a right to initiate resolution process against the guarantor whose liability is coextensive with that of the principal borrower even when the principle borrower is not a "corporate person".

(Order available [here](#))

**6. Indus Biotech Private Limited Vs. Kotak India Venture (Offshore) Fund [Arbitration Petition (Civil) NO. 48 of 2019 with Civil Appeal No.1070 /2021 @ SLP (C) NO. 8120 of 2020] (26<sup>th</sup> March)**

The Hon'ble Supreme Court ruled that if a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 is admitted any application under Section 8 of the Arbitration and Conciliation Act, 1996 thereafter will not be



maintainable. Further, if a Section 7 petition is yet to be admitted, and meanwhile an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority is duty bound to first decide the application under Section 7 of the IBC by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act, 1996 is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IBC application would befall on the application under Section 8 of the Act, 1996.

(Order available [here](#))

**7. India Resurgence ARC Private Limited Vs. M/s. Amit Metaliks Limited [Company Appeal (AT)(Insolvency) No. 1061 of 2020] (2<sup>nd</sup> March)**

The Hon'ble NCLAT ruled that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors and relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of the Insolvency and Bankruptcy Code.

(Order available [here](#))



**8. Mr. Gulabchand Jain vs. Mr. Ramchandra D. Choudhary,  
Resolution Professional of Vijay Timber Industries Pvt.  
Ltd. [Company Appeal (AT)(Insolvency) No. 142 of 2021]  
(2<sup>nd</sup> March)**

The Hon'ble NCLAT ruled that Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read together with explanation inserted by Act of 2019 empowers the Committee of Creditors to change its mind in regard to the liquidation of the Corporate Debtor even after an application has been filed by the Resolution Professional placing the Resolution Plan approved by the CoC before the Adjudicating Authority for approval, subject to the only exception that such course cannot be adopted after the approval of the Resolution Plan by the Adjudicating Authority.

(Order available [here](#))

**9. Edelweiss Asset Reconstruction Company Ltd. Vs.  
Gwalior Bypass Projects Ltd. [Company Appeal  
(AT)(Insolvency) No. 1186 of 2019] (8<sup>th</sup> March)**

The Hon'ble NCLAT ruled that there is no bar for the Financial Creditor to proceed against the principal borrower as well as Corporate Guarantor at the same time, either in CIRPs or file claims in both CIRPs.

(Order available [here](#))



सत्ये विद्यते धर्मः

**10. Mr Ram Ratan Kanoongo Resolution Professional of Sirpur Paper Mills Ltd Vs. Mr Veda Kumar Nimbagal [Company Appeal (AT) (Insolvency) No. 906 of 2020] (17<sup>th</sup> March)**

The Hon'ble NCLAT ruled that after the Resolution Plan's approval and implementation, no direction can be issued to the erstwhile Resolution Professional on account of any belated and settled claim. Successful Resolution Applicant cannot be burdened with the claim/dues of the Corporate Debtor.

(Order available [here](#))

**11. Kishanlal Likhmichand Bothra Vs. Canara Bank [Company Appeal (AT) (Insolvency) No. 704 of 2020] (24<sup>th</sup> March)**

The Hon'ble NCLAT ruled that Section 18 of the Limitation Act is applicable to proceedings under IBC and that if there is acknowledgment of debt in the balance-sheets or the OTS Proposal, the period of limitation would get extended if the acknowledgment is made before the period of limitation expires.

(Order available [here](#))

**12. Gyanchand Mutha Vs. M/s. Aditya Birla Money Limited [Company Appeal (AT) (Ins) No. 346 of 2020] (18<sup>th</sup> March)**

The Hon'ble NCLAT ruled that since the scheme of IBC



protects the financial service provider by means of exclusion under Section 3(8), an application under Section 9 cannot be admitted against such financial service providers.

(Order available [here](#))

## SECURITIES AND EXCHANGE BOARD OF INDIA

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### ORDERS

#### **1. SEBI fines 4 entities for non-submission of financial results ( 26<sup>th</sup> March)**

Capital market regulator SEBI has penalised four entities, Alliance Infrastructure Project Pvt Ltd, Ashna Realtors, RMG Developers and Tarendra Infrastructure Chennai for delayed or non-submission of financial results. The regulator has imposed a fine of Rs 1 lakh on each of the four entities.

The Securities and Exchange Board of India (SEBI) initiated adjudication proceedings under section 15A(b) of SEBI Act, 1992 the four entities and sent show cause notices to show cause as to why an inquiry should not be held and penalty not be imposed against them for the aforesaid alleged violations.

(Order available [here](#).)

#### **2. SAT sets aside SEBI orders in WhatsApp leak case (26<sup>th</sup> March)**

SEBI had carried out search and seizure operations of 26 entities of a specific market chatter WhatsApp group in case of leak of quarterly financial results of some companies before



the official disclosure. The Securities Appellate Tribunal (SAT) has set aside market regulator Securities and Exchange Board of India's (SEBI) orders against some employees of brokerage houses for forwarding messages on WhatsApp regarding unpublished quarterly results of some listed companies.

(Order available [here](#))

### **3. SEBI cancels Sahara India Financial Registration as Sub-Broker (3<sup>rd</sup> March)**

Terming Sahara India Financial Corp Ltd as an entity not 'fit & proper', market regulator Securities and Exchange Board of India (SEBI) has cancelled registration of the Sahara group unit as sub-broker of National Stock Exchange (NSE) and BSE. The SEBI order also refers to an order passed by the Securities Appellate Tribunal (SAT) on 28 July 2017 in Sahara Asset Management Company (AMC) Pvt Ltd issue.

(Order available [here](#).)

## **MASTER CIRCULAR**

### **1. Master Circular on Surveillance of Securities Market (1<sup>ST</sup> March)**

SEBI has issued the Master Circular on Surveillance of Securities Market where it enables all the users to have an



access to all the applicable circulars at one place. This Master Circular is a compilation of the circulars issued by Integrated Surveillance Department, which are operational as on date of this circular.

(Master Circular available [here](#).)

## **CIRCULAR**

### **1. Circular on Mutual Funds (4<sup>TH</sup> March)**

In exercise of its power conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Circular available [here](#).

### **2. Circular on Guidelines for votes cast by Mutual Funds (5<sup>th</sup> March)**

In exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, SEBI has prescribed guidelines to further improve transparency as well as encourage Mutual Funds/AMCs to diligently exercise their voting rights in best



interest of the unitholders and based on the deliberations in MFAC.

(Circular available [here](#).)

### **3. Rollout of Legal Entity Template (10<sup>th</sup> March)**

Exercising its powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets, SEBI rolled out circulars pertaining to Legal Entity Templates.

(Circular available [here](#).)

### **4. Review of norms regarding investment in debt instruments with special features, and the valuation of perpetual bonds (10<sup>th</sup> March)**

Exercising its powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, SEBI issued review of norms regarding investment in debt instruments with special features, provisions for Segregated Portfolio in the Scheme Information Document and the valuation of perpetual bonds.

(Circular available [here](#).)

### **5. Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs) (22<sup>nd</sup> March)**



Superseding the earlier circular dated March 26, 2019 issued on BCP-DR Policy of MII has brought new guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs) by exercising its powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

(Guidelines available [here](#).)

## **6. Clarification on the valuation of bonds issued under Basel III framework (22<sup>nd</sup> March)**

In exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market has issued a clarification on the valuation of bonds issued under Basel III framework.

This is done in concern to the circular dated March 10, 2021 March 10, 2021, which has inter alia stated that the maturity of all perpetual bonds shall be treated as 100 years from the date of issuance of the bond for the purpose of valuation.

(Circular available [here](#).)

## **7. Combating Financing of Terrorism (CFT) under Unlawful Activities (Prevention) Act, 1967 – Directions to Stock**





**Exchanges, Depositories and all registered intermediaries**  
***(25<sup>th</sup> March)***

In exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets, SEBI issued a circular pertaining to Combating Financing of Terrorism (CFT) under Unlawful Activities (Prevention) Act, 1967 Directions to Stock Exchanges, Depositories and all registered intermediaries.

(Circular available [here](#).)

**8. Transfer of business by SEBI registered intermediaries to other legal entity** ***(26<sup>th</sup> March)***

In exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, SEBI has issued circular in concern to transfer of business by SEBI registered intermediaries to other legal entity which covers five clarifications.

Circular available [here](#).

**9. Reduction in unblocking/refund of application money**  
***(31<sup>st</sup> March)***

In exercise of powers conferred by Section 11(1) and section 11A of the Securities and Exchange Board of India Act, 1992, a circular pertaining to reduction in unblocking/refund of application money has been issued.



(Circular available [here.](#))

## **MINISTRY OF CORPORATE AFFAIRS**

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### **AMENDMENTS**

#### **1. Companies (Incorporation) Third Amendment Rules, 2021 (5<sup>th</sup> March)**

The MCA notified the Companies (Incorporation) Third Amendment Rules, 2021. The stakeholders are now in a position to perform the aadhar authentication for GSTIN registration in Form INC-35 AGILE-PRO.

(Notification available [here](#))

#### **2. Amendments to Schedule V of the Companies Act, 2013 (18<sup>th</sup> March)**

The MCA amended the Schedule V of the Companies Act, 2013. In Section I of Schedule V, the words “or other director or directors” shall be inserted after “managerial person or persons” and in Section II, Table (A) was substituted.

(Notification available [here](#))

#### **3. The Companies (Management and Administration) Amendment Rules, 2021 (5<sup>th</sup> March)**

The MCA vide its notification amended Rule 11, 12 and 20 of



the Companies (Management and Administration) Rules, 2021. This amendment provides that every company except One Person Company (OPC) and Small Company shall file its annual return in Form MGT-7. OPC and Small Company shall file in Form MGT-7A. the amendment to Rule 20 provided a few definitions namely, 'Agency', 'Cut-off date', 'Cyber Security', 'Electronic Voting System', 'Remote e-voting', 'Secured System' and 'Voting by electronic means.'

(Notification available [here](#))

#### **4. The Companies (Accounts) Amendment Rules, 2021** ***(24<sup>th</sup> March)***

MCA vide its notification amended Rules 3(1) and 8(5) Companies (Accounts) Rules, 2014. Under Rule 3(1), a proviso was inserted stating that for a financial year commencing on and after 1<sup>st</sup> April, 2021, every company using an accounting software for maintaining books of accounts, shall use only such software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled. Further there has been an addition of two clauses under Rule 8(5) containing further details to be mentioned in the Board Report

(Notification available [here](#))

#### **5. The Companies (Audit and Auditors) Amendment Rules,**



### **2021 (24<sup>th</sup> March)**

MCA notified the Companies (Audit and Auditors) Amendment Rules, 2021 and omitted clause (d) of Rule 11 of Companies (Audit and Auditors) Rules, 2014 and additionally introduced clauses (e), (f) and (g). the matter related to specified bank notes during demonetisation period is not required to be stated in “Other Matters” in the auditor’s report. However, certain matters have been specified on which reporting needs to be done under “Other Matters” paragraph of Audit Report.

(Notification available [here](#))

### **6. Amendments to Schedule III of the Companies Act, 2013** ***(24<sup>th</sup> March)***

The MCA amended the Schedule III of the Companies Act, 2013. This contains the general instructions to prepare a balance sheet and Statement of profit and Loss of a Company. Multiple changes have been made including ones about Security Deposits and details of immovable property.

(Notification available [here](#))

## **NOTIFICATIONS**

### **1. Establishment of a Central Scrutiny Centre (CSC) (18<sup>th</sup> March)**



The MCA vide its notification established a Central Scrutiny Centre to carry out scrutiny of Straight Through Processes (STP) e-forms filed by companies under the Act.

(Notification available [here](#))

## **2. Commencement Notification (5<sup>th</sup> March)**

MCA appointed the 5<sup>th</sup> March, 2021 as the date of commencement of Section 23(i) of the Companies (Amendment) Act, 2017 which seeks to amend Section 92 of the Companies Act, 2013 dealing with annual return.

(Notification Available [here](#))

## **3. Commencement Notification (18<sup>th</sup> March)**

MCA appointed the 18<sup>th</sup> March, 2021 as the date of commencement of Sections 32 and 40 of the Companies (Amendment) Act, 2020 seeking to amend Sections 149 (Remuneration of Independent Director In case of absence or inadequate profits) and 197 (Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits) respectively of the Companies Act, 2013.

(Notification available [here](#))

## **4. Commencement Notification (24<sup>th</sup> March)**

MCA appointed the 24<sup>th</sup> March, 2021 as the date of commencement of Sections 23 (Unpaid Dividend Account) and 45 (Valuation) of the Companies (Amendment) Act, 2020.



(Notification Available [here](#))

## UPDATES

### **Availability of e-form CSR-1**

MCA has made e-form CSR-1 available for Registration of Entities for undertaking CSR activities.

(Notice available [here](#))

## CASES

### **1. Tata Consultancy Services Ltd. v. Cyrus Investments Private Ltd., 2021 SCC OnLine SC 272 (26<sup>th</sup> March)**

The Hon'ble Supreme Court set aside the NCLAT order allowing the Tata Group's appeals. Beginning on the 24<sup>th</sup> October 2016 with Cyrus Mistry being ousted as the Executive Chairman by the Board of Directors at Tata Sons. Soon after Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited filed a company petition before the NCLT under Sections 241 and 242 read with 244 of the Companies Act, 2013 on the grounds of unfair prejudice and mismanagement. The petition was dismissed by the SC as it could not sustain the serious charges it made. It also mentioned that nothing prevents Tata Sons from re-converting itself from a public company to a private one.

(Judgement available [here](#))