CENTRE FOR CORPORATE LAW

NATIONAL LAW UNIVERSITY ODISHA

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#IN SIGHTS

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IN THIS ISSUE

INSOLVENCY & BANKRUPTCY

The Supreme Court ("SC") rules that a pre-2016 Debts Recovery Tribunal ("DRT") cannot be treated as a "decree or order" for initiating insolvency proceedings under the Presidency Towns Insolvency Act, 1909 ("PTI Act") [Link]

The SC has held that a recovery certificate issued by a DRT before the 2016 amendment to the Recovery of Debts and Bankruptcy Act, 1993 cannot be treated as a "decree" or "order" for initiating insolvency proceedings under Section 9(2) of the PTI Act.

Prior to the 2016 amendment, there were no provisions in the RDB Act equating a recovery certificate issued by DRT with a decree or order of a civil court. Hence, a recovery certificate could not satisfy the threshold requirement of a decree or order under Section 9 (2) of the PTI Act, for initiating insolvency proceedings. However, in 2016, Section 19 (22A) was inserted in the Act, which deemed a recovery certificate as a decree or order.

Presently, the SC has clarified that Section 19(22A) operates prospectively and cannot be read into proceedings founded on certificates issued before its enactment. It reasoned that the Parliament's decision to insert the provision in 2016 indicates that no such equivalence existed prior to that date, as the amendment would otherwise have been unnecessary.

Moving forward, this ruling rule out reliance on pre-2016 DRT recovery certificates as a basis for insolvency proceedings under the PTI Act, resolving a residual category of legacy disputes initiated before the 2016 amendment. This ruling is significant in personal insolvency proceedings under pre-IBC statutes such as the PTI Act, which continue to apply to individuals not covered by Part III of the IBC. Creditors will now need a recovery certificate issued after the 2016 amendment or an actual civil court decree in order to satisfy the requirement of a "decree or order" for initiating insolvency proceedings under the PTI Act.

The SC clarifies the treatment of unresolved claims and calls for greater protection of Micro, Small and Medium Enterprises ("MSMEs") under the Insolvency and Bankruptcy Code, 2016 ("IBC") [Link]

The SC, in its recent judgment, has reaffirmed the finality of an approved resolution plan through the clean slate principle under the IBC. However, the position was less clear for a claim which was pending in the civil courts or arbitration proceedings but had not yet matured into a fixed and determinable liability at the time of approval of the resolution plan.

Whereas decisions had already held that a successful resolution applicant could not be faced with claims that were outside the accepted resolution scheme, the present case revolves around the issue of whether pending claims admitted at a notional value would stand after the approval of the plan.

In the present case, the court held that where a claim had not become final and quantifiable before the resolution plan was approved by the NCLT, the related civil suit or arbitration proceeding could not continue thereafter. Such claims would stand extinguished, thereby ensuring that the successful resolution applicant is not exposed to uncertain liabilities after taking over the company. The SC also upheld the Resolution Professional's decision to admit pending or disputed claims at a notional value of ₹1.

Additionally, the SC also highlighted that small operational creditors, including MSMEs, are placed at the lower end of the waterfall mechanism and may be unable to absorb even a relatively small financial loss. This puts them into a severely disadvantaged position. However, instead of altering the repayment mechanism itself, the Court stated that the issue falls within the legislative domain and suggested that the Law Commission and the Legislature examine whether changes are required to create a more balanced repayment mechanism.

The judgment is expected to provide greater certainty to successful resolution applicants by ensuring that unresolved claims cannot be pursued after a resolution plan has been approved.

At the same time, the SC's observations may lead to a legislative reconsideration of the position of MSMEs and other small operational creditors under the IBC. The ruling reinforces the clean slate principle and also highlights the need for a more balanced framework that adequately protects smaller creditors.

SECURITIES LAW

Securities and Exchange Board of India ("SEBI") clarifies that listed entities must list unlisted debentures after a business transfer [Link].

Through an informal guidance released on July 20th, 2026, SEBI has clarified that Regulation 62A (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 **("LODR Regulations")** will apply to all unlisted non-convertible debt securities **("NCDs")** irrespective of the manner in which they were acquired.

Earlier, Ananya Finance for Inclusive Growth Private Limited, a listed entity, had written to SEBI to seek guidance on whether transfer of unlisted NCDs would also require mandatory listing. Regulation 62A of the LODR Regulations provides that a listed entity whose NCDs are already listed by the stipulated date shall list all NCDs issued thereafter. However, there was no clarification as to whether the mandate would also apply when such NCDs are transferred to a business entity.

Through the guidance, SEBI clarified that Regulation 62A of the LODR Regulations does not depend on the structure of the transaction. Whenever a listed entity assumes the obligation of unlisted NCDs, the same shall be listed irrespective of the mode of transfer of obligations. Further, compliance with all listing requirements, including maintenance of depository records, listing formalities, etc., needs to be ensured.

The guidance is significant as it clarifies that the scope of Regulation 62A is wide enough to cover all NCDs, irrespective of how they were acquired. Thus, whenever any listed entity comes to possess any unlisted NCDs, the listing mandate will be triggered. The clarification therefore ensures that the purpose of Regulation 62A, which is the listing of NCDs, is served without being hindered by the form of transaction.

SEBI releases Alternative Investment Funds (Second Amendment) Regulations, 2026 ("AIF Amendment Regulations, 2026") [Link].

On 10th July 2026, SEBI circulated the AIF Amendment Regulations bringing significant procedural changes for Alternative Investment Funds **("AIFs")** and Angel Funds.
Before the amendment, AIFs were not required to pay any fee along with placement memorandum. The memorandum could be filed 30 days before the launch of the scheme and exemptions were present for large value funds for accredited investors. Additionally, angel investors could file a placement memorandum only through a merchant banker, and SEBI could give comments on the memorandum, which had to be incorporated.

However, after the amendments, AIFs will now be required to pay the fee specified in the Second Schedule of the SEBI (AIF) Regulations, 2012, along with documents specified by the Board. Regulation 12(2) now provides that the placement memorandum shall be filed at least 10 working days before the launch of the scheme, instead of thirty days.

Further, as per the amended Regulation 12(3), once the documents are filed, SEBI can provide any comments to the merchant banker or manager, whosoever files the memorandum. The merchant banker or manager is required to ensure compliance with such comments once received. However, Regulations 12(3) and 12(3A) do not apply to Accredited Investor-only funds.

The amendment also brings changes for Angel Funds, particularly, in the process of their registration. Along with SEBI's power to make comments in the placement memorandum that had to be incorporated, the amendment also omits the requirement of placing the placement memorandum by merchant bankers.

The amendments streamline the AIF framework by reducing filing, while retaining necessary supervision. For Angel Funds, the removal of mandatory merchant banker involvement and SEBI's power to make comments reduces procedural and regulatory burdens, potentially making their registration simpler and more efficient.
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AIFs which have thus retained the funds or AIFs intending to continue with registration due to expectation of a favourable outcome from a pending litigation can apply for 'Inoperative Fund' status. Such AIFs must submit an annual status report and are prohibited from launching a new scheme. Finally, once liabilities are satisfied and the remaining funds are distributed amongst investors, the AIF can be wound up.

Therefore, the circular gives effect to the changes introduced in the winding up provisions by establishing the procedural framework. The guidelines also bring ease of doing business because now AIFs which have concluded their investments are not required to stay operative and bear full compliance burden merely because of any outstanding liability. The guidelines thus account for industry realities while providing adequate safeguards for investors.

TAXATION LAW

The SC holds that BPCL and HPCL acted as commission agents of MGL in CNG sales, liable to service tax as "Business Auxiliary Service" under the Finance Act, 1994. [Commissioner of Service Tax Mumbai v. Bharat Petroleum Corporation Ltd. Etc.] [Link]

In this case, the SC restored a combined service tax demand exceeding ₹16 crore against Bharat Petroleum Corporation Ltd. **(“BPCL”)** and Hindustan Petroleum Corporation Ltd. **(“HPCL”)**, holding that the two oil companies acted as commission agents of Mahanagar Gas Limited **(“MGL”)** while selling CNG through their retail outlets, and were thus liable to service tax under Business Auxiliary Service **(“BAS”).**

MGL had previously supplied CNG through equipment at BPCL/HPCL outlets, paying a per-kg commission on sale to vehicle owners. The service tax department **(“Deparment”)** treated this as taxable BAS and raised demands in 2010–2011. The Customs, Excise & Service Tax Appellate Tribunal **(“CESTAT”)** reversed the demand in 2014, calling the arrangement a principal-to-principal sale. The Court found MGL retained title, pricing control, and risk over CNG throughout, while BPCL/HPCL only facilitated the sale. The commission recieved was received was held to be agency remuneration, not a trade discount, establishing a "Principal-Agent" relationship rather than "Buyer-Seller," squarely attracting BAS.

The Court distinguished this case from *K. Arumugam v. Union of India*, where the appellants bought lottery tickets from the State Government and resold them in other states as buyers, with no promotion or marketing service rendered on the State's behalf which took the transaction outside of the BAS. Here, by contrast, BPCL/HPCL acted as marketing agents and promoters of sale for MGL, making this "a precise case" of a principal-agent relationship squarely attracting BAS, unlike in Arumugam.’

The ruling shifts the ground for other pending and future disputes by affirming that actual passage of title and not contractual labels like "sale" or "Principal-to-Principal" determines whether an arrangement is a sale or a taxable agency service.

MISCELLANEOUS

The The Reserve Bank of India ("RBI") proposes comprehensive data governance framework for regulated entities. [Link]

RBI has issued the draft Guidance on Regulatory Expectations for Data Governance, proposing a comprehensive framework for the governance, management and security of data across RBI-regulated entities. The draft recognises data as a critical organisational asset and seeks to address risks arising from the increasing volume, complexity and interconnected use of data across financial institutions. It draws, inter alia, on international practices including the Basel Committee's BCBS 239 principles.

The draft applies broadly to commercial banks, small finance banks, payments banks, co-operative banks, NBFCs across all layers, All-India financial institutions, asset reconstruction companies and credit information companies. It is intended to operate alongside existing RBI Directions, which will prevail in case of inconsistency.

The proposed framework requires each Regulated Entity **("RE")** to establish a Data Governance Framework **("DGF")** aligned with its risk management framework and proportionate to its size, complexity, business model and IT and information-security infrastructure. The DGF is required to cover the entire data lifecycle, including data quality, classification, privacy, security, metadata, lineage and third-party arrangements.

A significant feature is the introduction of defined institutional accountability for data governance. REs would be required to establish a Data Function headed by a senior officer not below the rank of Chief General Manager or equivalent, alongside designated Data Owners, Data Stewards and Data Custodians for different data domains.

The draft also introduces a Single Source of Truth **("SSOT")** and periodic data-quality assessment requirements. Third-party data sharing would be subject to defined purposes, need-to-know access, contractual confidentiality requirements, traceability and ongoing monitoring. Cross-border processing, storage and transfer would also require specific risk assessment.

The draft represents a shift from treating data primarily as an information-security concern to treating data governance as a board-level risk and governance function. The SSOT and data-lineage requirements may, pose significant implementation challenges for institutions operating fragmented legacy systems and multiple data repositories. The proportionality principle is therefore important, particularly for smaller regulated entities.

Once finalised, the framework should ideally provide clear transition timelines and delineate its interaction with existing RBI Directions and the Digital Personal Data Protection framework to avoid overlapping compliance obligations.

RBI releases the draft Foreign Exchange Management (Foreign Investment) Rules 2026 to modernise India's Foreign Investment Framework. [Link]

The RBI has recently notified the Draft Foreign Exchange Management (Foreign Investment) Rules 2026 **("the 2026 Rules"),** which significantly overhauls the framework governing India's investment regime. It seeks to replace the existing Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 **("the 2019 Rules")** and consolidates several regulatory amendments notified earlier.

Earlier, the 2019 Rules were the main framework governing the foreign investment regime. This was supported by various RBI directions, government notifications and amendments. Though it liberalised the regime, it led to the issue of fragmentation, as investors often had to refer to various sources to know about the applicable rules. Concepts like beneficial ownership, downstream investments, pricing norms and reporting requirements were understood differently than what the law stated which led to uncertainty and additional compliance costs.

The 2026 Rules address this issue by bringing everything under one umbrella. Major changes include the introduction of a clearer beneficial ownership test as per the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 **("PML Rules")**, which, when applied to the investing entity, brings greater clarity and ensures that restrictions are not easily bypassed in the disguise of complex ownership structures. Further, it simplifies the downstream investments framework which helps in determining when the investments by Indian entities with foreign ownership will be treated as domestic investments. It streamlines and provides greater clarity with regards to equity instruments, convertible securities, share warrants and employee stock options, including their pricing, transfers, valuation and reporting.

Most importantly, the 2026 Rules consolidate previously issued directions and circulars, making the framework easier to understand and access by the stakeholders. It aligns regulatory frameworks like the Companies Act, 2013,, Foreign Exchange and Management Act 1999, and PML Rules with the foreign investment regime. Further, it clarifies approval requirements, investment and transfer procedures and reporting obligations, which makes understanding the requirements for each stage of a transaction easier for the investors.

In conclusion, the 2026 Rules make India's foreign investment regime more transparent, clear and investor-friendly. Consolidation of several regulatory schemes under one framework reduces compliance requirements while maintaining safeguards. Continued emphasis on beneficial ownership, sector-specific conditions and government approval requirements ensures balance between national security and regulatory oversight when facilitating investments. If implemented properly, investors' confidence is likely to improve with the foreign investment framework better aligned to support India's long-term economic growth.

The Ministry of Finance introduces the Draft Insurance Rules 2026 to strengthen India's Insurance Regulatory Framework [Link]

The Ministry of Finance, Department of Financial Services, recently issued the Draft Insurance Rules, 2026 **("the Draft Insurance Rules")** under Section 114 of the Insurance Act, 1938 **("the Insurance Act")**, which seeks to replace the Insurance Rules, 1939.

The existing framework, largely concerned with the Insurance Rules, 1939, continued to operate despite major amendments and changes in the insurance sector over the years. This made it outdated and redundant, requiring the stakeholders to go through several subsequent amended frameworks and directions to understand the requirements and obligations.

The Draft Insurance Rules attempt to bring this under one consolidated framework and proposes clearer requirements for brochures, premium tables and proposal forms. This includes disclosure of covered risks, permitted premium rebates, eligible classes and a copy of Section 41 of the Insurance Act.

Public insurers are mandated to disclose their shareholding and beneficial interest under Section 6A through prescribed forms to promote transparency, while insurance agents will be required to secure at least six policies, apart from their own in life, health, property or liability insurance, to establish their reliability. Further, with regards to minor nominees, a person is now allowed to be nominated to receive policy proceeds on behalf of a minor.

Additionally, the Draft Insurance Rules have clearly laid down the powers that the regulators have to suspend or cancel registration, reconstruct, transfer or wind-up financially unstable or wasteful insurers showing serious financial concerns. This similarly applies to general insurers and reinsurers. Further, it provides clarity with regards to determination of insurance business to be treated as being conducted in India, including property situated or ships and aircrafts being registered here. Detailed procedure and safeguards have been laid down for search and seizure under Section 34H of the Act, including written authorisation, witnesses, preparation of seizure lists, etc.

In conclusion, the Draft Insurance Rules bring much-needed change to keep up with the ever-evolving insurance sector. Though its effectiveness will be determined by how smoothly the provisions help in daily operations and work within the broader framework, it strengthens policyholders' and insurers' confidence, regulatory oversight and transparency and makes compliance easier for the stakeholders while retaining necessary safeguards in place.

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