



MONTHLY CORPORATE LAW UPDATES

JUNE, 2024

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

1. Lack of privity bars indemnity obligations from being classified as operational debt: National Company Law Tribunal (“NCLT”) Chandigarh [M/s Agarwal Foundries Private Limited v POSCO E&C India Pvt Ltd]. [\[Link\]](#)

The NCLT held that an indemnity obligation cannot be classified as an operational debt under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), due to a lack of privity between the creditor and the indemnifier. The NCLT emphasised that for a claim to be recognized as an operational debt, there must be a direct transaction or agreement involving the corporate debtor, which is absent in cases of indemnity where the obligation arises from a third-party arrangement.

2. Clean slate theory doesn’t shield corporate debtor boards from future claims: Madras High Court (“HC”) [National Sewing Thread Co Ltd v Superintending Engineer, TANGEDCO and Anr]. [\[Link\]](#)

The Madras HC held that the clean slate theory applies solely to safeguard third-party successful resolution applicants from potential future claims but does not extend protection to the suspended board of the corporate debtor. The court emphasised that the theory does not shield fraudulent actions or non-disclosures by the corporate debtor's suspended board, reiterating that full disclosure by creditors during the resolution process must be ensured.

3. Interest-bearing security deposit in development agreement qualifies as financial debt under the IBC: National Company Law Appellate Tribunal (“NCLAT”) [Chintan Jhunjunwala v Avani Towers Private Limited & Ors]. [\[Link\]](#)

The NCLAT has held that a refundable security deposit that accrues interest according to a development agreement qualifies as financial debt under Section 5(8) of the IBC. The tribunal rejected the contention that the amount should be treated solely as a security deposit contingent upon completing the development and instead relied on the commercial nature of the transaction, highlighting that the inclusion of interest transforms the deposit into a distinct financial obligation rather than a mere security arrangement contingent on successful completion of the project.

4. A pending scheme under Section 230 of the Companies Act, 2013, does not hinder admission of Corporate Insolvency Resolution Process (“CIRP”) application: NCLAT [*Grand Developers Pvt Ltd v Nitin Batra & Ors*]. [\[Link\]](#)

The NCLAT has held that the existence of a pending scheme under Section 230 of the Companies Act, 2013, which allows for compromises and arrangements between a company and its creditors, does not obstruct the initiation of CIRP under Section 7 of the IBC. Section 230 focuses on restructuring arrangements with creditors, but does not preclude creditors from seeking relief under the IBC.

5. Micro, Small and Medium Enterprises (“MSME”) promoters can be exempted from the net worth criteria when submitting a resolution plan: NCLT Kolkata [*Mr. Manish Kumar, suspended director of Wearit Global Ltd v Rachna Jhunjunwala, RP and Anr*]. [\[Link\]](#)

The NCLT Kolkata ruled that MSME promoters can be exempted from the net worth criteria of Rs. 15 crores when submitting a resolution plan under the IBC. However, they are still required to deposit the security deposit and the earnest money deposit.

1. Securities and Exchange Board of India (“SEBI”) mandates direct transfer of securities to client’s DEMAT account. [\[Link\]](#)

In order to enhance operational efficiency and reduce the risk to clients’ securities, SEBI mandates direct payout of securities to clients’ DEMAT account by Clearing Corporations (“CC”).

Additionally, CCs must provide a mechanism for Trading Members (“TMs”) and Clearing Members (“CMs”) to identify unpaid securities and funded stocks under the margin trading facility. Furthermore, in instances where shortages occur due to inter-netting of positions between clients (i.e., internal shortages), TMs and CMs must address these shortages through an auction process as specified by the CCs.

Moreover, brokers are prohibited from charging clients any additional fees beyond those imposed by the CCs. This process will not be applicable to clients who have arrangements with SEBI-registered custodians for clearing and settlement of trades.

2. SEBI mulls financial disincentives guidelines for surveillance lapses at Market Infrastructure Institutions (“MIIs”). [\[Link\]](#)

MIIs like stock exchanges, clearing corporations, and depositories are crucial for the securities market's integrity. To ensure proper monitoring and deterrence of manipulative trading, SEBI has mandated a framework to address surveillance related lapses due to non-adherence to required surveillance activities or decisions.

Additionally, SEBI has outlined penalties for surveillance-related lapses at MIIs. These lapses include inadequate or delayed reporting of surveillance activities and failure to implement required measures on time. The framework excludes lapses with market-wide impacts, significant investor losses, or those affecting market integrity.

Moreover, MIIs will have the chance to present their case before fines are imposed, and penalties must be paid to SEBI's Investor Protection and Education Fund within 15 working days. Furthermore, MIIs are mandated to disclose financial disincentive details on their websites and in their annual reports

3. SEBI withholds rules to freeze Mutual Fund (“MF”) and demat accounts in absence of nomination. [\[Link\]](#)

To enhance investor convenience, SEBI has announced significant changes to the rules for submitting 'choice of nomination' for demat accounts and MF folios. Accordingly, accounts and folios will not be frozen for non-submission of nominations.

Additionally, investors holding securities in physical form who haven't updated their nomination choice, contact details, bank account details, permanent account number or specimen signature will remain eligible to receive dividend, interest or redemption payment.

Furthermore, SEBI has simplified the nomination update process by reducing the mandatory fields to three. This effort aims to streamline compliance and encourage investors to provide their nomination details. Additionally, SEBI has urged existing investors to update their nomination details.

4. SEBI revises oversight framework for MIs. [\[Link\]](#)

SEBI has revised the governance structure of MIs by clearly defining the roles and responsibilities of various statutory committees. These changes are based on the recommendations of SEBI's committee on strengthening the governance of MIs.

Additionally, the committees within MIs are now categorized into functional, oversight, and investment committees. Key committees include the member committee, nomination and remuneration committee, oversight committees, standing committee on technology, regulatory oversight committee, risk management committee, and investment committee.

Furthermore, each committee must include key management personnel, non-independent directors, Independent External Professionals (“**IEPs**”), and Public Interest Directors (“**PIDs**”). Every committee must be chaired by a PID with relevant expertise, and PIDs must make up at least half of the committee members.

SEBI also outlines the specific responsibilities and terms of reference for each committee. The functions of statutory committees cannot be delegated, except for certain operational activities of the member committee. Moreover, MIs must establish the mandatory committees as specified by relevant laws. PIDs can serve on a maximum of five statutory committees, and IEPs must have integrity, a good reputation, and no conflicts of interest.

5. SEBI introduces a special call auction mechanism for fair-price discovery of listed Investment Companies (“ICs”) and listed Investment Holding Companies (“IHCs”). [\[Link\]](#)

To ensure fair price discovery for listed ICs and listed IHCs, SEBI has introduced a call-auction mechanism. This decision stems from the observation that ICs and IHCs often trade significantly below their book value. This discrepancy between market price and book value negatively impacts liquidity, fair price discovery, and investor interest. To address this, SEBI has implemented a ‘special call auction with no price bands’ mechanism specifically for listed ICs and IHCs. Stock exchanges are now required to conduct the first special call auction in October 2024, based on the latest audited financial statements of these companies.

Furthermore, SEBI has also established clear guidelines for identifying ICs and IHCs eligible for the special call auction. These companies must be classified according to uniform industry standards provided by stock exchanges, have their scrips listed and traded for at least one year, and must not be suspended from trading. This process ensures that only the most suitable companies participate in the auction.

6. Key Insights from SEBI’s latest board meeting. [\[Link\]](#)

SEBI has approved significant changes to boost investor protection, streamline business processes, and enhance market infrastructure in its latest board meeting. SEBI is now restricting associations between regulated entities and unregistered advisors to prevent misleading information and encourage authentic investor education. Furthermore, the delisting process has been made more flexible with a fixed price option and alternative frameworks for IHCs, along with changes to the reverse book-building process.

Moreover, for foreign portfolio investors, certain university funds and endowments will be exempt from additional disclosure requirements to simplify their operations. SEBI has also made it easier to conduct public issues of debt securities by reducing subscription periods and speeding up listing timelines.

Additionally, infrastructure investment trusts and real estate investment trusts will benefit from simplified operations, including reduced trading lots and clearer voting procedures. SEBI’s recent guidelines allow certain alternative investment funds to borrow short-term funds with limits on tenure extensions to protect investors.

SEBI has also approved a comprehensive cybersecurity and cyber resilience framework to strengthen the security of regulated entities. Lastly, revised criteria for the entry and exit of stocks in the derivatives market have been established to ensure a vibrant and protective market environment.

1. A high court (“HC”) that does not have original civil jurisdiction cannot extend the time limit to pass an arbitration award: Supreme Court (“SC”) [*Chief Engineer (NH) PWD (Roads) v M/S BSC & C and C JV*]. [\[Link\]](#)

The SC ruled that HCs lacking original civil jurisdiction cannot extend the time limit for passing arbitral awards under Section 29A of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”). This power lies with the principal civil courts of original jurisdiction, including HCs with ordinary original civil jurisdiction.

2. The initiation of arbitration proceedings does not bar the corporate debtor from pursuing other remedies: Delhi HC [*Pitambar Solvex Pvt Ltd v Manju Sharma*]. [\[Link\]](#)

The Delhi HC ruled that mere initiation of arbitration proceedings does not prevent a corporate debtor from pursuing other remedies, including those provided under the IBC.

3. The Indian government issues guidelines to discourage arbitration in domestic public procurement contracts. [\[Link\]](#)

The Ministry of Finance has issued guidelines to encourage the use of mediation as a preferred dispute settlement mechanism in domestic public procurement contracts. This move is followed by another recommendation to restrict the use of arbitration mechanism in disputes having a value of ten crore or more.

1. The Competition Commission of India (“CCI”) closes its case against Google as it finds no evidence of preferential treatment for the Truecaller app. [\[Link\]](#)

Section 4 of the Competition Act, 2002, prohibits the abuse of a dominant market position. Google faced an accusation of abusing its dominance in the Android market by favouring the app "Truecaller" over other caller ID and spam protection apps. The allegations claimed that Google granted Truecaller exclusive access to Android APIs, enabling it to access users' contact data and distorting competition.

The CCI investigated the claims and found that the informant's allegations relied on a version of Truecaller that was not available on the Google Play Store and lacked evidence proving Google's preferential treatment. The investigation also established that all developers had access to the relevant Android APIs. Users had voluntarily provided their contact data to Truecaller, and there was no evidence of unauthorised publishing or preferential access granted by Google.

1. The Reserve Bank of India (“RBI”) amends the definition of bulk deposits [\[Link\]](#)

RBI has updated the bulk deposit limits to Rs. 3 crores and above for Small Commercial Banks and Small Finance Banks and Rs. 1 crore and above for Local Area Banks by amending the Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016.

2. The RBI has updated priority sector lending (“PSL”) regulations to reduce disparities in regional credit access. [\[Link\]](#)

The RBI has revised the PSL norms. An updated list of districts with comparatively high and low PSL credit is provided, which will remain valid until FY 2026-27. The definition of MSMEs has been referenced to the Master Direction - Lending to MSME Sector for clarity, and the provisions for Urban Co-operative Banks to furnish PSL data in specific reporting formats have been repealed. With these, the RBI aims to address regional imbalances in credit flow.

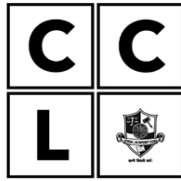
3. Separate notice is not required for establishing vicarious liability of the trustees in the event of cheque being dishonoured by a trust: Delhi HC *[Harpreet Sahni & anr. v Shrichand Hemnani]*. [\[Link\]](#)

The Delhi High Court dismissed petitions challenging a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”), against a trust and its trustees, including the petitioner, for dishonour of cheques issued by the trust. The Delhi high court held that since the demand notice was issued to the trust, which was addressed to be served on the trust through its trustees, all trustees were deemed to be duly served, thereby meeting the requirement of proviso (b) to Section 138 of the NI Act. A separate notice to each trustee was not required to make them vicariously liable under Sections 138 and 141 of the NI Act.



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