



LEGAL UPDATES – CORPORATE LAW

for the month of Febraury 2021

IBBI

NOTIFICATIONS & CIRCULARS

1. Circular for providing a copy of application under the Code to the Board (2nd Feb)

Providing copy of application to the Board, is mandated under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and for the sake of convenience the Board has made available a facility on its website along with a step-by step guide for submission of the application.

(Circular available [here](#))

CASES

1. Phoenix Arc Pvt. Ltd. vs. Spade Financial Services Limited & Ors. [Civil Appeal No. 2842 of 2020 with Civil Appeal No. 3063 of 2020] (1st Feb)

The first proviso to Section 21(2) states that financial creditors who are related parties of the corporate debtor shall not have any right of representation in the committee of creditors. The Hon'ble Supreme Court has ruled that those financial creditors that cease to be related parties, in order to

circumvent the exclusion under the first proviso to Section 21(2), would also be considered as being covered by the exclusion thereunder. Excluding only those financial creditors that are related parties *in praesenti* would render the proviso redundant, as then a related party financial creditor can devise a mechanism to remove its label of 'related party' before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.

(Order available [here](#))

2. Phoenix Arc Pvt. Ltd. vs. Ketulbhai Ramubhai Patel [Civil Appeal No. 5146 of 2019] (3rd Feb)

The Hon'ble Supreme Court ruled that a pledge agreement executed where only security was created by the corporate debtor in favor of Lender-Assignor and there is no liability to repay the loan taken by the borrower, would be classified as a secured debt and not a financial debt.

(Order available [here](#))

3. Ramesh Kymal vs. M/s Siemens Gamesa Renewable Power Pvt. Ltd. [Civil Appeal No. 4050 of 2020] (9th Feb)

The Hon'ble Supreme Court affirms the decision of the NCLAT and rules that Section 10A of the Insolvency and Bankruptcy Code stipulates that no application for initiating the CIRP of a corporate debtor shall be filed for a period of six months or such further period not exceeding one year from 25 March 2020. Further Section 10A does not require the Adjudicating



Authority to launch an enquiry into whether the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic.

(Order available [here](#))

4. Kolkata Municipal Corporation and another vs. Union of India and others [WPA No. 977 of 2020] (29th Jan)

The Hon'ble High Court of Calcutta ruled that a wrongful exercise of available jurisdiction would not be sufficient to invoke the High Court's jurisdiction under Article 226 of the Constitution, however, the ground of absence of jurisdiction could trigger such invocation. Further, in the absence of any successful challenge against the claims of a statutory authority, the same attains finality fastening a liability upon the Corporate Debtor, bringing it within the purview of "operational debt".

(Order available [here](#))

5. Adish Jain S/o Mohinder Jain vs. Sumit Bansal [Company Appeal (AT) (Insolvency) No. 379 of 2020] (3rd Feb)

The Hon'ble NCLAT, New Delhi ruled that there is no express provision for 'Review' in the NCLAT Rules, 2016 and the power of review is not an inherent power and has to be granted by statute.

(Order available [here](#))

6. Mr. Avil Menezes RP of AMW Auto Component Ltd. vs. M/s Shah Coal Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 63 of 2021] (3rd Feb)

The Hon'ble NCLAT, New Delhi ruled that the Resolution Professional, not being the aggrieved party, has no locus standi to prefer an appeal against the decision of the Adjudicating Authority to include a claim as a 'Financial debt'. Resolution Professional is a part of the Corporate Insolvency Resolution Process mechanism and is only supposed to collate the claims which implies comparison with the record and verification, he is not vested with any adjudicatory powers and all actions taken by him are subject to control of the Adjudicating Authority.

(Order available [here](#))

7. Ashok Agarwal vs. Amitex Polymers Private Limited [Company Appeal (AT) (Insolvency) No. 608 of 2020] (5th Feb)

The Hon'ble NCLAT, New Delhi ruled that going by the definition under Section 3(10) of The Insolvency and Bankruptcy Code 2016 which defines 'Creditor', 'Decree Holder' cannot be excluded to file an Application under the Code.

(Order available [here](#))

8. Tuf Metallurgical Private Limited vs. Impex Metal & Ferro Alloys Limited & Ors [CA (AT) (Ins) No. 190 of 2020] (3rd Feb)



The Hon'ble NCLAT, New Delhi ruled that advance payments for supply of goods received by the Corporate Debtor cannot be treated as an interim finance rather, it would have to be treated as CIRP costs.

(Order available [here](#))

9. Om Prakash Agrawal vs. Chief Commissioner of Income Tax (TDS) & Anr. [CA (AT) (Ins) No. 624 of 2020] (8th Feb)

The Hon'ble NCLAT, New Delhi ruled that TDS under Section 194 Income Tax Act, 1961, is an advance capital gain tax, recovered through transferee on priority with other creditors of the company, hence, is inconsistent with the provision of Section 53 (1)(e) of the Insolvency and Bankruptcy Code and by virtue of Section 238 of the Code, the provision of Section 53(1)(e) shall have overriding effect.

(Order available [here](#))

SEBI

ORDERS

1. Inter Globe Aviation settles with SEBI paying a fine worth 2.1 crores (9th Feb)

The airline paid SEBI a settlement penalty worth Rs. 2.1 crores to settle a complaint by Rakesh Gangawal, co-founder and Director, InterGlobe Aviations Limited. Mr. Gangawal's complaints alleged several violations concerning corporate governance norms, related party transactions, misrepresentation in red herring prospectus, etc.

(Settlement Order available [here](#))

2. SEBI imposes penalty of 1 crore on National Stock Exchange (10th Feb)

SEBI issued penalty of 1 crore against National Stock Exchange India Limited and Rupees 25 lakh each on its former chiefs Ravi Narain and Chitra Ramakrishnan in the matter of NSE Co-listing where NSE was held liable for failing to ensure a level playing field for trading members subscribing to its tick-by-tick (TBT) data feed.

National Stock Exchange was held in violation of the provisions of SECC Regulations in letter and spirit. Further, Ravi Narain and Chitra Ramakrishnan were held vicariously liable for the acts committed by NSE.



(Order available [here](#))

REGULATIONS

3. Amendment to SEBI (Mutual Funds) Regulations, 1996 ***(4th Feb)***

In exercise of the powers conferred to SEBI by Section 30 read with clause (c) of sub-section (2) of section 11 of the Securities and Exchange Board Act, 1992, new regulations came into force by amending the SEBI (Mutual Funds) Regulations, 1996. The amended regulations are called SEBI (Mutual Funds) (Amendment) Regulations, 2021. The amended regulations will come into force 30 days from the date of publication.

(Regulation available [here](#))

MASTER CIRCULAR

1. SEBI's Master Circular for Depositories ***(5th Feb)***

Superseding its previous Master Circular dated October 25, 2019, SEBI issued a fresh Master Circular for Depositories. The Circular consists of four sections. Beneficial Owner Accounts, Depository Participants Related, Issuer related and Depositories Related.



(Master Circular available [here](#))

CIRCULAR

1. Revised disclosure formats under Regulation 7 of SEBI (PIT) Regulations, 2015 (9th Feb)

In exercise of its powers under Section 11(1) of the SEBI Act read with Regulations 4(3) and 11 of the SEBI (Prohibition of Insider Trading) Regulations, SEBI revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015, to protect the interests of investors in securities and to promote the development and regulation of the securities market.

(Circular available [here](#))

2. Setting up of Limited Purpose Clearing Corporation by Asset Management Companies (2nd Feb)

Exercising its powers conferred by Section 11(1) of the SEBI Act, 1992, read with provisions of regulations 77 of SEBI (Mutual Funds) Regulations, 1996, SEBI has decided that Asset Management Companies shall contribute Rs. 150 crores towards the setting up of Limited Purpose Clearing Corporation (LPCC).

This was earlier recommended by the Working Group constituted by the Mutual Fund Advisory Committee (MFAC) of SEBI. This was recommended for the clearing and settling



of repo transactions in corporate debt securities. The Committee felt that the mutual funds would be natural beneficiaries of such clearing corporation.

(Circular available [here](#))

3. SEBI's Revised Framework for Innovation Sandbox (2nd Feb)

Exercising its powers conferred under Section 11(1) of the SEBI Act, 1992 and Section 19 of the Depositories Act, 1992, SEBI issued a revised framework for Innovation Sandbox.

The concept of “Innovation Sandbox” was recommended by SEBI to facilitate market related data and test environment to Financial Technology firms to test innovations effectively before its introduction to live environment. The revised framework aims to create new opportunities in the securities market and to make existing services investor friendly and inclusive.

(Circular available [here](#))

4. Pre-expiry Margin on Commodities under Alternate Risk Management Framework (23rd Feb)

In exercise of its powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, SEBI issued norms related to Pre-Expiry Margin on Commodities under Alternate Risk Management and Framework, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

(Circular available [here](#))

MCA

RULES

1. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 (1st Feb)

This notification amended the **Rule 25** of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by introducing a new sub-rule 1A.

(Notification available [here](#))

2. The Companies (Incorporation) Second Amendment Rules, 2021 (1st Feb)

The notification amended a few provisions of the Companies (Incorporation) Rules, 2014. This includes an amendment to Rule 3 where the MCA eased norms around setting up of One Person Company by reducing the residency limit of NRIs from 182 to 120 days. Further, certain threshold limits under Rule 7 were omitted.

(Notification available [here](#))

3. The Companies (Specification of Definitions Details) Amendment Rules, 2021 (1st Feb)

MCA amended the definition of Small Company by making changes into the threshold limits. The newer limits are paid up capital of 2 crores and turnover of 20 crores.

(Notification available [here](#))

4. The Producer Companies Rules, 2021 (11th Feb)

The Ministry of Corporate Affairs (MCA) vide its notification dated 11th February, 2021 in the suppression of Producer Companies (General Reserve) Rules, 2003 notified the Producer Companies Rules, 2021. New rules defines the term 'co-operative society' for the purpose of this rule and also the Change of place of registered office from one State to another of Producer Companies and Investment of general reserves of Producer Companies.

(Notification available [here](#))

5. The Companies (Share Capital and Debentures) Amendment Rules, 2021 (11th Feb)

The MCA amended the Companies (Share Capital and Debentures) Rules, 2014. This brings forth a new Rule 12A notifying the time period for issue of share capital under Section 62 to be not less than seven days for acceptance from the date of the offer

(Notification available [here](#))

6. The Companies (Specification of definitions details) Second Amendment Rules, 2021 (19th Feb)

The MCA amended the definition of listed companies. Pursuant to the amendment brought out by the Companies (Amendment) Act, 2020 in Section 2(52) of the Companies Act, 2013 i.e., Definition of Listed Company, the Ministry of Corporate Affairs has inserted Rule 2A in the Companies

(Specification of Definitions Details) Rules, 2014 to specify the classes of companies which are not considered as Listed Companies w.e.f. 1st April 2021.

(Notification available [here](#))

NEWS & UPDATES

1. Extension of Certain Sections of the Companies Act, 2013 to LLP Act, 2008 (18th Feb)

MCA decided to extend certain sections of the Companies Act, 2013 to the LLP Act, 2008. A total of 8 sections including the ones about disqualification of directors and conduct of inquiries shall be applicable to LLPs.

(Update available [here](#))

2. Memorandum of Understanding (MOU) between the Ministry of Corporate Affairs (MCA) and Central Board of Indirect Taxes and Customs (CBIC) (25th Feb)

MoU was signed between MCA and CBIC for exchange of data between the two organisations. These include details of import-export transactions and consolidated financial statements of companies registered in the country.

(Notice available [here](#))