



MONTHLY CORPORATE LAW UPDATES (JUNE, 2021)

- INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
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- MINISTRY OF CORPORATE AFFAIRS

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

ORDERS

1

Jet Airways resolution plan gets green light from Adjudicating Authority [State Bank of India vs. Jet Airways]

The long-drawn saga that took the entire aviation industry in India by a storm has finally come to an end. The NCLT, Mumbai approved the resolution plan for Jet Airways. After the publication of the fourth round of bidding, Jalan - Kalrock Capital emerged as a successful bidder and the plan submitted was approved by the CoC with a majority of 99.22% in October 2020 and was awaiting the approval from the Adjudicating Authority ever since. The successful resolution applicant has proposed to settle the claims of the Dutch Administrator at Rs. 10,000/-.

Order accessible [here](#)

2

Piramal Capital & Housing Finance Limited (PCHF) acquires Dewan Housing Finance Corporation Limited (DHFL) [Reserve Bank of India vs. Dewan Housing Finance Corporation Limited]

The NCLT, Mumbai has approved the resolution plan for DHFL, submitted by PCHF. The total resolution amount is Rs. 37, 250 crores. The RBI, in granting the NOC has directed that DHFL will be changing its status from Deposit taking Housing Finance Company to Non Deposit taking Housing Finance Company. Further, the NCLT has also prima facie approved the reverse merger of the successful resolution applicant, PCHF into and with DHFL.

Order accessible [here](#)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

GUIDELINES

1

Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2021

Insolvency Professionals (IPs) play a critical role in integrating the interest of corporate debtors and creditors. The IPs' function is thus critical to the smooth running of the insolvency and bankruptcy resolution process. A well IP-driven resolution system allows the adjudicator to transfer more powers and responsibilities to the professionals resulting in better judicial time utilization.

By virtue of these guidelines, the IBBI intends to ease the process of appointment of the Interim Resolution Professional (IRP) by the Adjudicating Authority (AA). The IBBI is required to nominate a panel of IPs for appointment as an IRP in order to reduce delay by firstly asking the IBBI to recommend the name and then to appoint such IRP by the AA, and fulfil the timeline set forth in the Code.

The guideline contains detailed provisions for the panel, expressions of interest, appointments, obligations, illustrations, and other concerns. It establishes a set of conditions on which an IP may be included in the panel of IPs and then further appointed by the AA, which are listed below:

- (a) No pending disciplinary proceeding against the IP
- (b) No conviction at any time in the last three years by a court of competent jurisdiction
- (c) Expression of IP's interest to be included in the panel for the relevant period
- (d) Undertaken the responsibility to discharge as IRP, Liquidator, RP or BT, as appointed by the AA
- (e) Held an Authorisation for Assignment, which is valid till the validity of Panel.

Guideline accessible [here](#)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

2

Listed Company required to maintain at least 5% of Public Shareholding

The well-known corporate buzz around the “Patanjali proxy” will now fade away with the clear stance of the SEBI. In June 2020, the share price of the bankrupt, Ruchi Soya with a low public shareholding of 0.97%, increased by 8,929% within 5 months of relisting after it was acquired by Patanjali Ayurved under the IBC. This incident bamboozled Dalal street and immediately caught the attention of SEBI taking note of the extremely low float causing strange share price volatility.

In light of this, the SEBI published a consultation paper titled "Recalibration of threshold for minimum public shareholding norms, enhanced disclosures in corporate insolvency resolution process (CIRP) cases" in August 2020. After a lot of deliberations and consideration of the current business and market conditions, in the wake of the Covid-19 outbreak, the SEBI has eased the 25% minimum public shareholding norms for listed companies. Every listed company is now required to maintain at least 5% of the public shareholding, post CIRP.

In addition to enforcing a compulsory minimum public float, the notification also provides that the company shall increase its public shareholding to at least ten percent within two years and at least twenty-five percent within five years, from the date of listing of the securities, in the manner specified by the SEBI. Moreover, a resolution plan that does not comply with the initial 5% public shareholding requirement will not be approved by the adjudicating authority, NCLT.

This notification is in the right direction as they aim to strike a balance between the revival of the corporate debtor and the rights of the public shareholders leading to better market integrity.

Notification accessible [here](#)

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDERS

1 SAT stays SEBI Order against Franklin Templeton, yet provides interim relief

Pursuant to SEBI's order, Franklin Templeton, an Asset Management Company (AMC) created a stir in the Indian financial market. In its order, SEBI holding Franklin Templeton in contravention of the SEBI (Mutual Funds) Regulations, 1996, noted the AMC's irregularities in running six of its debt schemes inspected, which are now shut.

The market regulator had placed two-fold directions on Franklin Templeton. Firstly, SEBI banned the AMC from launching debt schemes for two years. Secondly, SEBI had asked Franklin Templeton to refund investment management and advisory fees to the tune of Rs. 512 crore.

SEBI's ban had come after an investigation that found that Franklin Templeton committed serious lapses with regard to scheme categorization by placing high risk strategy across several schemes. Additionally, SEBI found the AMC violations pertaining to non-exercise of exit options in the face of an emerging liquidity crisis and investment-related due diligence. It was SEBI's stance that loss had been caused to the investors as a result of the irregularities.

However, SAT provided Franklin Templeton with an interim relief. While SAT stayed the direction pertaining to, it provided relaxations on the Rs. 512-crore refund. In this regard, SAT opined that the direction to deposit the refund appears to be excessive.

Order accessible [here](#)

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2

PNB Housing files appeal before SAT after SEBI seeks review of Carlyle Deal

Articles of Association of any company is a document that specifies the regulations for a company's operation. In this regard, SEBI through a letter, recently barred PNB Housing Finance from entering into a Rs. 4000-crore deal with Carlyle Group. PNB through an Extraordinary General Meeting had approved the stake of sale and had announced Carlyle Group's stake would go up to 50 per cent in PNB. However, it is SEBI's contention that the valuation of shares undertaken by PNB is ultra-vires its Articles of Association.

SEBI's probe into the deal sprung after Stakeholders Empowerment Services, a proxy advisory firm raised contentions with respect to the deal. As per the proposal, the deal would change the control of PNB Housing Finance from PNB being the sole promoter of the company to a joint control holder with Carlyle Group. The proxy advisory firm has questioned PNB's willingness of surrendering its control over PNB Housing to the Carlyle Group without extracting fair compensation.

In this regard, PNB Housing has approached SAT against SEBI's letter.

Excerpts of SEBI's letter to PNB accessible [here](#)

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATIONS

1

SEBI permits off market transfers to ease fund relocation to IFSC

SEBI has approved off-market securities transfers in order to make it easier for foreign funds to relocate to Gujarat's International Financial Services Centre (IFSC). An off-market transaction is settled between two parties on mutually agreed terms and the clearing corporation or the stock exchange is not involved. These include legacy transfers, gifts, transfer of shares between two demat accounts, shifting of securities between a client and a sub-broker, and transactions in unlisted securities. One party is the transferor, while the other is the transferee.

Gujrat's IFSC enables the firms to caters to their customers outside the jurisdiction of domestic economy, dealing with flows of finance, financial products and services across border. Gujarat, the GIFT city is India's first IFSC.

The cashless transfer of securities for FPI with different permanent account numbers is currently prohibited by SEBI regulations. Foreign funds that are registered as FPIs with SEBI and want to relocate to the IFSC will need a new FPI license. They must also transfer the securities from their old demat account to the new one, which is tagged with the IFSC FPI.

Circular accessible [here](#)

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2

SEBI proposes to streamline IPO process via UPI

In 2018, SEBI had introduced the use of Unified Payment Interface (UPI) as an additional payment mechanism with Application Aided by Blocked Amount (ASBA) for retail investors. Now UPI is a single platform that merges various banking services and features under one umbrella and ASBA is an application containing an authorization to block the application money in the bank account, for subscribing to an IPO. If an investor is applying through ASBA, his application money shall be debited from the bank account only if his/her application is selected for allotment after the basis of allotment is finalized, or the issue is withdrawn/failed.

SEBI further said that based on the experience gained with the current UPI system, it has identified certain issues based on the feedback from market participants.

To redress these concerns, SEBI stated that the regulator, the lead manager is the point of contact for any issues that arise during the public issuance process, and the timelines, processes, and compensation policy should all be included in the agreements signed by the intermediaries. They should ensure that intermediaries adhere to timelines and compensation policies.

Circular accessible [here](#)

3

Circular on Enhancement of Overseas Investment Limits

The SEBI increased the overseas investment limit for a mutual fund house from USD 600 million to USD 1 billion. The total amount of money that can be invested in mutual funds is limited to USD 7 billion. Such higher limit would allow mutual funds to allocate a larger portion of their assets to foreign securities. This move comes in as a response to mutual fund industry's request to increase the foreign investment limit.

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Some more changes on the reporting requirements were introduced. Firstly, investment limits are to be disclosed in scheme documents at the time of a New Fund Offer along with investment limits on the ongoing schemes. Secondly, there will now be soft limits for the purpose of mutual funds reporting only on a monthly basis in a prescribed format. Thirdly, mutual funds that are launching new schemes and intend to invest in foreign securities or Exchange-Traded Funds must make sure that the scheme documents disclose the amount they intend to invest in such instruments.

Circular accessible [here](#)

4

Centralized Database for Corporate Bonds / Debentures to help Indian debt market

SEBI has mandated the National Securities Depository Limited and Central Depository Services Limited to jointly create and co-host centralized database for corporate bonds and debentures. The public and other users can access the database without paying any fees or charges, which will help to strengthen the country's debt market.

SEBI move aims to strengthen the debt market in the country. Issuers and investors will be made aware of the centralized database by depositories and stock exchanges.

A SEBI committee had earlier recommended the creation of a "Centralized Database of Bond Information." While information on various bonds/debentures issued by issuers is available in a fragmented manner, it is believed that a comprehensive database on corporate bonds should be available in one location.

Circular accessible [here](#)

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5

Revised Framework for Regulatory Sandbox

Regulatory Sandbox (RS) refers to live testing of new products or services in a controlled/test regulatory environment for which regulators may permit certain relaxations for the limited purpose of the testing. The RS allows the regulator, innovators, financial service providers and customers to conduct field tests in order to collect evidence on the benefits and risks of new products and systems.

SEBI has revised the RS eligibility criteria, laying out the requirements for applying for the two stages of sandbox testing. The revision was carried out in order to broaden the scope and achieve the desired result. Besides mentioning that all SEBI-registered entities are eligible for testing in the regulatory sandbox, it added that the entity may apply either on its own or in partnership with any other entity.

In either scenario, the registered market participant shall be treated as the principal applicant and will be solely responsible for testing of the solution. There will be a maximum cap on users in both stages based on the applicant's requirements that have been approved by SEBI.

Circular accessible [here](#)

6

Framework for administration and supervision of Investment Advisers under the SEBI (Investment Advisers) Regulations, 2013

The SEBI (Investment Advisers) Regulations 2013 governs provisions concerning Investment Advisers. An Investment Advisor engages in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products. In this regard, SEBI recently announced the framework for the administration and supervision of Investment Advisers.

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SEBI introduced the Investment Adviser Administration and Supervisory Body (IAASB). It further entrusted the body with the administration and supervision of Investment Advisors. In this regard, BSE Administration & Supervision Limited, a wholly-owned subsidiary of BSE Limited, has been granted recognition as IAASB for three years.

The responsibilities of the IAASB are as follows:

- Supervision of Investment Advisers including both on-site and offsite
- Grievance redressal of clients and Investment Advisers
- Administrative action including issuing a warning and referring to SEBI for enforcement action
- Monitoring activities of Investment Advisers by obtaining periodical reports
- Maintaining a database of Investment Advisers
- Submission of periodical reports to SEBI

Circular available [here](#)

7

Discussion Paper on Review of delisting framework pursuant to open offer

Mergers & Acquisitions, bring with it, layers of regulatory compliances. One such compliance is the takeover code. An open offer is simply an exit option given by an acquirer to existing shareholders through a public announcement. Notably, in the cases of an open offer triggered either through direct or indirect acquisitions by an incoming acquirer, the incoming acquirer is mandated to give an exit option to the existing shareholders.

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This affects the ultimate shareholding of the acquirer and might result in the breach of Minimum Public Shareholding norms (MPS norms) by taking the incoming acquirer's holding to above 75% and perhaps even 90%. The MPS norms require the promoters to enable 25% minimum public stake in the company. The purpose of having MPS, is to enable sufficient free float liquidity in the securities market. On the other hand, the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009 (Delisting Regulations) do not permit the acquirer to attempt delisting requiring to reach 90% unless the acquirer holding is brought down to 75%. Hence, there exists a dichotomy in the above mentioned situation.

Identifying the directionally contradictory nature of the compliances, SEBI's sub-group has made recommendations on aligning the Takeover Regulations and Delisting Regulations. SEBI noted that this exercise would make M&A transactions for listed companies more rational and convenient while balancing the interests of all investors.

Bearing in mind the contradictory provisions that dissuade an incoming acquirer from seeking to acquire control over listed companies, SEBI has sought public comment on the framework.

Discussion Paper accessible [here](#)

MINISTRY OF CORPORATE AFFAIRS

1

Companies (Incorporation) 4th Amendment rules 2021: Amendment to the AGILE- PRO form

The latest amendment substituted the AGILE-PRO Form. The form serves as a single application for registration of Goods and Services Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC), and opening of a bank account to name a few. This amendment brings with itself the facility of obtaining Shops and Establishment Act's registration in the AGILE-Pro Form. The registration to the state Shops and Establishment Act via the MCA forms is a recent phenomenon. Consequently, the existing form is being replaced with "AGILE-PRO-S". The changes in this form have broadened the scope of registration, and made this process easier.

Notification accessible [here](#)

2

Companies (Meetings of Board and its Powers) Amendment rules 2021: Approval of financial statements can now be done online

The Central Government amended the Companies (Meetings of Board and its Powers) Rules, 2014. Therein, Rule 4 provided for certain matters such as approval of annual financial statements and prospectus to name a few to not be dealt in any meeting through video conferencing or any other audio-visual means. This rule had hindered the conduct of board meetings during the onset of the pandemic and the subsequent lockdown as holding a physical meeting was impossible. Earlier also, MCA had granted relaxation on this matter till the 30th June 2021. However, Rule 4 has now been permanently deleted.

Notification accessible [here](#)

MINISTRY OF CORPORATE AFFAIRS

3

Companies (Accounting Standards) Amendment Rules, 2021: MCA expands the definition of Small and Medium Companies

MCA notified the Accounting Standards for small and medium companies, thus revising their borrowing and turnover limits along with easing the disclosure requirements in that regard. The definition of Small and Medium Companies (SMCs) has also been revised under the standards. As per the revised definition, the turnover limit for small companies has been increased to not exceeding Rs. 250 crore. along with modified borrowing limits of Rs. 50 crore. These limits are aligned with the increase in the threshold done by ICAI for other non-corporate entities.

This would enable a wider set of companies to avail greater flexibility in the accounting standards while promoting ease of doing business.

Notification accessible [here](#)

4

Clarification on passing of Ordinary and Special Resolutions

Extraordinary General Meetings (EGMs) are shareholder meetings called apart from the Annual General Meeting. They are held on short notices to deal with urgent matters. Due to the ongoing pandemic, holding physical meetings for such large numbers was proving to be difficult. The MCA in continuation of its General Circulars passed in 2020 has decided to allow companies to conduct their EGMs through video conferencing or transact items through postal ballot within the purview of the framework provided within the aforementioned circulars. In light of the pandemic, this is a temporary measure valid up to 31st December 2021.

Notification available [here](#)

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