



MONTHLY CORPORATE LAW UPDATES (JULY, 2021)

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

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

ORDERS

1

NCLAT stays the Videocon Resolution plan

The NCLT had approved the resolution plan of Twinstar Technologies for the Videocon Group while expressing concerns with respect to the meagre amount being paid to creditors. Dissatisfied by the Resolution Plan, Bank of Maharashtra, a dissenting financial creditor, challenged the same arguing that the order passed by the NCLT is arbitrary, illegal and contrary to the provisions of IBC since it provides payment to dissenting financial creditors through non-convertible debentures (NCDs) and equities. Subsequently, the NCLAT in light of the submissions made, stayed the Impugned Order till the next date and directed status quo. The matter has been listed for hearing on 07th September, 2021.

(Order available [here](#).)

2

Interest free loans to qualify as financial debts? Supreme Court settles the debate

Time value of money has been the primary deciding factor for the classification of a debt as a financial debt, but whether in the absence of interest a loan can be said to have the time value of money has been a long-drawn concern. The Hon'ble Supreme Court of India answered this pertinent question as to whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC.

The Apex Court relying on the literal wording of the statute ruled that since the definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan, 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.

(Order available [here](#).)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATIONS

1

IBBI amends the Insolvency Resolution Process for Corporate Persons Regulations, 2021 to enhance discipline, transparency, and accountability in corporate insolvency proceedings

IBBI amends the Insolvency Resolution Process for Corporate Persons Regulations, 2021 to enhance discipline, transparency, and accountability in corporate insolvency proceedings.

In order to curb the losses taken place due to avoidable transactions, the regulations have been amended to empower the Interim Resolution Professional or the Resolution Professional, as the case may be, to disclose the former name and registered office address of the Corporate Debtor, if the same had been changed during two years preceding the insolvency commencement date and also appoint registered valuers on an arm's length basis to determine the fair value and liquidation value of corporate debtor, if he is of the opinion that the services of such professional are required. Further, the amendment also prescribes a mandate that the resolution professional shall file Form CIRP 8 intimating details of his opinion and determination with respect to avoidable transactions to fulfil his statutory obligations.

2

(Notification available [here](#).)

IBBI regulates the penalty to be imposed by an Insolvency Professional Agency

While the Bankruptcy Law Reforms Committee had envisioned that the Insolvency Professional Agencies shall have the flexibility to impose penalties on account of non-compliance and violations, the regulator, in order to ensure objectivity and uniformity, has released a Circular whereby it has been notified that Insolvency Professional Agencies shall amend their Bye-laws to provide for the maximum and minimum monetary penalty on its professional members, under Clause 24(2)(d) of the Schedule to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. The Circular prescribes fourteen contraventions and their subsequent penalties and does away with the discretion that lies with Insolvency Professional Agencies.

(Circular available [here](#).)

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDERS

1 Rakesh Jhunjhunwala & others settle Aptech insider trading dispute with SEBI

The illegal act of trading of a public company's securities on a stock exchange to one's own advantage, when in possession of confidential or non-public information, is Insider Trading. Such sensitive information is known as the Unpublished Price Sensitive Information (UPSI). Trading when in possession of UPSI is in contravention of the SEBI PIT Regulations.

In this regard, SEBI recently alleged that Rakesh Jhunjhunwala and a few others traded in Aptech when in possession of UPSI. However, before the commencement of adjudication proceedings, the alleged wrongdoers requested to resolve the dispute through Settlement Proceedings. In such proceedings, an alleged wrongdoer can settle the pending matter with SEBI without admitting or denying the charges levelled upon them.

While Rakesh Jhunjhunwala settled with SEBI paying 18 crores, a total fine of Rs. 37 crores were levelled against the alleged wrongdoers.

(Order available [here](#).)

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATIONS

1

SEBI reduces time for filing application to obtain NOC for release of 1% of issue amount

There exist some businesses that are regulated by certain special authorities. In this regard, entities dealing with financial securities need approval from SEBI. As per the present regulations, to obtain NOC for release of 1% of issue amount, the issuer company is required to submit an application on its letter head addressed to SEBI after lapse of 4 months from listing on the Exchange. However, SEBI has now reduced this time period to two months. SEBI further mandates an issuer company to deposit 1% of the issue amount offered to the public of the company's existing securities with the designated stock exchange. Also, this amount is released to the issuer company only after obtaining an NOC from SEBI.

(Circular available [here](#).)

2

SEBI puts in place guidelines on valuation of securities with multiple put options

SEBI came out with a new framework with regards to valuation of securities, having multiple put options, held by mutual funds. The new framework will be applicable with effect from October 1, 2021. SEBI has taken certain decisions based on the recommendations of its mutual fund advisory committee with respect to valuation of securities with multiple put options present "ab-initio," where the put option is factored into the valuation of the security by the valuation agency.

According to the framework, if a mutual fund does not exercise its put option, while doing so would have been beneficial to the scheme, the fund house must justify its decision to the valuation agencies, the board of AMC (asset management company), and the Trustees. The remaining put options will not be taken into account by the valuation

SECURITIES AND EXCHANGE BOARD OF INDIA

agencies when valuing the security. If the output of the valuation price while ignoring the put option under evaluation is more than the contractual yield or coupon rate by 30 basis points, the put option will be considered "in favor of the scheme."

The move will ensure that the fund managers exercise their opinion properly and conduct the fund management in a proper way.

(Circular available [here](#).)

3

Investors to get option to block securities in demat accounts for sale transactions

Apart from the existing early pay-in mechanism, investors will soon be able to block securities on their respective demat accounts for sale transactions. This is in response to the representations received by SEBI from clients undertaking sales transactions. Demat Account is used to hold shares and securities in electronic format. The purpose of opening a demat account is to hold shares that have been bought or dematerialized (converted from physical to electronic shares), thus making share trading easy for the users during online trading. SEBI ordered the issue of "block mechanism" in demat accounts of clients undertaking sale transactions and this would be made available by August.

Shares transferred from a client's demat account are returned if the sale transaction is not completed under the Early Pay-In (EPI) system. Under the block mechanism however, shares of a client aiming to make a sale transaction will be blocked in the client's demat account in favor of the clearing corporation. The shares will remain in the client's demat account and will be unblocked at the end of the T (Trade) day if the sale transaction is not completed. Shares will be blocked on a 'time basis.'

(Circular available [here](#).)

SECURITIES AND EXCHANGE BOARD OF INDIA

4

SEBI allows AMCs to offer instant access facility in overnight mutual fund schemes

SEBI confirmed that the framework related to Instant Access Facility (IAF) will be applicable with immediate effect. The latest framework allows Asset Management Companies (AMC) to offer instant access facility in overnight mutual fund schemes. Earlier, AMCs were allowed to offer such a facility only on liquid schemes. IAF facilitates credit of redemption proceeds in the bank account of the investor on the same day of redemption request. SEBI tweaked the framework with respect to treatment of unclaimed redemption and dividend amounts.

Further, SEBI shall allow unclaimed redemption and dividend amounts to be invested in separately created plans of overnight, liquid and money market schemes of mutual funds. This will come into effect from December 1, 2021.

(Circular available [here](#).)

MINISTRY OF CORPORATE AFFAIRS

AMENDMENTS

1

Companies (Incorporation) Fifth Amendment Rules, 2021: Role of Regional Directors

The MCA has issued its latest amendment to the Companies (Incorporation) Rules, 2014. The Companies Act, 2013 deals with rectification or modification of any existing company's name subjected to several conditions. The Act also establishes that the Central Government may direct a company to change its name if it resembles or is identical with the name of an existing company. In this case, the direction issued by the Central Government has to be implemented by the concerned company within a period of three months. As per the new amendment, the Regional Director is empowered to take action against those companies not complying with the directions within the stipulated time frame.

(Notification available [here](#))

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