



LEGAL UPDATES – CORPORATE LAW

for the month of January 2021



IBBI

NOTIFICATIONS & CIRCULARS

1. Ministry of Corporate Affairs invites comments from public on Pre-packaged Insolvency (8th Jan)

A sub-committee of Insolvency Law Committee (ILC) has designed the basic structure of the pre-pack framework within the basic structure of the Insolvency and Bankruptcy Code, 2016. The MCA has hereby invited comments/suggestions on the same.

(Notification available [here](#))

2. IBBI releases circular for retention of records relating to CIRP (6th Jan)

The Insolvency Professional (IP) is required to preserve a copy of records relating to the CIRP, both physical as well as electronic copy of all the assignments undertaken by him under the Code for at least three years from the completion of such assignment at a secure place, ensuring that unauthorised persons do not have access to the same.

(Circular available [here](#))

3. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021 (14th Jan)

The IBBI has amended the Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016



namely amending the Regulation 5, *inter alia*, inserting provisions with respect to Self-Evaluation and Compliance Officer.

(Notification available [here](#))

4. Chennai Bench of National Company Law Appellate Tribunal (NCLAT) starts functioning (23th Jan)

The Chennai Bench of National Company Law Appellate Tribunal (NCLAT) starts its functioning from 25.01.2021 through Virtual Mode. Therefore, the filing of Fresh Appeals against the orders of the Benches of the National Company Law Tribunal having jurisdiction in respect of States of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh and Telangana and Union Territories of Lakshadweep and Puducherry shall have to be made before the Chennai Bench of NCLAT w.e.f. 25.01.2021.

(Notification available [here](#))

CASES

1. In the matter of Manish Kumar Vs. Union of India and Another [WP (C) No. 26 of 2020 with 40 other writ petitions] decided by the Hon'ble Supreme Court of India (19th Jan)

The Hon'ble Supreme Court of India in this landmark judgment has finally settled the homebuyers conflict and has upheld the validity of the Insolvency and Bankruptcy Code

(Amendment) Act, 2020 which inter alia inserted provisos to section 7(1), an additional explanation to section 11, and section 32A in the Insolvency and Bankruptcy Code, 2016 (Code). The said amendment imposed an additional condition on the homebuyers to fulfil a minimum threshold for initiating CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(Order available [here](#))

2. **In the matter of Sri D. Srinivasa Rao Vs. Vaishnovi Infratech Ltd. (5th Jan)**

In this judgement the NCLAT, New Delhi has ruled that Demand Notice having been returned unserved would amount to non-delivery of notice but if the Corporate Debtor intentionally refuses to accept the delivery notice being aware of the implications of the same, the Adjudicating Authority would not be justified in coming to conclusion that notice has not been served on the Corporate Debtor.

(Order available [here](#))

3. **In the matter of Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd. (11th Jan)**

In this judgment the NCLAT, New Delhi has once again reiterated that the Adjudicating Authority cannot interfere with the commercial wisdom of the CoC even for the purpose of maximising the value of assets of the Corporate Debtor. Analysing whether the price offer in the approved resolution plan is reasonable and adequate is not the duty of the

Adjudicating Authority.

(Order available [here](#))

4. In the matter of State Bank of India Vs. Rajendra Bhuta Interim Resolution Professional of Prabhat Technologies (India) Limited (6th Jan)

The NCLT, Mumbai has ruled that an amount raised under a forward purchase agreement would not fall within the definition of financial debt until and unless the same has been disbursed against the time value of money and has the commercial effect of a borrowing.

(Order available [here](#))

SEBI

ORDERS

1. SC stays SAT order in the Bharati Goyal Case (5th Jan)

In the Bharati Goyal Case which involved fraudulent trading in shares of Mapro Industries, Supreme Court stayed an order by the Securities Appellate Tribunal wherein the latter reversed the penalty of Rupees 5 lakh imposed by SEBI, with a warning.

It was noted in this order that “the SAT is not exercising the jurisdiction under Article 226 of the Constitution and is a creature of the statute. Even the jurisdiction under Article 226 has to be exercised in a manner consistent with law,”.



(Order available [here](#))

2. SEBI penalizes CNBC Awaaz anchor Hemant Ghai for unfair trade practices (13th Jan)

SEBI issued directions against CNBC Awaaz anchor Hemant Ghai, mother Shyam Mohini Ghai and wife Jaya Ghai after examining a pattern of trading that violated the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market), Regulations, 2003.

Hemant Ghai hosted a show called 'Stock 20-20' in which he made recommendations of certain shares to be purchased or sold that day. It was observed that Jaya Ghai and Shyam Mohini Ghai engaged in a large number of Buy-Today-Sell-Tomorrow trades, in sync with the shares recommended on the show where the shares were purchased the day before the recommendation and were sold immediately post recommendation, making undue profit. The three entities are barred from buying, selling or dealing in securities as per the SEBI Interim Order.

(Order available [here](#))

3. SEBI holds RIL and Mukesh Ambani liable on the grounds of Manipulative Trading (1st Jan)

SEBI penalised Reliance Industries Limited, Mukesh Ambani imposing a fine of 25 and 15 crores respectively for indulging in manipulative trading in shares back in 2007 to make an undue profit. Adjudication Proceedings against RIL were initiated under Section 15HA of the SEBI Act for the violation



of the PFUTP Regulations, 2003.

(Order available [here](#))

4. SEBI imposes fine of Rs 1 lakh on Fortis Healthcare Holdings (11th Jan)

SEBI while holding Fortis Healthcare Holdings liable for the failure to disclose change in shareholdings under Regulations 29(2) read with 29(3) of the SEBI SAST Regulations, imposed a penalty of Rupees 1 lakh Rupees.

Regulations 29(2) and 29(3) of the SAST Regulations, 2011 talk about the ‘Disclosure of Acquisition and Disposal’ of change in shares and voting rights.

(Order available [here](#))

5. ICICI Bank Limited settles case pertaining to victimisation of whistle-blower with SEBI paying 28.40 lakh (29th Jan)

ICICI Bank settled a case paying 28.40 lakhs, “without admitting or denying the findings of fact and conclusions of law” relating to an alleged victimisation of a whistle-blower, filed by an ex-employee of ICICI. An alleged violation of the LODR (Listing Obligations and Disclosure Requirement) norms was levelled against ICICI.

(Settlement Order available [here](#))

REGULATIONS



1. Amendment to Regulation 20(6) of the SEBI (AIF) Regulation, 2012 (8th Jan)

In exercise of the powers conferred to SEBI by sub section (1) of Section 30 of the SEBI Act, 1992, new regulations were made to amend the SEBI (Alternative Investment Funds) Regulations, 2012. The amended regulations were called SEBI (Alternative Investment Funds) (Amendment) Regulations, 2021.

Clause (iv) of Regulation 20 (6) saw two changes. First, a symbol change in the clause and the second change was the insertion of a proviso.

(Regulation available [here](#))

2. Amendment to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (8th Jan)

In exercise of the powers conferred under Section 30 of the SEBI Act, 1992, Regulations 112, 115 and 167 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 were amended to form the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2021.

(Regulation available [here](#))

3. Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (8th Jan)

In exercise of the powers conferred under Section 11, 11A and 30 of the SEBI Act, 1992, the Board made substitutions and additions in Schedule III under Part A of

the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, to form the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2021.

(Regulation available [here](#))

CIRCULAR

1. SEBI's Circular on Relaxation relating to Procedural Matters – Issues and Listing (19th Jan)

Exercising its powers under Section 11(1) read with 11A of the SEBI Act, SEBI further extended the one-time relaxations from strict enforcement of certain rights under SEBI (Issue of Capital and Disclosure Requirements) Regulations, to protect the interests of investors in securities and to promote the development and regulation of the securities market.

(Circular available [here](#))

MCA

NEWS AND UPDATES

1. Ministry of Corporate Affairs clarified that spending of CSR funds for COVID-19 is an eligible CSR activity (13th Jan)



It was further clarified that spending of CSR funds for carrying out awareness campaigns or public outreach programmes on COVID-19 Vaccination programme is an eligible CSR activity under Item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013.

(Notification available [here](#))

2. New ‘Extend’ functionality to be introduced as a part of Companies (Incorporation) Third Amendment Rules, 2020 (27th Jan)

New ‘Extend’ functionality is to be introduced as part of SPICe+ Part A in line with Rule 9A ‘Extension of reservation of name in certain cases’ of the Companies (Incorporation) Third Amendment Rules, 2020 with effect from 26th January 2021.

(Notification available [here](#))

3. Ministry of Corporate Affairs allows to petition for winding up under Section 271 (1) (c) of the Companies Act, 2013 (18th Jan).

The Central Government, exercising the powers conferred to it by Section 272 (1) (c) of the Companies Act, 2013, authorised the Chairman cum Managing Director of a Government Company to present a petition before the tribunal for winding up of Devdas Multimedia Private Limited on the grounds specified under Section 271 (1) (c) of Companies Act, 2013.

(Notification available [here](#))



4. Ministry of Corporate Affairs Invites comments on the report of Company Law Committee on Decriminalisation of the LLP Act, 2008 (18th Jan)

The Company Law Committee was constituted in September, 2019 to study the existing framework under the Limited Liability Partnership Act, 2008. It was constituted to suggest measures to plug the loopholes to decriminalize the provisions of the Limited Liability Partnership Act, 2008 to bring about Greater Ease of living for corporate stakeholders. The report after its approval has been put up for public access and comments and suggestions from public has been invited by the Ministry of Corporate Affairs.

(Notice available [here](#))

AMENDMENTS

5. Companies (CSR Policy) Amendment Rules, 2021 (22th Jan)

The rules have brought about major changes in the implementation of CSR initiatives and introduced concepts such as mandatory impact assessment, mandatory registration by NGOs with the central Government undertaking CSR activities. Other amendments include Revamped reporting format and transfer of the unspent amount to the government notified fund.

(Notification available [here](#))