



MONTHLY CORPORATE LAW UPDATES

FEBRUARY, 2024

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

1. Insolvency and Bankruptcy Board of India (“IBBI”) mandates that the liquidator must provide progress reports to the members of the Stakeholders’ Consultation Committee (“SCC”). [\[Link\]](#)

According to Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016, liquidators must provide progress reports to the Adjudicating Authority and the Board within fifteen days following the conclusion of each quarter. These reports are not shared with critical parties, such as creditors, leading to information asymmetry and leaving them unaware of the progress in the process.

Thus, IBBI has instructed the liquidators to provide progress reports to the members of the SCC after receiving a confidentiality undertaking. The liquidator is required to produce progress reports in accordance with Regulation 15 until the final report is filed. This brings more transparency to the process.

2. IBBI notifies a specific format for withdrawing funds from the corporate liquidation account. [\[Link\]](#)

Regulation 46 of the IBBI (Liquidation Process) Regulations, 2016 outlines the procedures for handling unclaimed deposits and undistributed revenues in the liquidation process. Liquidators must deposit unclaimed or undistributed funds into the corporate liquidation account and notify the IBBI, as required by the regulation.

The IBBI has specified the format for the liquidator to withdraw funds from the company liquidation account for distribution to stakeholders.

3. The Delhi High Court (“HC”) has instructed the IBBI to create a Code of Conduct for members of the Committee of Creditors (“CoC”): [\[Delhi HC *Kunwer Sachdev v IDBI Bank*\]](#). [\[Link\]](#)

The Delhi HC has directed the IBBI to notify a code of conduct or guidelines for the efficient functioning of the CoC. However, the code of conduct should not hamper the commercial wisdom of the CoC. The HC has asked the IBBI to notify the code of conduct within a reasonable time, preferably within three months of the judgement.

4. National Company Law Tribunal (“NCLT”) can recall its orders despite no particular IBC provision, using inherent capabilities: Supreme Court (“SC”) [*Greater Noida Industrial Development Authority v Prabhjit Singh Soni*]. [\[Link\]](#)

The SC held that even if there is no particular provision authorising the NCLT to recall its order, it has the authority to do so as neither the IBC nor the Regulations created under it preclude such action. Further, Section 60(5)(c) of the IBC, which begins with a non-obstante clause, empowers the NCLT to entertain or decide any question of priorities, law, or facts arising out of or in relation to the corporate debtor's or corporate person's insolvency resolution or liquidation proceedings under the IBC. Moreover, Rule 11 of the NCLT Rules of 2016 retains the tribunal's inherent power. However, the SC remarked that such power should be used judiciously and not as a tool for re-hearing the case.

5. IBBI introduces key amendments to liquidation process regulations. [\[Link\]](#)

The IBBI has notified amendments to the IBBI (Liquidation Process) Regulations, 2016 with the aim of making corporate insolvency process more transparent and inclusive. Now, for early dissolution as provided under Regulation 14, the liquidator has to contact the consultation committee. If the consultation committee advises dissolution, the liquidator shall apply to the adjudicating authority along with the consultation committee's report. Further, the liquidator shall call successive sessions of the stakeholders' consultation committee within thirty days of the previous meeting, unless the consultation committee has prolonged the period between such meetings.

6. Liquidator can file writ petition on behalf of corporate debtor with the permission of NCLT: National Company Law Appellate Tribunal (“NCLAT”) [*CA Rajeev Bansal Liquidator of Isolux Corsan India Engineering & Construction Pvt. Ltd.*]. [\[Link\]](#)

The NCLAT concluded that the liquidator can file a writ petition on behalf of the corporate debtor if the NCLT allows so under Section 33(5) of the IBC. This is a legal requirement provided in Section 33(5) of the IBC and thus cannot be dispensed with.

1. The Securities and Exchange Board of India (“SEBI”) frames guidelines for returning of draft offer document and its resubmission. [\[Link\]](#)

In order to ensure the completeness of the offer document for investors and provide greater clarity and consistency in the disclosures, SEBI issues guidelines for returning of draft offer document and its resubmission. The offer document, akin to a prospectus for public issues or a letter of offer for rights issues, serves as a fundamental tool for potential investors, offering detailed insights into the company and the proposed offer.

Such documents will be scrutinized under these guidelines and any such documents that are not compliant with the instructions provided under Schedule VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR** Regulations”) shall be returned to the issuer.

Additionally, the disclosure made under the draft offer document must be presented in a clear, concise, and intelligible manner. Furthermore, the draft offer document must refer to the general rules and regulations if the information required to be included in the draft offer document is not clearly understandable otherwise.

In case any regulatory authority or enforcement agency has expressed material concern concerning the draft offer document filed, the issuer must ensure to undertake remedial measures with the relevant regulator before resubmission of the document. Accordingly, upon resubmission of the draft offer document to the board, the issuer is required to make a public announcement within two days, adhering to the modalities prescribed under the ICDR Regulations.

1. The Ministry of Corporate Affairs (“MCA”) introduces the Companies (Registration Offices and Fees) Amendment Rules, 2024. [\[Link\]](#)

The MCA has amended the Companies (Registration Offices and Fees) Rules, 2014, in order to enhance the efficiency of the company registration process and simplify regulatory compliance. Rule 10A has been inserted, establishing the Central Processing Centre (“**CPC**”) as provided by Section 396 of the Companies Act of 2013. It will be overseen by a registrar. The CPC will be evaluating all applications, e-forms, and documents for approval, registration, or record-keeping within thirty days, except for cases requiring higher authority clearance, covering various nationwide applications such as name changes, conversions, share capital adjustments, resolutions, etc.

1. A generic exclusive jurisdiction clause doesn't take away the jurisdiction of the courts of the seat: Delhi HC [*Nitin Kwatra v Stadhawk Services Pvt Ltd & Ors*]. [\[Link\]](#)

The Delhi HC ruled that despite an agreement designating exclusive jurisdiction to a different court, the courts of the seat maintain supervisory jurisdiction. Thus, a generic exclusive jurisdiction clause doesn't nullify the jurisdiction of the arbitration seat.

2. An arbitration agreement will not be invalid merely because the Arbitration Act, 1940, is stated as the applicable law: Karnataka HC [*M/s. ICDS Ltd v Sri Bhaskaran Pillai and Others.*]. [\[Link\]](#)

The Karnataka HC ruled that if an arbitration agreement mistakenly refers to the Arbitration Act, 1940, despite the enactment of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”), it doesn't invalidate the agreement. Further, the court noted that arbitral proceedings commenced under the old Act before the A&C Act's enactment could proceed unless otherwise agreed by the parties.

3. An arbitration agreement stipulating multiple seats is not void under Section 29 of the Indian Contract Act, 1872 (“ICA”): Delhi HC [*Vedanta Limited v Shreeji Shipping*]. [\[Link\]](#)

The Delhi HC ruled that an arbitration agreement allowing for multiple arbitration seats, thereby giving parties a choice, is not rendered void under Section 29 of the **ICA**. Section 29 deems agreements uncertain or incapable of being made certain as void. The HC clarified that once the seat is determined, it grants exclusive jurisdiction to the courts of that seat to oversee arbitral proceedings stemming from the agreement between the parties.

1. The MCA sets February 20, 2024, as the effective date for enforcing Section 33 of the Competition (Amendment) Act, 2023. [\[Link\]](#)

The MCA has made Section 33 of the Competition (Amendment) Act, 2023 effective from February 20, 2024. This action, authorised by sub-section 2 of section 1 of the Act, aims to bolster the competition regulatory framework in India. Section 33, which talks about powers to impose lesser penalty, substitutes Section 46 of the Competition Act, 2002.

2. The Competition Commission of India (“CCI”) introduces revised Lesser Penalty Regulations. [\[Link\]](#)

In 2023, the Competition Act, 2002, was amended, incorporating provisions such as “lesser penalty plus” and “withdrawal of lesser penalty/lesser penalty plus applications.” It incentivises applicants involved in cartels to disclose information about other cartels previously unknown to the CCI in return for additional penalty reductions. In view of the amendment, the CCI (Lesser Penalty) Regulations, (“LPR”) 2023, was proposed in order to substitute LPR 2009.

After receiving comments from various stakeholders on the draft LPR, CCI has now notified LPR 2024. It defines terms like ‘admission,’ clarifies the availability of benefits to individuals, and outlines procedures for handling lesser penalty plus applications. Further, in light of various concerns raised by the stakeholders, the provision regarding forfeiture of the benefits has been deleted. The LPR 2024 prioritises early disclosure to aid investigations while maintaining the integrity of the competition enforcement process.

1. Reserve Bank of India (“RBI”) releases master direction for filing supervisory returns. [\[Link\]](#)

The RBI has issued RBI (Filing of Supervisory Returns) Directions, 2024. It is for banks, non-banking financial companies, select all-India financial institutions, and all asset reconstruction companies. Supervisory Returns refer to all periodic / ad-hoc data submitted to RBI in formats prescribed from time to time, irrespective of the technology platform, periodicity and the mode of submission. The aim is to merge all the existing guidelines on submission of data for increased transparency and compliance.



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