



MONTHLY CORPORATE LAW UPDATES

MAY, 2024

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

1. Set-off of debt by the Income Tax Department with tax refunds after the expiry of the Corporate Insolvency Resolution Process (“CIRP”) timeline but before the liquidation order is a violation of the moratorium: National Company law Appellate Tribunal (“NCLAT”) [Mr. Devarajan Raman Liquidator of Kotak Urja Pvt Ltd v Principal Commissioner Income Tax and Ors]. [\[Link\]](#)

The NCLAT has ruled that the set-off of demands with tax refunds by the Income Tax Department during the period between the end of the CIRP and before the passing of a liquidation order under Section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”), amounts to a violation of the moratorium under Section 14 of the IBC.

The tribunal emphasised that the moratorium aims to protect the assets of the corporate debtor from actions by individual creditors that could deplete or diminish these assets. This protection extends until the liquidation order is issued or a resolution plan is confirmed by the adjudicating authority.

2. When a demand notice by the operational creditor does not include a Goods and Services Tax (“GST”) refund claim, that unnotified claim cannot later be a ground for initiating CIRP: NCLAT [RB Singh and Anr v Rashmi Cement Ltd and Anr]. [\[Link\]](#)

The NCLAT has ruled that if a GST refund or Input Tax Credit claim is not included in the demand notice by the operational creditor, it cannot later become a ground for default and thus the basis for initiating CIRP under Section 9 of the IBC. The tribunal emphasised that establishing a default under Section 6 of the IBC is a prerequisite for initiating CIRP, and it must be clearly established in the initial demand notice and application.

3. Insolvency and Bankruptcy Board of India (“IBBI”) invites comments on proposed changes to the process of issuance of Record of Default (“RoD”) by Information Utilities (“IUs”). [\[Link\]](#)

The NCLAT has held that a liquidator who has been replaced with another cannot The IBBI has suggested changes to the process of issuing the RoD by IUs. The suggestions include extending the response time for debtors to seven days after receiving a default notification from the IU.

They also received three subsequent reminders allowing seven days each. Creditors other than banks must upload proof of debt/security, default, and the latest acknowledgment of debt, accompanied by a declaration of authenticity, when submitting information.

For banks, if acknowledgment of debt exists, the IU will issue the RoD under the authenticated category, even if the default is disputed. Partially disputed defaults will result in a RoD for the undisputed amount. Lastly, the format of Form D will be enhanced by incorporating additional details to improve its effectiveness and admissibility.

1. The Securities and Exchange Board of India (“SEBI”) issues a consultation paper on the direct pay-out of securities to client demat accounts. [\[Link\]](#)

SEBI has proposed a significant change in the securities settlement process by issuing a consultation paper that mandates the direct payout of securities to clients’ demat accounts, bypassing brokers’ intermediary pools. Currently, securities are first credited to brokers’ pool accounts before reaching clients, causing delays and potential risks. Direct crediting by Clearing Corporations (“CCs”) will expedite settlements, reduce default risks, and enhance transparency, ensuring clients have quicker and more secure access to their securities.

The key provisions include CCs directly crediting securities to clients’ accounts, mechanisms for identifying unpaid and funded stocks, segregation of funded stocks in separate demat accounts, and handling shortages through a CC-specified auction process without extra broker charges.

2. SEBI issues consultation paper on enhancing ease of doing business for non-convertible securities. [\[Link\]](#)

SEBI has issued a consultation paper to streamline business operations for non-convertible securities, aligning with Finance Minister Nirmala Sitharaman’s objectives for FY 2023-24 to simplify processes and reduce compliance costs. Key proposed changes include protecting data privacy by eliminating the requirement to disclose PAN and personal addresses of issuers’ promoters. Additionally, SEBI suggests broadening current regulations to include the proposed use of proceeds, aligning with the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, instead of just disclosing project costs and financing means.

Due to frequent private placements of debt securities, SEBI proposes delegating attestation responsibilities to committees or key managerial personnel. This delegation would apply to both public and private issuances, with attestations potentially provided by the executive chairperson and compliance officer, or the MD & CEO and compliance officer, as delegated by the board.

Further, SEBI suggested changes include requiring offer documents to disclose the time- period for key operational and financial parameters, relaxing the requirement to provide certain business and commercial details for property acquisitions in offer documents, and modifying the timeline for entities with listed commercial paper to submit status updates on payment obligations to stock exchanges.

3. SEBI updates certification requirement for key investment team of Alternative Investment Fund's ("AIF") manager. [\[Link\]](#)

SEBI has revised the SEBI (AIF) Regulations 2012 mandating that at least one key member of an AIF manager's investment team must possess a relevant certification as prescribed by SEBI. This certification is now a prerequisite for AIF registration. Previously, under the regulation, the requirement was for at least one key team member of AIF to have a minimum of five years of experience in managing or advising investment pools, wealth or portfolio management, or trading securities and financial assets. This amendment represents a significant enhancement in regulatory standards aimed at bolstering professionalism within AIF management teams.

4. SEBI introduces norms for real-time price data sharing with third parties. [\[Link\]](#)

SEBI has introduced new norms governing the sharing of real-time price data with third parties. These norms stipulate that Market Infrastructure Institutions ("MIs") such as stock exchanges, clearing corporations, and depositories, along with registered market intermediaries, must refrain from sharing real-time price data except where necessary for the orderly functioning of the securities market or to meet regulatory requirements. Additionally, ("**MII's**") and market intermediaries intending to share such data must enter into agreements specifying the purposes and justifications for sharing, which must be reviewed annually.

Furthermore, the real-time market price data can only be shared with a one-day lag for investor education and awareness activities, with strict provisions in place to prevent misuse. These measures are aimed at safeguarding the integrity of market data and ensuring compliance with regulatory standards, effective within 30 days from the issuance of the circular. Moreover, MIs are directed to implement necessary systems, amend relevant regulations, and communicate these changes to market participants promptly.

5. SEBI introduces a framework for considering the unaffected price for transactions upon confirmation of market rumour. [\[Link\]](#)

SEBI has amended Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements Regulations) 2015, through the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations 2024. These amendments require listed entities to verify market rumours when there are significant price movements. Accordingly, stock exchanges will provide a framework for identifying such material price movements on their websites.

Additionally, if a rumour affecting a transaction is confirmed within 24 hours of a significant price change, the transaction should use an unaffected price determined by SEBI or the stock exchange's pricing norms. This unaffected price excludes any impact from the price movement and confirmed rumour. Furthermore, these rules will apply to the top 100 listed entities starting June 1, 2024, and to the next top 150 entities from December 1, 2024. Stock exchanges are also instructed to inform their listed entities about these requirements and ensure compliance.

1. The Ministry of Corporate Affairs (“MCA”) provides extension for filing LLP BEN-2 and Form 4D without additional fees. [\[Link\]](#)

The MCA has extended the deadline for filing LLP BEN-2 and LLP Form 4D under the Limited Liability Partnership Act, 2008, without additional fees, until July 31, 2024. LLP BEN-2 is used to file returns concerning the declaration of significant beneficial owners under Section 90 of the Companies Act, 2013, read with the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.

LLP Form 4D is for declaring beneficial interest in contributions received by the LLP, as per the Limited Liability Partnership (Second Amendment) Rules, 2023. This extension aims to facilitate compliance during the transition from MCA-21 version 2 to version 3.

1. An arbitral tribunal cannot recall or modify an award passed by it: Allahabad High Court (“HC”) [*National Highways Authority of India v Musafir and Others*]. [\[Link\]](#)

The Allahabad HC determined that an arbitral tribunal lacks the authority to recall or modify its award under Section 33 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”). No provision within the Act grants such power to the tribunal, rendering any unauthorized action by the tribunal void ab initio.

2. Enforcement of a foreign award cannot be declined on the ground of the improper constitution of the arbitral tribunal if the same objection was not raised before the arbitral tribunal or the seat court: Delhi HC [*Mercator Ltd v Dredging Corporation of India*]. [\[Link\]](#)

The Delhi HC has held that a foreign arbitral award cannot be denied enforcement on the ground that the arbitral tribunal has been improperly constituted if the objection regarding the improper constitution of the tribunal was not raised before the arbitral tribunal or the seat court. The failure of a judgement debtor to raise such objections before appropriate tribunals/courts may establish a lack of merit in its objection.

3. An arbitrator’s encouragement to parties to arrive at an amicable settlement cannot be termed conciliation under the A&C Act: Calcutta HC [*MFAR Constructions Private Ltd v Bengal Shristi Infrastructure Development Ltd*]. [\[Link\]](#)

The Calcutta HC has held that an arbitrator’s attempt to strike a settlement between the parties or to suggest the parties to strive for a settlement cannot be labelled as conciliation proceedings under Part III of the A&C Act. Conciliation is an independent mode of alternative dispute resolution and has its own procedure and conclusion.

4. Inauguration of the Arbitration Bar of India. [\[Link\]](#)

The Arbitration Bar of India has been established, signifying a pivotal advancement in the nation's legal framework, with esteemed members of the legal community affirming the event's importance in enhancing India's arbitration ecosystem. The aims of the Arbitration Bar of India include widening the pool of arbitrators and working towards establishing India as an arbitration hub.

1. The Competition Commission of India (“CCI”) invites bids to launch a market study on artificial intelligence (“AI”). [\[Link\]](#)

The CCI invites proposals to conduct a market study on AI and competition in India. The study aims to understand AI's transformative capabilities and competition concerns. It will explore AI systems, market structures, and competition dynamics, assessing the impact of AI applications on efficiency and innovation.

1. Using banking channels for gift transactions doesn't automatically validate the transaction's authenticity: Allahabad HC [*Mohit Agarwal v Commissioner of Income Tax*]. [\[Link\]](#)

The Allahabad HC upheld the decision of the Income Tax Appellate Tribunal to make an addition under section 68 of the Income Tax Act, 1961. The Tribunal rejected the claim of the assessee regarding gifts received from six individuals, as there was no pre-existing relationship or circumstances disclosed to support the gifts. The HC emphasized that merely proving gifts were received through banking channels and not disputed by donors is insufficient to establish the genuineness of the transaction.

2. The Reserve Bank of India ("RBI") proposes modifications to the payment aggregator framework. [\[Link\]](#)

With the intention of expanding the current scope by incorporating physical Payment Aggregators ("PA") within the framework for PAs and payment gateways, the RBI has released two sets of draft rules. Both new and current players can get authorization from the regulator for their services by following the comprehensive methods and consequences outlined by the RBI in the proposed guidelines. Indian banks do not need a separate RBI authorization in order to offer physical PA services because these services are already included in their regular banking agreements.

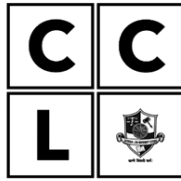
The major implications of these guidelines can be seen with the change in mandatory net-worth requirements. The RBI has proposed to increase the net-worth requirement for payment aggregators from the current Rs 15 crore to Rs 25 crore, which must be maintained at all times. This is aimed at ensuring that only financially sound entities operate as payment aggregators. The draft also prohibits PAs from loading credit lines or pre-paid instruments of any kind onto the PA's platform.

Further, PAs will be required to maintain separate escrow accounts for different merchants, with the funds being transferred to the respective merchant accounts within the next business day. This will ensure the timely settlement of merchant dues and prevent any misuse of merchant funds. PA's must ensure that all the data related to payment transactions is stored only in India, in compliance with the RBI's data localization norms, to ensure the security of customer data.



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