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CORPORATE LAW BULLETIN



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A. MINISTRY OF CORPORATE AFFAIRS

Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2024

As per MCA amendment Companies (Appointment and Qualification of Directors) Rules, 2014, in case an individual desires to update his personal mobile number or the e-mail address in DIN number, as the case may be, he or she shall update the same by submitting e-form DIR-3 KYC only on or before 30th September of the financial year.

Top 500 firms likely to get 'quota' for interns based on CSR spend

The Government plans to talk to the top 500 companies and mutually agree on a "voluntary quota system" for taking on board interns under the employment package announced in the Budget 2024-25. The "quota system" would be based on the Corporate Social Responsibility (CSR) expenditure of these companies, Finance Secretary TV Somanathan told The Indian Express.

"Details are yet to be worked out, and will be done in consultation with the industry. We might perhaps have some kind of voluntary quota system, mutually agreed upon, saying that you will take so much or this much based on your CSR expenditure. We will also permit them to use their backward and forward supply chain for skilling,"

For more details: <https://indianexpress.com/article/business/top-500-firms-likely-to-get-quota-for-interns-based-on-csr-spend-9476204/>

Companies (Adjudication of Penalties) Rules, 2014

The Central Government notified Companies (Adjudication of Penalties) Amendment Rules, 2024 which shall come into force from the 16th day of September 2024.

- A new section 3A is being inserted which states that all proceedings of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the E-adjudication platform developed by the Central Government for this purpose. It also mentions the mode of notice or summons to be issued were the E-mail address or address of the concern person is not available in the records.

For more details: <https://www.mca.gov.in/bin/dms/getdocument?mids=ksyWu6kmYbS46oyUYmt6cw%253D%253D&type=open>

Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Amendment Order, 2024

As per the order the following amendments are made in the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 In paragraph 3, the following proviso shall be inserted, namely:

The Form MSME-1 had been revised and the following new information are required to be mentioned in it:

- Name of the (MSEs) Suppliers
- PAN of the Supplier
- Details of Amount paid within 45 days
- Details of Amount paid after 45 days
- Outstanding for 45 days or less
- Outstanding for more than 45 days
- Reason for delay in payment / amount outstanding

For more details: <https://www.mca.gov.in/bin/dms/getdocument?mcs=LNC1bxj5jUf0Ccxk6hVY6uQ%253D%253D&type=open>

Penalty under section 90(11) for the violation of provisions of Section 90 of the Companies Act, 2013 r/w 3 & 4 of the Companies (Significant Beneficial Owners) Rules, 2018, in the matter of YSK Developers Private Limited v/s Registrar of Companies, Hyderabad

Brief Facts: It was observed that the Company had received the form BEN-1 on 20.05.2023 Further, Form BEN-2 needed to be filed within 30 days, which was by 19.06.2023. However, the Company filed the same on 07.03.2024.

Hence, the company did not comply with the requirement under Section 90(4) of the Companies Act 2013, during the period 19.06.2023 to 07.03.2024 which necessitates timely filing of the declaration of beneficial interest of SBO (Significant Beneficial Owners) in the company's shares.

Order: Having considered the facts and circumstances of the case and after taking into account the factors and submissions made in the application, the Adjudicating Officer imposed the maximum penalty for the non-compliance of Section 90 amounting to Rs. 2,30,500/- on the Company penalty of Rs. 77,200 and Rs. 75,000 imposed upon two of Company's Directors & Company Secretary of Company (Officers in default) respectively as allowed under Companies Act, 2013.

Penalty under section 117(2) for the violation of provisions of Section 117 & 13(9) of the Companies Act, 2013 r/w 24 of the Companies (Management and Administration) Rules, 2018, in the matter of Kratos Impex Limited v/s Registrar of Companies, Gujarat, Dadra & Nagar Haveli

Brief Facts: It was observed that the Company made a default for non-filing of special resolution passed for alteration of object clause of Memorandum of Association within 30 days. Thus, the company and directors have violated the provisions of section 117 of the Companies Act, 2013.

Order: Having considered the facts and circumstances of the case and after taking into account the factors and submissions made in the application, the Adjudicating Officer imposed the maximum penalty for the non-compliance of Section 117 amounting to Rs.1,30,100 upon the company and amounting to Rs. 17,100 upon 2 directors, Rs. 50,000 upon 4 directors and Rs. 47,800 upon 1 director in default as allowed under Section 117(2) of Companies Act, 2013.

Penalty under section 118(11) for the violation of provisions of Section 118(10) of the Companies Act, 2013, in the matter of Teleone Online Venture Private Limited v/s Registrar of Companies, Delhi & Haryana

Brief Facts: It was observed that from the e-form AOC-4 for the financial year ended 31.03.2018 that the notice of Annual General Meeting and Board Report for the concerned years has not been numbered correctly. Thus, the company and directors have violated the provisions of section 118(10) of the Companies Act, 2013 read with Secretarial Standards-1 and Secretarial Standards-2 issued by ICSI.

Order: Having considered the facts and circumstances of the case and after taking into account the factors and submissions made in the application, the Adjudicating Officer imposed the maximum penalty for the non-compliance of Section 118(10) amounting to Rs.12,500 upon the company and amounting to Rs. 2,500 upon two of Company's Director (officer in default) as allowed under section 118(11) of Companies Act, 2013.

B. INSOLVENCY & BANKRUPTCY

Strengthening IBC: Extend prepack to big companies, says industry

As Finance Minister Nirmala Sitharaman, in her Budget speech, hinted at impending changes to the Insolvency and Bankruptcy Code (IBC), industry experts suggest priorities should include extending pre-packaged insolvency to larger firms, codifying group insolvency norms, and clarifying project-wise insolvency processes. The minister announced plans to reform and strengthen tribunals to expedite insolvency resolution, establish more tribunals, and assign some exclusively to cases under the Companies Act.

For more details: https://www.business-standard.com/economy/news/demands-to-strengthen-ibc-pre-pack-for-large-firms-124072501333_1.html

C. SECURITIES LAWS

Consultation Paper on investment by Foreign Investors through Segregated Portfolios/ P-notes/ Offshore Derivative Instruments

Investments made by foreigners via Offshore Derivative Instruments (erstwhile P-notes) or through segregated portfolios of Foreign Portfolio Investors (FPIs) are currently not subject to the same set of disclosure and other regulatory requirements as regular FPIs under the SEBI (Foreign Portfolio Investors) Regulations, 2019. This includes the additional disclosure requirements on objectively identified FPIs under the SEBI Circular dated August 24, 2023. The proposals in this paper seek to address this regulatory arbitrage. Public comments are invited on these proposals and the comments or suggestions should be submitted latest by August 27, 2024.

For more details: https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-investment-by-foreign-investors-through-segregated-portfolios-p-notes-offshore-derivative-instruments_85510.html

SEBI targets reduction in fundraising time

India's market regulator is working to streamline the fundraising process for companies and simplifying public offer documents for investors, Chairperson Madhabi Puri Buch said on August 02, 2024, Friday. SEBI is working to merge rights issues and preferential allotments to expedite fundraising, Buch said at an event in Mumbai, adding that combining the two would cut the time companies need to raise funds by half. In a rights issue, a company invites its current shareholders to buy additional stock at a discount. In contrast, a preferential allotment is when a company issues shares or convertible securities to a select group of investors outside its existing shareholders, not through a public offering. If a company has received approval for a rights issue, it can also allocate shares preferentially to new investors if part of the issue remains unsubscribed, Buch said.

For more details: <https://economictimes.indiatimes.com/markets/stocks/news/sebi-targets-reduction-in-fundraising-time/articleshow/112217284.cms>

Consultation paper on proposal to improve ease of doing business with respect to the additional disclosure framework for large FPIs

Under the additional disclosure framework for FPIs specified vide SEBI's August 24, 2023 Circular ("August Circular"), certain FPIs/investor groups with assets under management ("AUM") exceeding INR 25,000 crores are required to provide granular details of all their investors/stakeholders on a look-through basis, to ascertain whether the FPI is effectively domiciled in a Land Bordering Country (LBC) or not. To improve ease of doing business, rather than requiring disclosure of all investors/stakeholders, it is proposed to require disclosures of an appropriate majority of set thresholds for disclosure for identification and categorization of an FPI as an LBC or non-LBC entity. The public comments are invited on the proposals and comments or suggestions should be submitted latest by August 20, 2024.

For more details: https://www.sebi.gov.in/reports-and-statistics/reports/jul-2024/consultation-paper-on-proposal-to-improve-ease-of-doing-business-with-respect-to-the-additional-disclosure-framework-for-large-fpis_85277.html

D. FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

At present, remittances under LRS to IFSCs can be made only for:

- Making investments in IFSCs in securities except those issued by entities/ companies resident in India (outside IFSC); and
- Payment of fees for education to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned in the gazette notification no. SO 2374(E) dated May 23, 2022, issued by the Central Government.

For these permissible purposes, resident individuals can open Foreign Currency Account (FCA) in IFSCs.

On a review, it has been decided by RBI that Authorised Persons may facilitate remittances for all permissible purposes under LRS to IFSCs for:

- Availing financial services or financial products as per the International Financial Services Centres Authority Act, 2019 within IFSCs; and
- All current or capital account transactions, in any other foreign jurisdiction (other than IFSCs) through an FCA held in IFSCs.

For these permissible purposes, resident individuals can open Foreign Currency Account (FCA) in IFSCs.

For more details: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12699&Mode=0>

E. MISCELLANEOUS

CCI approves amalgamation of Mangalore Chemicals & Fertilizers with Paradeep Phosphates Limited and acquisition of equity shares of Mangalore Chemicals & Fertilizers Limited by Zuari Maroc Phosphates Private Limited

The Competition Commission of India (CCI) has approved the proposed amalgamation of Mangalore Chemicals & Fertilizers with Paradeep Phosphates Limited and proposed acquisition of equity shares of Mangalore Chemicals & Fertilizers Limited by Zuari Maroc Phosphates Private Limited. Paradeep Phosphates Limited (PPL) is a company under the Adventz group of companies (Adventz group). The majority shareholding in PPL is held by ZMPPL. ZMPPL is a 50:50 joint venture between Zuari Agro Chemicals Ltd (ZACL), a company belonging to the Adventz group and OCP S.A. (OCP). PPL is primarily engaged in the production and marketing of complex phosphatic fertilizers. Mangalore Chemicals & Fertilizers Limited (MCFL) is a company under the Adventz group. The majority shareholding (i.e. 54.03%) in MCFL is held by ZACL. MCFL is primarily engaged in the production and marketing of complex phosphatic fertilizers.

CCI approves acquisition of 100% share capital of Viterra by Bunge

The Competition Commission of India (CCI) has approved the acquisition of 100% share capital of Viterra by Bunge. The proposed combination relates to the acquisition of 100% of the issued and outstanding share capital of Viterra Limited by Bunge Global SA. As part of the consideration for the proposed transaction, Viterra's three main shareholders, namely Glencore PLC, the Canada Pension Plan Investment Board, and the British Columbia Investment Management Corporation (BCI), will receive Bunge stock and as a result respectively own minority stakes in Bunge.

For more details: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2039227>

Adjudication order in the matter of M/s TIL Limited v/s SEBI

Facts of the Case: TIL Limited ("Noticee/TIL/Company") is a company listed in National Stock Exchange of India Ltd. ("NSE") and BSE Ltd. ("BSE"). SEBI received an alert from NSE, inter alia, raising concerns regarding the regularization of appointment of independent directors in TIL after the expiry of three months. Thereafter, SEBI conducted an examination in the matter.

During the course of examination, it was, inter alia, observed that the Noticee has failed to disclose "the defaults on loans obtained by the Noticee" to the Stock Exchanges in a timely manner.

Therefore, it was alleged that the Noticee has violated the provisions of Regulations 30(2) and 30(6) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") read with Clause 6 of Para A of Part A of Schedule III of the LODR Regulations and SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019.

SEBI Order: SEBI held that the Noticee being a listed entity is expected to take statutory compliances very seriously and to carry out its obligations with skill, care and diligence. However, in the instant case, there are 11 instances in which the disclosures were not made within the stipulated time period. These lapses on part of the Noticee cannot be viewed as an inadvertent omission. Such lapses therefore need to be viewed seriously. In the exercise of powers conferred upon SEBI under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, SEBI imposed a monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on the TIL Limited under section Section 15A(b) of SEBI Act.

In the matter of M/s Dhawan Box Sheet Containers Pvt Ltd v. M/s Sel Manufacturing Co Ltd- High Court of Delhi

Invoices which contains Arbitration Clause may be treated as Arbitration Agreement In this case, the respondent placed various orders during the period between June 2021 and September 2023, and the petitioner raised invoices accordingly. The invoices issued by the petitioner contain various terms and conditions, including the following:

"All Disputes Subject to 'Delhi' Jurisdiction arbitration only."

The invoices placed on record are signed by the representative of the petitioner and the representative of the respondent.

The Hon'ble High Court held that Although a stand is taken in the reply that the respondent's signature was only in acknowledgement of receipt of the goods, and not in agreement with the terms and conditions, that is not a matter which can be decided in these summary proceedings. As stated above, the respondent has also not filed an affidavit to deny the case pleaded by the petitioner, despite being given opportunities for the same.

In these circumstances, keeping in mind the limited jurisdiction of the Court at the pre-reference stage, I am of the view that the petitioner has made out a case for reference to arbitration, leaving all questions open for adjudication by the learned Arbitrator, including the defence, if any, with regard to the existence of the arbitration agreement.

In the matter of BRS Ventures Investments Ltd. (Appellant) Vs. SREI Infrastructure Finance Ltd. & Anr. (Respondents)- Supreme Court of India

Assets of the subsidiaries cannot be included in the resolution plan of the holding company under IBC In the above case, Hon'ble Supreme Court of India inter alia observed that a holding company and its subsidiary are always distinct legal entities. The holding company would own shares of the subsidiary company. That does not make the holding company the owner of the subsidiary's assets. In the case of Vodafone International Holdings BV (Civil Appeal No.4565 of 2021), Supreme Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator.

As mentioned in the decision, the reason is that a company is a separate legal persona and the fact that the parent company owns all its share has nothing to do with its separate legal existence. Therefore, the assets of the subsidiary company of the corporate debtor cannot be part of the resolution plan of the corporate debtor.

Further, Apex Court summarized and concluded that a holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company, and the financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well.

For more details: <https://ibbi.gov.in/uploads/order/4688087e4e8ccbbc67df12eca3134f29.pdf>

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