

# WHITESPAN

WINS

#### NEWSLETTER

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE MONTHLY NEWSLETTER

January 01, 2020 – January 31, 2020 Issue No. – 034/ 2020

WHITESPAN





#### FROM THE CHIEF EDITOR'S PEN

"Unless you try to do something beyond what you have already mastered, you will never grow."

- Ronald E. Osborn

It gives me immense pleasure to share the 34<sup>th</sup> edition of "WINS – e-newsletter" for January 2020. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better content in timely manner, month after month. Hope we not only help you keep updated but also save your time by bringing a brief summary of all the updates through our section on Editor's Quick Take.

# **Our Editorial Board comprises the following professionals:**

- 1. **Mr. Vinay Shukla** Mr. Vinay Shukla, a Fellow Member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management is Co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Mr. Mayank Rai LL.M, M.Phil, is a practicing advocate having more than 26 years of experience also an Asst. Professor in Dept. of Law, V.S.S.D.College, Kanpur.
- **3. Ms. Jaya Yadav** Ms. Jaya Yadav, a practicing company secretary based at Gurgaon is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce from Delhi University.
- **4. Mr. Himanshu Gupta** Mr. Himanshu Gupta is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce.
- **5. Ms. Trishna Choudhary** Ms. Trishna Choudhary is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in commerce from Delhi University.
- **6. Ms. Ankita Pandey** Ms. Ankita Pandey is a commerce graduate from Kanpur University and an associate member of The Institute of Company Secretaries of India (ICSI).
- 7. Ms. Divya Shukla- Ms. Divya Shukla is presently pursuing law from Christ University, Bangalore.





## In this issue we have covered the following:

- Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
- Articles on:
- i. Resolution Plan under the Insolvency and Bankruptcy Code, 2016
- ii. Conciliation as a Mode of Settlement Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- iii. Homebuyer As Financial Creditor, an NCLT/IBC perspective

Compliance checklist for the month of February 2020.

We hope all these would be of interest to you.

We invite articles on topics of professional interest. Please do ensure that the article is original, written in good style and adds value for the reader.

Your candid feedbacks are valuable: appreciation will encourage us; criticism will help us improve! Feedbacks can be sent at the following email id:

## vinayshukla@whitespan.in

With warm regards
WINS (Whitespan Information and News Services)
January 31, 2020



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# MCA Ministry of CorporateAffairs





# 1. <u>The Companies (Appointment and Remuneration of Managerial Personnel) Amendment</u> Rules, 2020.

Date of Notification: 03 January, 2020

Effective Date: 01 April, 2020

#### **Above Notification is available at the following link:**

http://www.mca.gov.in/Ministry/pdf/AmdtRules 06012020.pdf

## **Editor's Quick Take:**

MCA vide its notification dated January 03, 2020 has notified The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 by amending the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. Key Highlights of the amendment are as follows.

## 1. Appointment of Company Secretaries in Companies Not Covered Under Rule 8

Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.

#### 2. Secretarial Audit Report

- (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-
  - (a) Every public company having a paid-up share capital of fifty crore rupees or more; or
  - (b) Every public company having a turnover of two hundred fifty crore rupees or more;





- (c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.
- (2) The format of the Secretarial Audit Report shall be in Form No. MR.3.

[Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.]





# 2. Date Extension for filing of e-Form BEN-2 without additional fees

Date of Circular: 01 January 2020

## **Above Circular is available at the following link:**

http://www.mca.gov.in/Ministry/pdf/Circular1 01012020.pdf

# **Editor's Quick Take:**

MCA Vide its circular dated January 01, 2020 has extended the last date for filing of e-Form BEN-2 without additional fees on account of the representations received by it. The time limit for filing e-form No. BEN-2 has been extended upto March 31, 2020 without payment of additional fee and thereafter fee and additional fee shall be payable. Consequent to the extension in the date of filing of e-Form BEN-2, the date of filing of Form BEN-1 may be construed accordingly.





3. Changes made in the process of Incorporation of companies

Above information is available at the following link:

http://www.mca.gov.in/

# **Editor's Quick Take:**

MCA with respect to its Stakeholders has announced that as part of Government of India's Ease of Doing Business(EODB) initiatives, it would shortly notify and deploy a new Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form. The new Form SPICe+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. It will also facilitate the allotment of GSTIN wherever so applied for by the Stakeholders. After deployment of SPICe+ web form, RUN shall be applicable only for the change of name of existing companies. Further, upon notification & deployment, all new name reservations for new companies as well as new incorporations shall be applied through SPICe+ only, however, incorporation of companies for names reserved through the existing RUN service shall continue to be filed in the existing SPICe eform along with related linked forms as applicable and if marked under resubmission shall be resubmitted in SPICe eform. Resubmission of SPICe forms submitted prior to the date of deployment of SPICe+ web form shall also be filed in the existing SPICe eform and related linked forms as applicable.





4. Proposed changes to the RUN web service (for companies)

Above information is available at the following link:

http://www.mca.gov.in/

# **Editor's Quick Take:**

MCA with respect to its Stakeholders has announced that due to the proposed changes in the RUN web service (for companies), Resubmission Option for name reservation shall not be available for forms processed by CRC from 1st February, 2020 onwards for approximately 15 days. Hence, stakeholders are advised to either await deployment of **SPICE+** and then apply for names through SPICe+ web form or perform due diligence while submitting any application in existing RUN web service for name reservations. RUN applications (for companies) processed w.e.f 1st February 2020 onwards shall either be approved or rejected based on checks performed by CRC officers. Stakeholders may kindly note and plan accordingly.





# 5. The Companies (Winding Up) Rules, 2020

Date of Notification: 24 January, 2020

Effective Date: 01 April, 2020

Above notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Rules 28012020.pdf

## **Editor's Quick Take:**

MCA vide its notification dated 24 January 2020 has notified the Companies (Winding Up) Rules, 2020, key highlight of the rules are as follows:

The Companies (Winding Up) Rules 2020 provides rules for Winding up by Tribunal; Liquidators; Winding up Order; Application for stay of suits etc. on winding up order; Report by Company Liquidator under section 281; Settlement of list of contributors; Advisory Committee; Meetings of Creditors and Contributories; Proxies in relation to meetings of creditors and contributories; Registration and Books of Account to be Maintained by Company Liquidators; Banking Account of Company Liquidator; Investment of Surplus Funds; Filing and Audit of Company Liquidator's Account; Winding up by Tribunal (other than summary winding up) Debts and Claims against Company; Attendance and Appearance of Creditors and Contributories; Collection and Distribution of Assets in Winding up by Tribunal; Calls in Winding up by Tribunal; Examination under Section 299 and 300; Application against Delinquent Directors, Promoters and Officers of the Company; Compromise or Abandonment of Claims; Sale by Company Liquidator; Dividends and Returns of Capital in Winding up by Tribunal; Termination of Winding up; Payment of Unclaimed Dividends or Distribution of Assets and Summary Procedure for Liquidation.





# 6. The Companies (Account) Amendment Rules, 2020

Date of Notification: 30 January, 2020

Effective Date : Date of Notification in the Official Gazette

Above notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Rules 31012020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated January 30, 2020 has notified the Companies (Accounts) Amendment Rules, 2020 by amending the Companies (Accounts) Rules, 2014.

From now on every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).



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# SEBI

Securities
Exchange
Board of India





# 1. Strengthening of the Rating Process in Respect of 'INC' Ratings

Date of Circular: January 03, 2020

Effective Date: January 03, 2020 partly from July 01, 2020

Above circular is available at the link below:

https://www.sebi.gov.in/legal/circulars/jan-2020/strengthening-of-the-rating-process-in-respect-of-inc-

ratings 45553.html

# **Editor's Quick Take:**

SEBI vide its circular dated 03 January 2020 has with a view to strengthen the rating process in respect of 'INC' ratings notified that:

- **1.** A No Default Statement (NDS) is being aligned with SEBI Circular on mandating listed companies to make public disclosure on stock exchanges of:
  - a. default in payment of interest/installment obligations on loans, including revolving facilities like cash credit, from banks/financial institutions which continues beyond 30 days and
  - b. default in case of unlisted debt securities i.e. NCDs and NCRPS, promptly but not later than 24 hours from the occurrence of the default.
- 2. In order to further strengthen the rating process of the CRAs with regard to 'Issuer not cooperating' (INC) ratings, following directions are being issued:





- a. If an issuer has all the outstanding ratings as non-cooperative for more than 6 months, then the CRA shall downgrade the rating assigned to the instrument of such issuer to non-investment grade with INC status. If non-cooperation by the issuer continues for further six months from the date of downgrade to non-investment grade, no CRA shall assign any new ratings to such issuer until the issuer resumes cooperation or the rating is withdrawn-Applicable w.e.f. July 01, 2020
- b. In case of multiple ratings on an instrument (where there is no regulatory mandate for multiple ratings), a CRA may withdraw a rating earlier than stipulated in the aforementioned circular, provided the CRA has:
  - i. rated the instrument continuously for 3 years or 50 per cent of the tenure of the instrument, whichever is higher; and
  - ii. received No-objection Certificate (NOC) from 75% of bondholders of the outstanding debt for withdrawal of rating; and
  - iii. received an undertaking from the issuer that another rating is available on that instrument.
- c. At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide Circular dated November 01, 2016. The Press Release shall also mention the reason(s) for withdrawal of rating.





# 2. Annual System Audit of Market Infrastructure Institutions

Date of Circular: January 07, 2020 Effective Date: January 07, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/annual-system-audit-of-market-infrastructure-

institutions 45573.html

# **Editor's Quick Take:**

SEBI vide its circular dated January 07, 2020 has directed the Market Infrastructure Institutions (MIIs) to conduct an Annual System Audit as per the framework and and Terms of Reference (TOR) as provided in the circular. Market Infrastructure Institutions (MIIs) are also advised to maintain a list of all the relevant SEBI circulars/ directions/ advices, etc. pertaining to technology and compliance thereof, as per format provided in the circular and same shall be included under the scope of System Audit.

Further, MIIs are advised to submit information with regard to exceptional major Non-Compliances (NCs)/minor NCs observed in the System Audit





# 3. Operating Guidelines for Investment Advisers in International Financial Services Centre.

Date of Circular: January 09, 2020 Effective Date: January 09, 2020

# Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/operating-guidelines-for-investment-advisers-in-international-financial-services-centre 45620.html

# **Editor's Quick Take:**

SEBI vide its circular dated January 09 2020 has in continuation to its SEBI (International Financial Services Centres) Guidelines, 2015 for facilitating and regulating financial services relating to securities market in an IFSC set up under section 18(1) of Special Economic Zones Act, 2005 released Operating Guidelines for Investment Advisers in IFSC' covering the following:

- Applicability of SEBI (Investment Advisers) Regulations, 2013 ('Investment Adviser Regulations
- Registration of Investment Advisers for operating in IFSC
- Compliance Requirements, Conditions and Restrictions
- Qualification and Experience Requirement [Corresponding Regulation in Investment Adviser Regulations-7(1)]
- Certification Requirement [Corresponding Regulation in Investment Adviser Regulations- 7(2)]
- Net Worth Requirement [Corresponding Regulation in Investment Adviser Regulations- 8]





# 4. Options in Goods - Product Design and Risk Management Framework

Date of Circular: January 16, 2020 Effective Date: January 16, 2020

**Above circular is available at the following link:** 

https://www.sebi.gov.in/legal/circulars/jan-2020/options-in-goods-product-design-and-risk management-

framework 45692.html

# **Editor's Quick Take:**

SEBI vide its circular dated 16 January 2020, has permitted stock exchanges to launch 'Option in Goods' in their commodity derivatives segment. This is in addition to 'Options on commodity futures', guidelines which were issued vide SEBI circular SEBI/HO/CDMRD/DMP/CIR/P/2017/55 dated June 13, 2017.

The product design and risk management framework would be in conformity with the guidelines this mentioned in the said circular.

Exchanges willing to start trading in options contracts with goods as underlying shall take prior approval of SEBI for launching such contracts.

Exchanges shall make necessary disclosures such as open interest of top 10 largest participants/group of participants in "option in goods" (both long and short) and the details of their combined open interest in underlying constituents etc., in line with SEBI circular SEBI/HO/CDMRD/DNPMP/CIR/P/2019/08 dated January 04, 2019 regarding "Disclosures by Stock Exchanges for commodity derivatives" to the public.





# 5. <u>Exemption from Clubbing of Investment Limit for Foreign Government Agencies and its Related Entities</u>

Date of Circular: January 16, 2020 Effective Date: January 16, 2020

## **Above circular is available at the following link:**

https://www.sebi.gov.in/legal/circulars/jan-2020/exemption-from-clubbing-of-investment-limit-for-foreign-government-agencies-and-its-related-entities 45697.html

# **Editor's Quick Take:**

SEBI vide its notification dated 16 January 2020 has provided exemption from clubbing of investment limit for foreign Government agencies and its related entities.

Above mentioned amendment is in line with rule 1(a)(iv) of Schedule II of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 regarding "Investments by Foreign Portfolio Investors", certain foreign Government agencies and its related entities are exempt from clubbing of investment limit requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.

In view of the above, clause 1(x) of Part C of Operational guidelines for FPIs & DDPs and EFIs regarding "Monitoring of investment limit at investor group level" has been amended accordingly.





6. <u>Format for Statement indicating Deviation or Variation in the use of proceeds of issue of listed non-convertible debt securities or listed nonconvertible redeemable preference shares (NCRPs)</u>

Date of Circular: January 17, 2020 Effective Date: March 31, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0

# **Editor's Quick Take:**

SEBI vide its circular dated 17 January 2020 has directed listed entities which have issued nonconvertible debt securities or NCRPs, to submit a statement indicating deviation or variation, if any, in the format placed at Annexure of this circular on half yearly basis

#### The salient features of the format are as under:

- **a. Applicability:** The format for the statement indicating deviation or variation shall be applicable for funds raised by entities through issuance of non-convertible debt securities or NCRPs, which are listed.
- **b.** Frequency of Disclosure: The statement indicating deviation or variation shall be submitted to the Stock Exchange(s) on half yearly basis within 45 days of end of the half year until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.
- c. Role of the Audit Committee: The statement indicating deviation report shall be placed before the Audit Committee of the listed entity for review on half yearly basis and after such review, the comments of Audit Committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format.

In cases where the listed entity is not required to have an audit committee under the provisions of SEBI LODR Regulations or Companies Act, 2013, the word 'Audit Committee' shall be replaced with 'Board of Directors'.





7. Guidelines for rights issue of units by a listed Real Estate Investment Trust (REIT)

Date of Circular: January 17, 2020 Effective Date: January 17, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/guidelines-for-rights-issue-of-units-by-a-listed-real-estate-

investment-trust-reit- 45712.html

# **Editor's Quick Take:**

SEBI vide its circular dated 17 January 2020 has issued guidelines for rights issue of units by a listed Real Estate Investment Trust (REIT) providing for the following:

- 1. Conditions for issuance
- 2. Appointment of merchant banker(s) and other intermediaries :-
- 3. Draft Letter of Offer and Letter of Offer
- 4. Pricing of Units:
- 5. Timelines:

6.The REIT shall file an allotment report with the Board providing details of the allottees and allotment made within 15 days of the issue closing date.





# 8. Guidelines for rights issue of units by a listed Infrastructure Investment Trust (InvIT)

Date of Circular: January 17, 2020 Effective Date: January 17, 2020

# Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/guidelines-for-rights-issue-of-units-by-a-listed-

infrastructure-investment-trust-invit- 45713.html

# **Editor's Quick Take:**

SEBI vide its circular dated 17 January 2020 has issued guidelines for rights issue of units by a listed Infrastructure Investment Trusts (InvIT) covering the following heads:

- 1. Conditions for issuance
- 2. Appointment of merchant banker(s) and other intermediaries
- 3. Draft Letter of Offer and Letter of Offer :-
- 4. Pricing of Units:
- 5. Timelines:

6.The InvIT shall file an allotment report with the Board providing details of the allottees and allotment made

within 15 days of the issue closing date.





# 9. Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities

Date of Circular: January 17, 2020 Effective Date: January 17, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html

# **Editor's Quick Take:**

SEBI vide its circular dated 22 January 2020 decide to streamline the Standard Operating Procedure for dealing with non-compliances, it has been decided to issue the present Circular in supersession of the Circular bearing number SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 3, 2018.

Henceforth, the stock exchanges shall, having regard to the interests of investors and the securities market:

- a) Take action in case of non-compliances with the Listing Regulations as specified in Annexure I of this Circular, and.
- b) Follow the Standard Operating Procedure ("SOP") for suspension and revocation of suspension of trading of specified securities as specified in Annexure II of this Circular.

Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.



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In order to ensure effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from the concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter(s) in such non-compliant listed entity as well as all other securities held in the demat account of the promoter(s). Further, if a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this Circular in consultation with each other.

The recognized stock exchanges shall take necessary steps to implement this circular. The recognized stock exchanges shall disclose on their website the action(s) taken against the listed entities for non-compliance(s); including the details of the respective requirement, amount of fine levied, details regarding the freezing of shares of promoters, the period of suspension etc.

The recognized stock exchanges may keep in abeyance the action against any noncompliant entity or withdraw the action in specific cases where specific exemption from compliance with the requirements under the Listing Regulations/moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.

It may be noted that the SoP circular dated May 03, 2018 would be applicable till the time current SoP circular comes into force.





# 10. Streamlining the Process of Rights Issue

Date of Circular: January 22, 2020 Effective Date: 14 February 2020

# Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jan-2020/streamlining-the-process-of-rights-

issue 45753.html

# **Editor's Quick Take:**

The Securities and Exchange Board of India (SEBI), has simplified the rights issue process to make it more efficient and effective, by amending the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations") and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Accordingly, following changes are made with respect to the Rights Issue process:

- 1.1. The period for advance notice to stock exchange(s) under Regulation 42(2) of LODR Regulations has been reduced from at least 7 working days to at least 3 working days (excluding the date of intimation and the record date), for the purpose of rights issue.
- 1.2. Issuance of newspaper advertisement disclosing date of completion of dispatch and intimation of same to the stock exchanges for dissemination on their websites, as per Regulation 84 (1) of ICDR Regulations, shall be completed by the issuer at least 2 days before the date of opening of the issue.
- 1.3. Introduction of dematerialized Rights Entitlements (REs) –
- 1.3.1. In the letter of offer and the abridged letter of offer, the issuer shall disclose the process of credit of REs in the demat account and renunciation thereof.



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- 1.3.2. REs shall be credited to the demat account of eligible shareholders in dematerialized form.
- 1.3.3. In REs process, the REs with a separate ISIN shall be credited to the demat account of the shareholders before the date of opening of the issue, against the shares held by them as on the record date.
- 1.3.4. Physical shareholders shall be required to provide their demat account details to Issuer / Registrar to the Issue for credit of REs not later than two working days prior to the issue closing date, such that credit of REs in their demat account takes place at least one day before the issue closing date.
- 1.4. Trading of dematerialized REs on stock exchange platform –
- 1.4.1. REs shall be traded on secondary market platform of Stock exchanges, with T+2 rolling settlement, similar to the equity shares. Trading in REs on the secondary market platform of stock exchanges shall commence along with the opening of the issue and shall be closed at least four days prior to the closure of the rights issue.
- 1.4.2. Investors holding REs in dematerialized mode shall be able to renounce their entitlements by trading on stock exchange platform or off-market transfer. Such trades will be settled by transferring dematerialized REs through depository mechanism, in the same manner as done for all other types of securities.
- 1.5. Payment mode Application for a rights issue shall be made only through ASBA facility.
- 1.6. No withdrawal of application shall be permitted by any shareholder after the issue closing date.
- 2. The detailed procedures on the Rights Issue process is given within the circular for due compliance.



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Reserve Bank of India





# 1. Enhancing Security of Card Transactions

Date of circular : January 15, 2020 Effective date : January 15, 2020

Above circular is available at the following link:

https://www.rbi.org.in/scripts/BS\_CircularIndexDisplay.aspx?Id=11788

# **Editor's Quick Take:**

RBI Vide its circular dated January 15, 2020 has with a view to enhance Security of Card Transactions has directed all banks to ensure that:

- a) At the time of issue / re-issue, all cards (physical and virtual) shall be enabled for use only at contact based points of usage [viz. ATMs and Point of Sale (PoS) devices] within India. Issuers shall provide cardholders a facility for enabling card not present (domestic and international) transactions, card present (international) transactions and contactless transactions, as per the process outlined in para 1 (c).
- b) For existing cards, issuers may take a decision, based on their risk perception, whether to disable the card not present (domestic and international) transactions, card present (international) transactions and contactless transaction rights. Existing cards which have never been used for online (card not present) / international / contactless transactions shall be mandatorily disabled for this purpose.





- c) Additionally, the issuers shall provide to all cardholders:
  - i. facility to switch on / off and set / modify transaction limits (within the overall card limit, if any, set by the issuer) for all types of transactions domestic and international, at PoS / ATMs / online transactions / contactless transactions, etc.;
  - ii. the above facility on a 24x7 basis through multiple channels mobile application / internet banking / ATMs / Interactive Voice Response (IVR); this may also be offered at branches / offices;
  - iii. alerts / information / status, etc., through SMS / e-mail, as and when there is any change in status of the card.
- 2. The provisions of this circular are not mandatory for prepaid gift cards and those used at mass transit systems.
- 3. Issuers and card networks may give wide publicity to the provisions of this circular.





# 2. Introduction of Rupee Derivatives at International Financial Services Centres (IFSC)

Date of circular: January 20, 2020 Effective date: January 20, 2020

Above circular is available at the following link:

https://www.rbi.org.in/scripts/BS CircularIndexDisplay.aspx?Id=11791

# **Editor's Quick Take:**

RBI vide its circular Dated 20, January 2020 has decided to allow Rupee derivatives (with settlement in foreign currency) to be traded in International Financial Services Centres (IFSCs), starting with Exchange Traded Currency Derivatives(ETCD).

Currency futures contracts may be listed on recognised stock exchanges at IFSCs subject to the Currency Futures in International Financial Services Centre (Reserve Bank) Directions, 2020 (Notification No.FMRD.FMD.01/ED(TRS)-2020 dated January 20, 2020), issued by the Reserve Bank of India, a copy of which is annexed (Annex I).

Currency options contracts may be listed on recognised stock exchanges at IFSCs subject to the Currency Options in International Financial Services Centre (Reserve Bank) Directions, 2020 (Notification No.FMRD.FMD.02/ED(TRS)-2020 dated January 20, 2020), issued by the Reserve Bank of India, a copy of which is annexed (Annex II).





# 3. Investment by Foreign Portfolio Investors (FPI) in Debt

Date of circular : January 23, 2020 Effective date : January 23, 2020

Above circular is available at the following link:

https://www.rbi.org.in/scripts/BS\_CircularIndexDisplay.aspx?Id=11797

# **Editor's Quick Take:**

RBI vide its circular dated 23 January 2020 has amended the direction for the Foreign Exchange Management (Debt Instruments) Regulations, 2019.

The following changes are made to the Directions: -

- a) In terms of paragraph 4(b) (i) of the Directions, short-term investments by an FPI shall not exceed 20% of the total investment of that FPI in either Central Government Securities (including Treasury Bills) or State Development Loans. This short-term investment limit is hereby increased from 20% to 30%.
- b) In terms of paragraph 4(b) (ii) of the Directions, short-term investments by an FPI shall not exceed 20% of the total investment of that FPI in corporate bonds. This short-term investment limit is hereby increased from 20% to 30%.
- c) FPI investments in Security Receipts are currently exempted from the short-term investment limit (paragraph 4 (b)(ii)) and the issue limit (paragraph 4(f)(iii)).





Above mentioned exemptions shall also extend to FPI investments in the following securities:

- i. Debt instruments issued by Asset Reconstruction Companies; and
- ii. Debt instruments issued by an entity under the Corporate Insolvency Resolution Process as per the resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016.





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Central Board of Excise & Customs





# 1. Standard Operating Procedure (SOP) to be followed by exporters

Date of Circular: January 23, 2020 Effective date: January 23, 2020

**Above Circular is available at the following link:** 

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-131.pdf

# **Editor's Quick Take:**

Central Board of Indirect Taxes and Customs vide its notification dated 23<sup>rd</sup> January 2020 has issued Standard Operating Procedure (SOP) to be followed by exporters. Key highlights of the SOP are as follows:

- To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.
- Exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.





- Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of
  information in proforma by the exporter. If the verification is not completed within this period, the
  jurisdiction officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief
  Commissioner/Chief Commissioner Office.
- After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).
- The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue





# 2. The Rate of Exchange of Conversion of each of the Foreign Currencies

Date of Notification: January 02, 2020 Effective date: January 03, 2020

Above Circular is available at the following link:

http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt01-

2020.pdf;jsessionid=6064E02E6BE1A63DF57611C08967483D

# **Editor's Quick Take:**

Central Board of Indirect Taxes and Customs vide its notification dated 3<sup>rd</sup> January 2020 has issued revised rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Sl.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(For Imported Goods)	(For Exported Goods)
1.	Australian Dollar	51.15	48.90
2.	Bahraini Dinar	195.25	183.15



# S WHITE SPAN



Sl.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees		
(1)	(2)	(3)		
		(For Imported Goods)	(For Exported Goods)	
3	Canadian Dollar	55.90	53.90	
4	Chinese Yuan	10.40	10.05	
5	Danish Kroner	10.90	10.50	
6	EURO	81.50	78.45	
7	Hong Kong Dollar	9.30	9.00	
8	Kuwaiti Dinar	243.05	227.60	
9	New Zealand Dollar	49.25	47.00	
10	Norwegian Kroner	8.25	7.95	
11	Pound Sterling	95.85	92.55	
12	Qatari Riyal	20.10	18.85	



## WHITESPAN



Sl.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees		
(1)	(2)	(3)		
		(For Imported Goods)	(For Exported Goods)	
13	Saudi Arabian Riyal	19.65	18.40	
14	Singapore Dollar	53.90	52.05	
15	South African Rand	5.25	4.95	
16	Swedish Kroner	7.75	7.50	
17	Swiss Franc	75.05	72.15	
18	Turkish Lira	12.35	11.60	
19	UAE Dirham	20.05	18.80	
20	US Dollar	72.15	70.45	



# WENTESPAN



Sl.No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees		
(1)	(2)	(3)		
		(a)	(b)	
		(For Imported Goods)	(For Exported Goods)	
1.	Japanese Yen	66.85	64.35	
2.	Korean Won	6.35	5.95	



NEWSLETTER

## CBDT

Central Board of Direct Taxes





#### 1. The Income-tax (1st Amendment) Rules, 2020

Date of Notification: January 03, 2020

Effective from: April 01, 2020

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/news/notification\_01\_2020.pdf

#### **Editor's Quick Take:**

CBDT vide its notification dated January 03, 2020 makes the following amendment in the Income-tax Rules, 1962 are as follows:-

In the Income-tax rules, 1962 (hereinafter referred to as the principal rules), in rule 12,-

- (a) in sub-rule (1),-
- (I) in the opening portion, for the figures "2019", the figures "2020" shall be substituted;
- (II) in clause (a), in the proviso,-
  - (i) in item (V), the word "or" occurring at the end shall be omitted;
  - (ii) after item (VI), the following items shall be inserted, namely:- "(VII) owns a house property in joint-ownership with two or more persons; or (VIII) is required to furnish a return of income under seventh proviso to sub-section (1) of section 139.";





(III) in clause (ca), -

(ii) in the proviso, after item (V), the following item shall be inserted, namely:-

"(VI) owns a house property in joint-ownership with two or more persons."; (b) in sub-rule (5), for the figures "2018", the figures "2019" shall be substituted.

In the principal rules, in Appendix II, for Form "Sahaj (ITR-1)" and "Sugam (ITR-4)", the following Forms shall, respectively, be substituted, namely:-



#### NEWSLETTER

## Misc.Laws





1. Notice under Rule 7(3) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules 2016

Date of Public Notice: January 20, 2020

Above public notice is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Notice 20012020.pdf

#### **Editor's Quick Take:**

IEPF Authority vide its public notice dated 20<sup>th</sup> January, 2020 has issued a list of 11619 claimants through public notice under Rule 7(3) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules 2016. As per proviso of Rule 7(3) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 in case of non-receipt of the documents by the Authority after expiry of 90 days from the date of filing Form IEPF-5, the Authority may reject the Form IEPF-5, after giving an opportunity to the claimants to furnish response within a period of thirty days.

All such Claimants and Companies are requested to submit the required documents/reports to the Authority within 30 days of this notice, failing which all such claims may be rejected by the Authority without any further notice.





#### 2. Guidelines for submission of Cash / Non-Cash documents at Trade Marks Registry

Date of Public Notice: January 09, 2020

Above public notice is available at the following link:

http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/Public Notice -

Guidelines for Document Sumission.pdf

#### **Editor's Quick Take:**

Trade Marks Registry ide its public notice dated January 09, 2020 has issued the guidelines submission of cash/ non cash documents with the Trade Marks Registry. The documents which found not as per guidelines as below will not be accepted at the counter:

- 1. All applications, notices, statements, or other documents served, left or sent, at or to the Registry or with or to the Registrar shall be typewritten and printed in Hindi or in English in legible characters with deep permanent ink upon strong A-4 or legal size on one side only.
- 2. Covering Letter should clearly indicate in the name of the related section (e.g. Letter related to EDP/ Examination/ PRAS/ PARM/ TLA/ TOP/ Journal/ Renewal/ Post Registration, etc.) to which document is submitted, at the top, center of the document in bold and underlined format.
- 3. Subject of the Covering Letter should compulsorily indicate the document/ document type (e.g. Authorization letter, Reply to Examination, etc.) and the Reference number to the Application/Opposition/Rectification and be clearly visible.
- 4. Name of the filer with code and authority under which the same is filed, should be clearly indicated at the first page.





- 5. Bar Code should be affixed on the first page only and in the straight line at the top, right side of the document.
- 6. Personal documents (e.g. PAN card/Aadhar Card/Bank details, etc.) should NOT be submitted along with any documents (unless specifically asked for),
- 7. Authorization documents for attending hearing should be submitted well in advance before the hearing date.





NEWSLETTER

An Article on Insolvency and Bankruptcy Code 2016





### **Resolution Plan**

#### Introduction

"Debt" within the meaning of section 3(11) of the I&B Code, 2016 means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. "Default" in terms of section 3(12) of the "I&B" Code, 2016 means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. It is the situation of insolvency. insolvency is the condition of a person who is unable to pay off his debts as they fall due, or in the usual course of trade and business. As well, Bankruptcy is a legal process through which insolvent person may seek relief from some or all of their debt. In most jurisdictions, bankruptcy is imposed by a court order, often initiated by the debtor. Thus, Bankruptcy is not the synonym for insolvency.

Section 2 provides the applicability of the Code. Section 3(23) of the Code includes the "person" who may initiates Corporate Insolvency Resolution Process under 6 of the Code. As per the Preamble of the Code, inter-alia, it is an act to reorganisation and insolvency resolution and balance the interest of all the stakeholders. However, the Preamble itself provides that it is an act to reorganisation and insolvency resolution. The reorganisation may be of any type. The IBC (Amendment) Act, 2019, No.26 of 2019, effective from 16.08.2019 has made Explanation in Section 5(26), "Resolution Plan" may include restructuring of the corporate debtor, including by way of merger, amalgamation and demerger. The "Resolution Plan" means a plan proposed by Resolution Applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.





However, there are various objective of the Code, the priorities of the Code are defined by the Hon'ble NCLAT in Binani Industries Limited Vs. Bank of Baroda & Anr.-Company Appeal (AT)(Insolvency) No.82 of 2018 etc. NCLAT Date of decision 14th November, 2018. The NCLAT discussed the objective of the I & B Code. The Appellate Authority held the first order objective is 'resolution'. The second order objective is "maximisation of value of assets of the Corporate Debtor and the third order is promoting entrepreneurship, availability of credit and balancing the interests". The order of object is sacrosanct.

#### 2. Role of the Adjudicating Authority

The Adjudicating Authority has not to interfere with the Resolution Plan approved by the Committee of Creditors, if it meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on all the stakeholders. *In the matter of Binani Industries Ltd v. Bank of Baroda & Ors.* Company Appeal (AT) (Insolvency) No. 82 of 2018, NCLAT with Company Appeal (AT)(Insolvency) No. 123 of 2018 Delhi. NCLAT order dated 14.11.2018. The 'I&B Code' defines 'Resolution Plan' as a plan for Insolvency Resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, colour and texture of 'Resolution Plan', which is left to imagination of stakeholders read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve Insolvency (rescue a failing, but viable business); should maximise the value of assets of the 'Corporate Debtor', and should promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders. Resolution Plan is not sale, not an auction, not recovery and not liquidation. *In the matter of Essar Steel Ltd* IA *No.431 of 2018 in CP(IB) Nos.39 & 40 of 2017 and allied IAS.* NCLT Ahmedabad date of order 8.3.2019. The Adjudicating Authority held that once the resolution plan is approved by the committee of creditors,



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thereafter, the aforesaid plan is binding on all the stakeholders. The Adjudicating Authority has limited scope to suggest or recommend but cannot make judicial review of the commercial decision taken by the CoC. Reliance was placed upon the matter of *K.Sashidhar v. Indian Overseas Bank and Others [2019] 148 CLA 497(SC). In K. Sashidhar vs. Indian Overseas Bank & Ors., Date of decision 5<sup>th</sup> February, 2019. The Hon'ble Supreme Court held: "the legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors". It further observed: "Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timeliness prescribed by the I&B Code....... In para 3 of this judgement, the Hon'ble Supreme Court held: "The CoC is called upon to consider the resolution plan under section 30(4) after it is vetted and verified by RP as being compliant with all statutory requirements specified under section 30(2)". In the said judgement, the Hon'ble Supreme Court observed: "The Resolution Professional is not required to express his opinion on matters within the domain of the financial creditors, to approve or reject the resolution plan, under section 30(4) under the I & B Code". Thus, IP and CoC have a complete and clear understanding of their roles and responsibilities in a CIRP under the Code.* 

In the case of Encore Asset Reconstruction Company Private Limited Vs. Calyx Chemicals & Pharmaceuticals Limited; Co. Appeal (AT) (Insolvency) No.657 of 2019. Date of order 30.08.2019. The Committee of creditors approved the Resolution Plan by 77.08% voting share. It resulted into haircut of 95.2%. The appellant dissented the Resolution Plan and abstained from voting. In pursuance of filing appeal, the Appellate Authority held that in the absence of any discrepancies or discrimination, it is not inclined to interfere with the impugned order.





In the matter of ICICI Bank Ltd. v. Innoventive Industries Ltd.- MA No. 529 of 2017. The application was filed by the workmen of Innoventive Industries Ltd contending that if the company (corporate debtor) is liquidated, the workmen will suffer as corporate debtor had been providing livelihood to more than 2000 families. NCLT observed that the jurisdiction of NCLT lies to exercise its power under section 31 of the Code only when a plan is approved by CoC. When no decision has been taken by CoC, no jurisdiction will lie to NCLT as jurisdiction given under section 30 is only limited to approve or reject the Resolution Plan approved by CoC with super majority. Thus, the application was dismissed. [The voting of 75% by committee of Creditors with regard to resolution plan has reduced to 66% vide Insolvency and Bankruptcy Code (Amendment) Act, 2018, effective from 6.06.2018]. Thus, the Adjudicating Authority has no role to interfere in the Resolution Plan approved by the Committee of Creditors.

#### 3. Role of Adjudicating Authority with regard to treatment to operational creditors

The NCLAT at the time of approval of the resolution plan has to examine that the operational creditors are roughly given the same treatment which is given to the financial creditors in terms of sub-section (2)(b) of section 30 of the Code. It provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53. Section 53(1) provides for payment to the claimants in the waterfall mechanism. Section 53(1)(b)(ii) provides for making payment to the Financial Creditors. As opposed Section 53(1)(f) provides for making payment to Operational Creditors. Thus, after making payment to the Financial Creditors, the turn of Operational Creditors come.



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As only the Financial Creditors are part of the Committee of Creditors, then the Resolution Plan is approved in such a way which has provision of 100% payment to the Financial Creditors as against notional amount rupee one or roughly not equal amount is provided for the operational creditors (refer the matter of M/s Essar Steel Ltd.) in terms of compliance of section 30(2) of the Code. However, Resolution Plan is approved by the Committee of Creditors but it is against the Preamble of the Code itself and it is not the intention of legislature. Thus, the Adjudicating Authority has to ensure that the operational creditors are given roughly the same treatment alike Financial Creditors. In the matter of Essar Steel Ltd IA No.431 of 2018 in CP(IB) Nos.39 & 40 of 2017 and allied IAS. NCLT Ahmedabad date of order 8.3.2019. The Adjudicating Authority held that the liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution. The lordship held that the dues of operational creditors must get at least similar treatment as compared to the dues of Financial Creditors. In the same case, the Adjudicating Authority held that the Resolution Professional shall examine each Resolution Plan received by him to confirm that each Resolution Pan (a) provides for the payment of insolvency resolution process costs in a manner specified by the board in priority to the repayment of other debts of the corporate debtor; (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under section 53; (c) provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; (d) the implementation and supervision of the resolution plan; (e) does not contravene any of the provisions of the law for the time being in force; (f) confirms to such other requirement as may be specified by the board; (g) the resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. In the case of Ayush Agrawal Vs. C.A.Kannan Tiruvengadam & Anr., company Appeal (AT)(Insolvency) No.606 of 2018. NCLAT Date of decision 18.09.2019.



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The Respondent-Successful Resolution Applicant has filed a summary chart of disbursement of funds to Financial Creditors (secured)-80.54%, Financial Creditors (Unsecured)- 16.11%, Operational Creditors (Workmen & Employees)-100%, and Operational Creditors (Others) 60.75%. The Appellant (Operational Creditors) claimed 70.80% as per resolution plan. It was accepted on behalf of the Respondent to be paid to the Operational Creditors other than workmen 60.75%, as against initially provided 70.8%. The Hon'ble Appellate Authority directed the Respondent to provide the Appellant (Operational Creditor other than workmen) 60.75% as admitted to be paid by the Insolvency Professional, i.e. roughly the same amount. In the case of Central Bank of India vs. Resolution Professional of the Sirpur Paper mills Ltd. & Ors.-Company appeal (AT)(Insolvency) No. 256 of 2018. The NCLAT held that the Board cannot override the provisions of I&B Code nor it can be inconsistent with the Code. The NCLAT further held that Clauses (b) and (c) of Regulation 38(1) being inconsistent with the provisions of I&B Code, and the legislators having not made any discrimination between the same set of group such and 'Financial Creditor' or Operational Creditor', Board by its Regulation cannot mandate that the Resolution Plan should provide liquidation value to the Operational Creditors' clause (b) of regulation 38(1) or liquidation value to the dissenting Financial Creditors [clause (c) of regulation 38(1)]. Such regulation being against Section 240(1) can not be taken into consideration and any resolution plan which provides liquidation value to the Operational Creditor(s) or liquidation value to the dissenting 'Financial Creditor (s) in view of clause (b) and (c) of Regulation 38(1), without any other reason to discriminate between two sets of creditors similarly situated such as Financial Creditors or the Operational Creditors cannot be approved being illegal. After the decision, the Board amended/repealed the Regulation 38 having found it discriminatory.





In Swiss Ribbons Pvt Ltd & Anr. Vs. Union of India & Ors-2019 SCC Online SC 73: Date of Decision 25<sup>th</sup> January, 2019, wherein the Hon'ble Supreme Court observed that NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors right are safeguarded.

In the matter of Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors., Company Appeal (AT) (Ins.) No.242 of 2019, NCLAT Date of decision 4/07/2019. NCLAT held that the suggestion of 'Resolution Applicant' to distribute the financial package offered by it only to the 'Secured Financial Creditors', denying the right of 'Operational Creditors' and other stakeholders, is also against the provision of Section 30(2) and Regulation 38(1A) and thereby can not be upheld. (para 144, page 73). The NCLAT held that if both Section 5(7) and Section 5(8) are read together, it is evident that there is no distinction made between one or other 'Financial Creditor'. All persons to whom a financial debt is owed by the 'Corporate Debtor', which debt is disbursed against the consideration for time value of money, whether they come within one or other clause of Section 5(8), all of such person form one class i.e. 'Financial Creditor' they cannot be sub-classified as 'Secured' or 'Unsecured Financial Creditor' for the purpose of preparation of the 'Resolution Plan' by the 'Resolution Applicant' (para 164, p-84). A 'Resolution Plan' shows upfront payment in favour of the Creditors including the 'Financial Creditors', 'Operational Creditors' and the other Creditors. It is not a distribution of assets from the proceeds of sale of liquidation of the 'Corporate Debtor' and, therefore, the 'Resolution Applicant' cannot take advantage of Section 53 for the purpose of determination of the manner in which distribution of the proposed upfront amount is to be made in favour of one or other stakeholders namely- the 'Financial Creditor', 'Operational Creditor' and other creditors.





Thus, the NCLAT held that Section 53 cannot be made applicable for distribution of amount amongst the stakeholders as proposed by the 'Resolution Applicant' in its 'Resolution Plan'. Therefore, NCLAT modified the resolution plan for giving the same treatment to the Financial and Operational Creditors (p-104 to 106). The NCLAT further directed that after distribution of the amount of Rs.42000 crore in the directed manner, if any amount is found to have been generated as profit during the Corporate Insolvency Resolution Process, it should be distributed amongst all the Financial Creditors and the Operational Creditors on pro-rata basis of their claims subject to the fact that it should not exceed the admitted claim (page-110). The order of the Hon'ble NCLAT was challenged in the Hon'ble Supreme Court. Thereafter, the Insolvency and Bankruptcy Code (Amendment) Act, 2019, w.e.f. 16.08.2019 included the amendment provision in section 30(2)(b) of the Code:

- "(b) provides for the [payment] of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
  - (i) the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53, or
  - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order or priority in subsection (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.





In the matter of Committee of Creditors Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 & Ors.; Date of Decision 15.11.2019. The Hon'ble Supreme Court held as regards of the Role of NCLT & NCLAT that (i) the limited judicial review is available to Adjudicating Authority within the four corners of section 30(2) of the Code. In respect of NCLAT, it has to be within parameters of Section 32 read with section 61(3) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors.

#### 4. Conclusion-

The ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but the decision of such Committee must reflect the fact that it has adequately balanced the interests of all stakeholders including OCs, while the Adjudicating Authority cannot interfere on merits with commercial decision taken by the CoC. The limited judicial review available is to see that the CoC has taken into accounts the fact that the Corporate Debtor needs to keep going concern during the insolvency resolution process. The NCLT or the NCLAT has not to interfere in the merits of the business decision taken by the requisite majority of the CoC, provided that it is otherwise in conformity with the provisions of the Code and Regulations.

If the Adjudicating Authority finds that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the CoC to re-submit such plan after satisfying the aforesaid parameters. Once it is satisfied that the CoC has paid attention to these key features, it must then pass the resolution plan.



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WINS WHITESPAN INFORMATION AND NEWS BERVICES

NEWSLETTER

CONCILIATION AS A MODE OF SETTLEMENT UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013





CONCILIATION AS A MODE OF SETTLEMENT UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Conciliation is the process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

SECTION 10 OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 PROVIDES CONCILIATION AS A MODE OF SETTLEMENT OF COMPLAINTS FILED UNDER THE ACT SUBJECT TO FOLLOWING CONDITIONS:

- i. Internal Committee Members to offer the conciliation to parties before starting the inquiry
- ii. Can be initiated only at the request of the aggrieved woman
- iii. Can be opted for only before the initiation of the enquiry process
- iv. No monetary settlement can be made as a basis of conciliation
- v. Conciliation should be through IC and not any other outsider

#### **ROLE OF INTERNAL COMMITTEE IN CONCILIATION**

- Adopt a neutral standard
- Listen to both Parties carefully and identify the issues
- Assist in settlement of disputes between the Parties





#### LEGAL ENFORCEABILITY OF SETTLEMENT ARRIVED AT THROUGH CONCILIATION

If both Parties agree to the settlement terms	Binding order is passed by the Internal Committee
If either Party fails to abide by the order	Complainant can go for full inquiry
If both Parties abide by the terms agreed between them during the process of conciliation	Matter stands closed

Mere Physical Contact Without Sexual Overtones Would Not Amount To Sexual Harassment At Workplace

A and B had an argument in office and A held B by her arm, but the act was done only in a fit of anger. Will A's act amount to sexual harassment?

The said incident may be a case of harassment and is deplorable, but same would not qualify as sexual harassment. Plainly, all physical contact cannot be termed as sexual harassment and only a physical contact or advances which are in the nature of an "unwelcome sexually determined behaviour" would amount to sexual harassment.





Physical contact or advances would constitute sexual harassment provided such physical contact is a part of the sexually determined behaviour. Such physical contact must be in the context of a behaviour which is sexually oriented. Plainly, a mere accidental physical contact, even though unwelcome, would not amount to sexual harassment. Similarly, a physical contact which has no undertone of a sexual nature and is not occasioned by the gender of the complainant may not necessarily amount to sexual harassment.







## Article On

Homebuyer – As Financial Creditor, an NCLT/IBC perspective



#### NEWSLETTER

### Homebuyer – As Financial Creditor, an NCLT/IBC perspective

To understand the rights of an allottee in a real estate project, like a homebuyer, to approach National Company Law Tribunal (NCLT) for initiation of insolvency proceedings against the builder/developer in case of delay/default, an attempt has been made to analyze the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (the Code)along with the relevant case laws having bearing on such provisions.

Chapter II of the Code which deals with Corporate Insolvency Resolution Process (CIRP) vide section 6, inter alia, entitles a financial creditor to initiate CIRP. A homebuyer's status under the Code is that of a financial creditor. It is relevant to note that this status was not accorded to homebuyers since inception of the Code, rather it evolved as follows.

Section 5(7) of the Code defines - "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Vide section 5(8)(f) of the Code - "financial debt", inter alia, includes – any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

Explanation to section 5(8)(f) says - for the purposes of this sub-clause, - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.



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The explanation to section 5(8)(f) including allottees of a real estate project was subsequently added to the Code with effect from June 6th 2018. And this addition was subject to challenge in Pioneer Urban Land Development case.

In Pioneer Urban Land and Infrastructure Limited V. Union of India, the Supreme Court upheld the constitutional validity of the explanation and observed that –"Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law."

The following provisions of the Real Estate (Regulation and Development) Act, 2016 also need reference.

Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 defines -"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

Section 2 (zn) defines - "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.



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Therefore, in simple words – an allottee in a real estate project is a financial creditor under the Code, and as contemplated in section 6 of the code. Such an allottee can initiate a CIRP in case of default.

Being equipped with the right to approach NCLT with CIRP, homebuyers felt well treated. However, to their dismay, the following provisos were added to section 7(1) by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 with effect from 28.12.2019.

"Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less.

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission."

The addition of these provisos was challenged before the Apex Court in Writ Petition (Civil) No. 26/2020 - MANISH KUMAR V. UNION OF INDIA & ANR.

The court has passed interim order to maintain status quo with respect to the pending applications before NCLT.





#### **Conclusion:**

The Ordinance passed by the government barred homebuyers less than 100, or 10 percent of total homebuyers, from moving insolvency proceedings against real estate developers. The Section 3 of the ordinance required all pending applications by homeowners to meet the minimum threshold of 10 homebuyers by January 28.

However, Hon'ble SC in the matter of Manish Kumar Vs. UOI, partly stayed the IBC ordinance. As per the order, the National Company Law Tribunal (NCLT) will have to maintain status quo with respect to the applications already filed by homebuyers and investors against defaulting developers. This order provides much needed interim relief to home buyrs who have already moved before NCLT.

However, fate of the Ordinance is tested when Hon'ble SC will decide the constitutional validity of the amendment, after hearing the government and the homebuyers.

The Supreme Court, after hearing the petition, said till further hearing, the NCLT can't reject the applications of the home buyers or investors for non-compliance of the new amendment. In view of the above, Hon'ble NCLT is accepting the application filed by home buyers, subject to outcome of the decision of the Hon'ble SC in the above matter.

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NEWSLETTER



## WINS

Compliance Checklist





### **Compliance Calendar for February 2020**

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		



# S WHITESPAN



Income Tax Related Compliances
<ul> <li>Due date for deposit of Tax deducted/collected for the month of January, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan</li> </ul>
Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M
<ul> <li>Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2020 has been paid without the production of a challan</li> <li>Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2019</li> </ul>
RBI Related Compliances
<ul> <li>Monthly return (NBS-6) on exposure to capital market</li> <li>Monthly Return on Important Financial Parameters</li> </ul>
Monthly statement of short term dynamic liquidity in Form ALM-I



# WS WHITE SPAN Advisory



NEWSI	
	Economic, Industrial & Labour Law Related Compliance
	<ul> <li>Monthly payment of PF (Non-Corporate)</li> <li>File monthly return (Form No.5) for employees leaving /joining during the previous month</li> <li>File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))</li> <li>File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))</li> <li>File monthly return of members joining service during the previous month (Form no.F4(PS)</li> </ul>
	<ul> <li>Monthly return of PF for the previous month</li> <li>Monthly return of PF for the previous month with respect to international workers</li> </ul>
	Payment of ESI Contribution for the previous month
	Good and Service Tax Related Compliances
	GSTR-1 (Monthly)
	• GSTR-7 • GSTR-8
	<ul> <li>GSTR-3B</li> <li>GSTR-5</li> <li>GSTR-5A</li> </ul>





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