

WHITESPAN

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NEWSLETTER

WHITESPAN INFORMATION AND NEWS SERVICES) A GATEWAY TO KNOWLEDGE MONTHLY NEWSLETTER

May 01, 2020 – May 31, 2020 Issue No. – 038/ 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 us an immense pleasure to share the 38th edition of "WINS – e-newsletter" for May 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 contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor's Quick Take.

In this issue we have covered the following:

- 1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
- 2. Articles on:
 - i. Cross Border Insolvency
 - ii. Investor Education And Protection Fund-complete Overview
 - iii. Mimansa Rules of Interpretation: A Lost Legacy
- 3. Compliance checklist for the month of June 2020.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback are valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at vinayshukla@whitespan.in

With warm regards

WINS (Whitespan Information and News Services)

May 31, 2020





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 graduate in Law and Commerce from Christ University, Bengaluru.



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MCA Ministry of CorporateAffairs





1. Amendment of Item no. (Viii) in the Schedule VII of Companies Act 2013

Date of Notification: May 26, 2020 Effective Date: March 28, 2020

Above Notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Notice 27052020.pdf

Editor's Quick Take:

MCA vide its notification dated May 26, 2020 has notified that any contribution made towards PM CARES Fund shall qualify as CSR expenditure under Section 135 of the Companies Act, 2013 & Schedule VII thereof.

Further, this notification has been given retrospective effect from March 28, 2020. Accordingly, any contribution made to PM CARES Fund made on or after March 28, 2020 shall be eligible CSR Expenditure and contributing Companies can accordingly take benefit of the same





PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

S. No	Particulars	Due date	Extended time Period	Link
Α	Names reserved for 20 days for new company incorporation. SPICe+ Part B needs to be filed within 20 days of name reservation.	Name expiring any day between 15 th March 2020 to 31 st May 2020.	20 days beyond 31 st May 2020. (i.e. 20 th June 2020)	http://www.mca.g ov.in/Ministry/pdf/ Extension 220420 20.pdf
В	Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation.	Names expiring any day between 15 th March 2020 to 31 st May 2020.	20 days beyond 31 st May 2020.(i.e. 20 th June 2020)	
С	Extension of RSUB validity for companies.	where last date of Resubmission (RSUB) falls between 15 th March 2020 to 31 st May 2020	Additional 15 days beyond 31 st May 2020 (i.e.15 th June 2020)	
D	Names reserved for 90 days for new LLP incorporation/change of name.	Names expiring any day between 15 th March 2020 to 31 st May	20 days beyond 31 st May 2020. (i.e. 20 th June 2020)	
E	RSUB validity extension for LLPs.	Where resubmission (RSUB) falls between 15th March 2020 to 31st May 2020	Additional 15 days beyond 31 st May 2020 (i.e.15 th June 2020)	
f	Extension for marking IEPF-5	SRNs where last date of filing e Verification Report (for both Normal as well as Resubmission filing) falls between 15th March 2020 to 31st May 2020	30 th September 2020	





3. Clarification on dispatch of notice under section 62(2) of Companies Act, 2013 by listed companies for right issue opening upto 31st July, 2020

Date of General Circular: May 11, 2020

Above General Circular is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular21_11052020.pdf

Editor's Quick Take:

MCA vide its General circular dated May 11, 2020 has clarified that for the rights issue opening of Listed Companies till July 31, 2020, inability to dispatch of Notice would not be considered as violation under Section 62(2) of the Act.

For more understanding of the complete circular, please check the articles published at he below link.

- 1. http://whitespanadvisory.com/resource/Image/Note on clarification on dispatch of notice under section 62.pdf
- 2. https://taxguru.in/company-law/dispatch-notice-listed-companies-rights-issue-upto-31-07-2020.html





4. <u>Clarification on holding of annual general meeting (AGM) through video conferencing (VC)</u> or other audio visual means (OAVM)

Date of Circular: May 05, 2020 Effective Date: May 05, 2020

Above circular is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular20 05052020.pdf

Editor's Quick Take:

MCA vide its circular dated May 05, 2020 has allowed Companies to hold Annual General Meetings (AGMs) through VC or OAVM during the calendar at year 2020.

The circular also provides for the guidelines to be adopted for conducting such AGMs by companies which are required to provide the facility of e-voting under the Act, for companies which have opted for such facility and for companies which are not required to provide the facility of e-'voting under the Act. For more understanding of the complete circular, please check the articles published on the below link.

- 1. http://whitespanadvisory.com/resource/Image/AGM VC E Voting.pdf
- 2. http://whitespanadvisory.com/resource/Image/AGM_VC_NON_E_Voting.pdf
- 3. https://taxguru.in/company-law/agm-vc-oavm-companies-required-provide-e-voting-facility.html
- 4. https://taxguru.in/company-law/agm-through-vc-oavm-companies-not-required-provide-e-voting-facility.html



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SEBI

Securities
Exchange
Board of India





1. Advisory on disclosure of material impact of COVID-19 pandemic on listed entities under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Date of Circular: May 20, 2020 Effective Date: May 20, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/may-2020/advisory-on-disclosure-of-material-impact-of-covid-19-pandemic-on-listed-entities-under-sebi-listing-obligations-and-disclosure-requirements-regulations-2015 46688.html

Editor's Quick Take:

SEBI vide its circular dated May 20, 2020 has advised all listed entities, to make disclosure of material impact of COVID–19 pandemic under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR') on financial condition, operations, liquidity and demand of product/services etc.

All listed entities have been further advised to evaluate the impact of covid-19 pandemic on their business performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same.

For more understanding of the complete circular, please check the articles published on the below link.

https://taxguru.in/sebi/advisory-disclosure-material-impact-covid-19-listed-entities.html





2. Relaxation in time lines for compliance with regulatory requirements

Date of Circular: May 15, 2020 Effective Date: May 15, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/may-2020/relaxation-in-timelines-for-compliance-with-regulatory-

requirements 46674.html

Editor's Quick Take:

SEBI vide its circular dated May 15, 2020 in continuation to its earlier circulars has extended the timelines for compliance of various regulatory requirements, by the trading members / clearing members / depository participants as under:

SEBI circular	S. Nos. for which timeline is extended	Extended Timeline /Period of exclusion
SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020.	L	Till June 30, 2020 for the month of April 2020.
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-timelines-	II	Till June 30, 2020 for the quarter ended on March 31, 2020.
for-compliance-with-regulatory- requirements-by-trading-members- clearing-members 46523.html	X and XI	Till June 30, 2020



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SEBI circular	S. Nos. for which timeline is extended	Extended Timeline /Period of exclusion
SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020 https://www.sebi.gov.in/legal/circula rs/apr-2020/relaxation-in-time-period-for-certain-activities-carried-out-by-depository-participants-rtas-issuers-kras-stock-brokers 46524.html		Period of exclusion shall be from March 23, 2020 till June 30, 2020
SEBI/HO/MIRSD/DOP/CIR/P/2020/68	I, II and III	Till June 30, 2020
https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements-by-trading-members-clearing-members 46539.html	IV and V	Two months from the due date





3. <u>SEBI Relaxation on Non-Compliance with Minimum Public Shareholding (MPS)</u> Requirements

Date of Circular: May 14, 2020 Effective Date: May 14, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/may-2020/relaxation-from-the-applicability-of-sebi-circular-dated-october-10-2017-on-non-compliance-with-the-minimum-public-shareholding-mps-requirements 46669.html

Editor's Quick Take:

SEBI vide its circular dated May 14, 2020 has provided relaxation to all listed entities from penal actions for non-compliance of MPS requirements during the period from March 01, 2020 to August 31, 2020. In case any penal actions have already been initiated any company by any stock exchange, such action may be withdrawn.

SEBI in its earlier Circular dated October 10, 2017 had laid down the penal actions that may be taken for non-compliance with the Minimum Public Shareholding(MPS) requirements.

Please refer the link below for the same:

https://www.sebi.gov.in/legal/circulars/oct-2017/non-compliance-with-the-minimum-public-shareholding-mps-requirements 36216.html





4. Relaxations relating to procedural matters –Takeovers and Buy-back

Date of Circular : May 14, 2020 Effective Date : May 14, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-takeovers-and-

buy-back 46672.html

Editor's Quick Take:

SEBI vide its circular dated May 14, 2020 has granted one time relaxation on certain regulations of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Buy-back of securities) Regulations, 2018 pertaining to open offers and buy-back tender offers opening up to July 31, 2020 due to current condition arise due to Covid-19 Pandemic.

Key Highlights of the Relaxation are as follow:

- 1.1 Service of the letter of offer and/or tender form and other offer related material to shareholders may be undertaken by electronic transmission as already provided under Regulation 18(2) of the Takeover Regulation and Regulation 9(ii) of Buy-back Regulations subject to the following:-
- 1.1.1. The acquirer / company shall publish the letter of offer and tender form on the websites of the company, registrar, stock exchanges and the manager(s) to offer.
- 1.1.2. The acquirer / company along with lead manager(s) shall undertake all adequate steps to reach out to the/its shareholders through other means such as ordinary post or SMS or audio-visual advertisement on television or digital advertisement, etc.





- 1.1.3. Further, the Acquirer/ Company shall make an advertisement containing details regarding the dispatch of the letter of offer electronically and availability of such letter of offer along with the tender form on the website of the company, registrar and manager to the offer in the same newspapers in which (i) detailed pubic statement was published as per regulation 14(3) of Takeover Regulation or (ii) public announcements was published as per regulation 7(i) of Buy-back regulation.
- 1.1.4. Further, the acquirer/ company may have the flexibility to publish the dispatch advertisement in additional newspapers, over and above those required under the respective regulations.
- 1.1.5. The acquirer/ company shall make use of advertisements in television channels, radio, internet etc. to disseminate information relating to the tendering process. Such advertisements can be in the form of crawlers/tickers as well.
- 1.1.6. All the advertisement issued should also be made available on the website of the company, Registrar, Managers to the offer, and Stock Exchanges.
- 2. The acquirer/ company and the manager to offer shall provide procedure for inspection of material documents electronically.





5. Relaxations relating to procedural matters –Issues and Listing

Date of Circular: May 06, 2020 Effective Date: May 06, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-

listing 46652.html

Editor's Quick Take:

SEBI vide its circular dated May 06, 2020 has granted onetime relaxation from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 pertaining to Rights Issue opening upto July 31, 2020.

Key highlights of the relaxation are as follows:

i. Service of the abridged letter of offer, application form and other issue material to shareholders may be undertaken by electronic transmission as already provided under Regulation 77(2) of the ICDR Regulation. Failure to adhere to modes of dispatch through registered post or speed post or courier services due to prevailing Covid-19 related conditions will not be treated as non-compliance during the said period. However, the issuers shall publish the letter of offer, abridged letter of offer and application forms on the websites of the company, registrar, stock exchanges and the lead manager(s)to the rights issue. Further, the issuer company along with lead manager(s) shall undertake all adequate steps to reach out its shareholders through other means such as ordinary post or SMS or audio-visual advertisement on television or digital advertisement, etc





- ii. In terms of Regulation 76 of the ICDR Regulations, an application for a rights issue shall be made only through ASBA facility. In view of the difficulties faced due to COVID-19 pandemic and the lockdown measures, and in order to ensure that all eligible shareholders are able to apply to rights issue during such times, the issuer shall along with lead manager(s)to the issue, the registrar, and other recognized intermediaries[as deemed fit by issuer and lead manager(s)]institute an optional mechanism(non-cash mode only)to accept the applications of the shareholders subject to ensuring that no third party payments shall be allowed in respect of any application.
- iii. In respect of all offer documents filed until July 31, 2020, following relaxations have been granted:
 - a) Authentication/ certification/ Undertaking(s)in respect of offer documents, may be done using digital signature certifications.
 - b) The issuer along with lead manager(s) shall provide procedure for inspection of material documents electronically



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Reserve Bank of India





1. <u>COVID-19 – Regulatory Package</u>

Date of Circular: May 23, 2020 Effective Date: May 23, 2020

Above circular is available at the following link:

https://www.rbi.org.in/Scripts/BS CircularIndexDisplay.aspx?Id=11902

Editor's Quick Take:

RBI vide its circular dated May 23, 2020 has issued detailed instructions regarding the CoVID 19 regulatory package:

- (i) Rescheduling of Payments Term Loans and Working Capital Facilities
- (ii) Easing of Working Capital Financing
- (iii) Asset Classification

All other provisions of <u>circulars dated March 27, 2020</u> and <u>April 17, 2020</u> shall remain applicable mutatis mutandis.



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(ii) Easing of Working Capital Financing

- 4. In respect of working capital facilities sanctioned in the form of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may, as a one-time measure,
 - recalculate the 'drawing power' by reducing the margins till August 31, 2020. However, in all such cases where such a temporary enhancement in drawing power is considered, the margins shall be restored to the original levels by March 31, 2021; and/or,
 - (ii) review the working capital sanctioned limits upto March 31, 2021, based on a reassessment of the working capital cycle.



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Central Board of Excise & Customs





1. <u>Special Procedure for Corporate Debtors undergoing The Corporate Insolvency Resolution</u> process under The Insolvency And Bankruptcy Code , 2016

Date of Notification: May 05, 2020

Above circular is available at the following link:

https://www.ibbi.gov.in/uploads/legalframwork/3abd46740ba9bc99609e5c865f7257d3.pdf

Editor's Quick Take:

Ministry of Finance (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) vide its circular dated May 05, 2020 in respect to amend the Notification, No.11/2020- Central Tax, dated the March 21, 2020 https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-central-tax-english-2020.pdf.

In the said Notification-

In First paragraph, the following proviso shall be inserted, namely: -

• Such corporate debtors shall not include those who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.

In Second paragraph, the following proviso shall be substituted, namely: -

Registration of such corporate debtors shall, with effect from the date of appointment of IRP / RP, be
treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each
of the States or Union territories where the corporate debtor was registered earlier, within 30 days of the
appointment of the IRP/RP or by 30th June, 2020, whichever is later.





2. Extension Of Due Date For Furnishing GST Annual Return for the FY 2018 - 2019

Date of Notification: May 05, 2020 Effective Date: March 24, 2020

Above circular is available at the following link:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-41-central-tax-english-2020.pdf

Editor's Quick Take:

Ministry of Finance (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) vide its Notification dated May 05, 2020 in respect to extend the time limit for furnishing of the annual return for the financial year 2018-2019 till the 30th September 2020.



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CBDT

Central Board of Direct Taxes





1. Reduction in rate of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)

Date of press release: May 13, 2020

Above circular is available at the following link:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/834/Press-Release-Reduction-in-

TDS-TCS-Rates-dated-14-05-2020.pdf

Editor's Quick Take:

CBDT vide its press release dated May 13, 2020 has reduced the rates of TDS /TCS. The rates of Tax Deduction at Source (TDS) for the following non-salaried specified payments made to residents has been reduced by 25% for the period from May 14, 2020 to March 31, 2021. No TDS/ TCS concessions relief will be given under Atamnirbhar Bharat Abhiyan, to individual if he/she doesn't furnish PAN/ Aadhaar.

S. No	Section of the Income Tax	Nature of Payment	Existing Rate of TDS	Reduced rate from 14/05/2020 to 31/03/2021
1	193	Nature of securities	10%	7.5%
2	194	Dividend	10%	7.5%
3	194A	Interest other than interest on securities	10%	7.5%
4	194C	Payment of contractors and sub- contractors	1% (individual/HUF) 2% (others)	0.75% (individual/HUF) 1.5% (others



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S. No	Section of the Income Tax	Nature of Payment	Existing Rate of TDS	Reduced rate from 14/05/2020 to 31/03/2021
5	194 D	Insurance Commission	5%	3.75%
6	194DA	Payment in respect of life insurance policy	5%	3.75%
7	194EE	Payments in respect of deposits under National Savings Scheme	10%	7.5%
8	194F	Payments on account of re- purchase of Units by Mutual Funds or UTI	20%	15%
9	194G	Commission, prize etc., on sale of lottery tickets	5%	3.75%
10	194H	Commission or brokerage	5%	3.75%
11	194-I(a)	Rent for plant and machinery	2%	1.5%
12	194-I(b)	Rent for immovable property	10%	7.5%
13	194-IA	Payment for acquisition of immovable property	1%	0.75%
14	194-IB	Payment of rent by individual or HUF	5%	3.75%



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S. No	Section of the Income Tax	Nature of Payment	Existing Rate of TDS	Reduced rate from 14/05/2020 to 31/03/2021
15	194-IC	Payment for Joint Development Agreements	10%	7.5%
16	194J	Fee for Professional or Technical Services (FTS), Royalty, etc.	2% (FTS, certain royalties, call centre) 10% (others)	1.5% (FTS, certain royalties, call centre) 7.5% (others)
17	194K	Payment of dividend by Mutual Funds	10%	7.5%
18	194LA	Payment of Compensation on acquisition of immovable property	10%	7.5%
19	194LBA(1)	Payment of income by Business trust	10%	7.5%
20	194LBB(i)	Payment of income by Investment fund	10%	7.5%
21	194LBC(1)	Income by securitisation trust	25% (Individual/HUF) 30% (Others)	18.75% (Individual/HUF) 22.5% (Others)
22	194 M	Payment to commission, brokerage etc. by Individual and HUF	5%	3.75%
23	194-0	TDS on e-commerce participants	1% (w. e. f 1.10.2020)	0.75%



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Misc.Laws





1. Review of Relief to establishments covered under EPF and MP Act, 1952 from levy of penalty for delayed deposit of dues during lockdown

Date of press note: May 15, 2020

Above press note is available at the following link:

https://pib.gov.in/PressReleasePage.aspx?PRID=1624093

Editor's Quick Take:

Ministry of Labour and Employment vide its press release dated May 15, 2020 in view of the difficulty faced by establishments in timely deposit of contributions or administrative charges under The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF & MP Act, 1952") due to the Covid-19 pandemic and lockdown implemented by the Government of India, any delay in payment of statutory contribution within time limit shall not be treated as default and penal damages shall not be levied for such delay.

This step shall ease the compliance norms for 6.5 Lakh EPF covered establishments and save them from liability on account of penal damages.





2. Extension of Timelines and Periods as Prescribed Under The IP Acts

Date of public Notice: May 04, 2020

Above press note is available at the following link:

http://www.ipindia.nic.in/writereaddata/Portal/News/681 1 Public Notice dated 4-5-2020.pdf

Editor's Quick Take:

The Office of the Controller General of Patents, Designs & Trade Marks vide its Public Notice dated May 04, 2020 has issued Public Notices regarding the timelines/periods as prescribed under the IP Acts and Rules administered by the CGPDTM towards completion of various acts/proceedings, filing of reply/document, payment of fees, etc. in the matters of any IP applications. In view of the lockdown period due, dates falling between the lockdown period, shall be May 18, 2020.



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Articles on:

- 1. Cross Border Insolvency
- 2. Investor Education And Protection Fund-complete Overview
- 3. Mimansa Rules of Interpretation: A Lost Legacy





Cross Border Insolvency

Background

If the insolvency/liquidation proceedings on account of unpaid debt is initiated in the country other than the country wherein the registered office of the corporate debtor (company) is existed, it amounts to cross border insolvency.

Enforceability of foreign Judgments & decrees passed by foreign courts

The Foreign Judgement or decree is required to pass the test of Section 13, 14 and 44-A of the Civil Procedure Code, 1908. Indian Judiciary enforce such foreign decrees and judgments in India which is in consonance with the basic fundamental rules and laws in force in India. A foreign judgment, whether passed by a Court in a **reciprocating or non-reciprocating territory**, must pass the test of Section 13 of the Code. Visà-vis in case of a decree of a Court in a Non-Reciprocating foreign territory, the same can be enforced in an Indian Court of competent jurisdiction by filing a suit on that foreign decree or on the original, underlying cause of action, or both. Such decree cannot be straightaway executed. *In the matter of Viswanathan v Rukn-Ul-Mulk Syed Abdul Wajid, AIR 1963 SC 1 19 of 22 CP69-13-F.DOC*

Section 13 embodies the principle of res judicata in foreign judgments. The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needed to be enforced. Such a recognition is accorded on the basis of consideration of basic principle of justice, equity and good conscience. Section 13 lays down the fundamental rules which should not be violated by any foreign court in passing a decree or judgment. The decree or judgment of foreign court will be conclusive except where it comes under any of the clauses (a) to (f) of Section 13. Otherwise, it would not be considered conclusive and consequently not legally effective and binding.





The provisions of the CPC are applicable for enforcement of foreign judgments, both from reciprocating and non-reciprocating territories. Section 44-A of the Code of Civil Procedure, 1908 are applicable in both the cases. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title.

Foreign Judgement or decree which is inconclusive or falling u/s 13 of CPC

(a) Where it has not been pronounced by a Court of competent jurisdiction. In the matter of Kitply Industries Ltd Vs. California Pacific Trading Co. Company Judge on 19.11.2008 held that Court can't go behind decree of the U.S. Court and examine the legality of the foreign decree. The respondent Kitply filed Company Appeal No. 1/2009. The learned Division Bench considered the appellant's contentions and noted, inter- alia, in its preliminary order that proceeding under Section 439 is not a proceeding for execution of a decree. and rejected Kitply's objection that a petition under Section 439 of the Company's Act is not maintainable. The Appellate Court opined that California is seeking recognition of a decree passed by a foreign court and not its execution and since winding up is not an execution proceeding, even in the absence of an appropriate notification by the Central Government under Section 44 A of CPC, the company proceeding is maintainable and accordingly the appeal was posted for hearing. The Supreme Court while disposing of the S.L.P. on 23.10.2009 ordered the High Court to decide all the points urged by the parties. Thereafter, in the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that the foreign decree was not by a Court of competent jurisdiction, from the reasoning given earlier, it is hereby held that the North Carolina Court neither had jurisdiction to try a claim for damage nor does the said Court acquire jurisdictional competence, through the pro-se response filed by the defendant in that Court. Similarly, In R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar. Such judgment must be by a court competent both by law of the state which has constituted it and in an international sense and it must have directly adjudicated upon the matter which is pleaded as Res judicata





- **(b)** Where it has not been given on the merits of the case. In the matter of *California Pacific Trading Co vs Kitply Industries Ltd* on 2 May, 2011. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that Foreign Court's decree is also declared to be inconclusive and hit by Clause (b) of Section 13 of the CPC. This is because the damage quantification was made by the Court without any acceptable evidence on record and the claimed loss suffered by the plaintiff was given on conjecture and surmise and accordingly it is declared that the North Carolina Court has not given its judgment on the merit of the case. *In Gurdas Mann v. Mohinder Singh* Brar. The Punjab & Haryana High Court held that an ex-parte judgment and decree which did not show that the plaintiff had led evidence to prove his claim before the Court, was not executable under Section 13(b) of the CPC since it was not passed on the merits of the claim; *In the case of I & G Investment Trust v. Raja of Khalikote*
- (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable. In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011. It is further seen that the suit for damage was filed by the petitioner in the North Carolina Court 3 years after the alleged breach which is beyond the prescribed period of limitation in India. Since the foreign judgment to be conclusive, is required to be in conformity with the law in India, I hold that the North Carolina Courts decree is inconclusive, as it is covered by exception Clause (c) of Section 13 of the Code.
- (d) Where the proceedings in which the judgment was obtained are opposed to natural justice. Under Section 13(d) of CPC, the following proposition may be laid:
- (i)The foreign court must follow the principle of natural justice while delivering the judgment. Judgement must be impartial, given fairly, moreover, the parties to the dispute should be given appropriate notice of the initiation of legal proceedings.





- (ii) Foreign judgment obtained by fraud. Satya v. Teja Singh
- **(e)** Where it has been obtained by fraud. In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011. There is also reasonable basis for concluding that the judgment of the North Carolina Court has been obtained by playing fraud on Court. The relevant certificates showing that the materials were of contracted standards and dispatch worthy were withheld and the probability of the Court giving a different verdict if the withheld materials were available, is a distinct possibility. In the matter of <u>Sankaran Govindan vs. Lakshmi Bharathi</u> reported in AIR 1974 SC 1764, where the Court accepted that if a foreign judgment was obtained by fraud, it will be covered by the exceptions in Section 13 of the CPC and such judgment can't be held to be conclusive for use in Indian Courts. In China Shipping Development Co. Limited v. Lanyard Foods Limited, since the records of the case manifestly revealed that the respondent Indian company was unable to pay its debts, the petition for winding up was admitted vide order dated 4.4.2007 under sections 433 and 434 of the Companies Act, 1956.
- **(f)** Were it sustains a claim founded on a breach of any law in force in India. *In Brijlal Ramjidas v. Govindram Gordhandas Seksaria*, Supreme Court held that Section 13 speaks not only of "Judgment" but "any matter thereby directly adjudicated upon". The word 'any' clearly shows that all the adjudicative parts of the judgment are equally conclusive.

Section 13 of the CPC sets out the limits on application of decree passed by a foreign Court and no proceeding to recover a debt on the basis of a foreign decree can be initiated, without fulfilling the conditions laid down in Clauses (a) to (f) of Section 13 of the CPC. In support of this contention, he relies upon the decision of the Supreme Court *in Roshanlal Kuthalia vs. R.B. Mohan Singh Oberio* reported in (1975) 4 SCC 628 and Smt. Satya vs. Teja Singh reported in AIR 1975 SC 105.





The decision of the Apex Court in *Raj Rajendra Sandar Moloji Nar Singh Rao Shitole vs. Shankar Saran reported* in AIR 1962 SC 1737 is also relied on by the learned counsel to show that the provisions of Section 13 of the CPC are not merely Rules of procedure but are Rules of substantive law and the decree of the U.S. court must be valid in the international sense and can"t be enforced ipso facto in Indian Courts only because, the proceeding in the North Carolina Court conforms to the municipal laws applicable in USA. *In the case of Narhari Shivram Shet Narvekar vs. Pannalal Umediram* reported in AIR 1977 SC 164 to contend that an incompetent Court cannot exercise jurisdiction over a foreign subject merely because, the foreign subject responded to the summons of the Court particularly when, response was to the effect that the U.S. Court lacked territorial jurisdiction, to examine the claim of damages against the foreign defendant. *In R. Viswanathan vs. Rukn Ul Mulk Syed Abdul Wajid* reported in AIR 1963 SC 1, the Apex Court held that for a foreign judgment to be conclusive, it must be rendered by a competent court both by the law of the State which has constituted it and in an international sense, ... and the foreign court must be a court of competent jurisdiction. Sec.13(a)

The Supreme Court *in Roshanlal Kuthalia vs. R.B. Mohan Singh* Oberoi reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC. *In Sankaran Govindan vs. Lakshmi Bharathi* reported in AIR 1974 SC 1764, it has been held that a foreign judgment can be impeached for fraud of the party, in whose favour the judgment is obtained. *In the Renusagar Power Co. Ltd. vs. General Electric Co.* reported in 1994 (Supp) 1 SCC 644, in the context of an award given by an Arbitrator, the Supreme Court declared that the phrase Public Policy of India would cover: - "(a) Fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal." *In R.M.V.Vellachi Achi Vs. R.M.A.ramanathan Chettiar reported in (1972) 2 MLJ 468.* This case turns on Section 44-A CPC and it is essentially for the proposition that a foreign decree cannot be executed under CPC if it is hit by condition, as provided in Section 13(a) to (f) of CPC. It is also regarding the validity of ex parte foreign decree. The order of Supreme Court refused to interfere.





The Apex Court in Raj Rajendra Sardar Moloji Nar Singh Rao Shitole, it must be declared that the objections are substantive and not procedural and the U.S. Court's decree is not valid in the International Sense since it is hit by one or the other exception(s), stipulated in Section 13 of the Code.

A foreign Judgment which is conclusive and does not fall within section 13 (a) to (f), may be enforced in India in either of the following ways.

(i) By instituting execution proceedings-

Section 14 states the presumption that an Indian court takes when a document supposing to be a certified copy of a foreign judgment is presented before it. The Indian Courts presume that a foreign Court of competent jurisdiction pronounced the judgment unless the contrary appears on the record, but by proving want of jurisdiction may overrule such presumption.

Foreign judgement may be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the CPC. Section 44A — Execution of decrees passed by Courts in reciprocating territory-(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. *In the matter of Goyal Mg Gases Private Ltd.*(Appellant) vs Messer Griesheim Gmbh on 1 July, 2014, EFA (OS) 3/2014. The definition of section 44A was discussed that any country or territory outside India which the Central Government, may by notification in the official gazette, declare to be a reciprocating country, so that now the Code puts all countries or territories outside India on an equal footing. Delhi High Court held that High Court of Delhi not being a 'District Court' in terms of Section 44A of the Code of Civil Procedure, 1908 is not vested with the jurisdiction to entertain the present Execution Petition. In view thereof, the same is liable to be transferred to the 'Court of District Judge" within whose jurisdiction the property sought to be attached is situated for being dealt with in accordance with law. *In California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011; COMPANY PETITION No. 10 OF 2002. Gauhati High Court.*





- (b) **Certificate with the certified copy of decree** The certified copy of the decree shall be filed together with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.
- (c) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation I: "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and "Superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation II: "Decree" with reference to a superior Court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalties, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment. [Explanation:-Judgement means the statement given by the judge on the ground of a decree or order. It is the decision of the court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. Decree is a code as the formal expression of an adjudication which so far as regards the court expressing it concussively determines the right of the parties with regard to all or any of the matters in controversy in the suit. An order is nothing but a judgement while a decree is a final part of judgement.





The primary difference between decree and order is that the decree is given in a site, which determines the substantive legal rights of the parties concerned, the order is given in the part course of proceedings, and determines the procedural legal rights of the parties concerned].

The List of the Reciprocating Territories as per the Provisions of Section 44 A of the Code of Civil Procedure, 1908

United Kingdom, Singapore, Bangladesh, UAE, Malaysia, Trinidad & Tobago, New Zealand, The Cook Islands (including Niue) and The Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea, Fiji, Aden. In the matter of *Moloji Nar Singh Rao vs Shankar Saran* Supreme Court held that a foreign judgment which does not arise from the order of a superior court of a reciprocating territory cannot be executed in India. It ruled that a fresh suit will have to be filed in India on the basis of the foreign judgment." Therefore, under Section 44A of the CPC, a decree or judgment of any of the Superior Courts of any reciprocating territory are executable as a decree or judgment passed by the domestic Court. The judgment, once declared, will be executed in accordance with section 51 of the Code. Thereafter, the court may order measures such as attachment and sale of property or attachment without sale, and in some cases arrest (if needed) in enforcement of a decree. This is done by the methods discussed below.

ii) By instituting a suit on such foreign judgment

Where a judgment or decree is not of a superior court of a reciprocating territory, a suit has to be filed in a court of competent jurisdiction in India on such foreign judgment. The general principle of law is that any decision of a foreign court, tribunal or any other quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. In such a suit, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated between the same parties. Such a suit must be filed within a period of 3 years from the date of judgment.





In the case of Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd., the Bombay High Court observed that in case of a decree from a non-reciprocating foreign territory, the decree-holder should file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree or on the original, underlying cause of action, or both. However, in both the cases, the decree has to pass the test of Section 13 CPC which specifies certain exceptions under which the foreign judgment becomes inconclusive and is therefore not executable or enforceable in India.

Limitation period for Enforcement of Foreign Judgments

As per the provisions of the Code, foreign judgments from reciprocating territories are enforceable in India in the same manner as the decrees passed by Indian courts. The Limitation Act, 1963 prescribes the time limit for execution of a foreign decree and for filing of a suit in the case of judgment passed by foreign court.

- Three years, commencing from the date of the decree or where a date is fixed for performance; in case of a decree granting a mandatory injunction; and
- Twelve years for execution of any other decree commencing from the date when the decree becomes enforceable or where the decree directs any payment of money or the delivery of any property to be made at a certain date, when default in making the payment or delivery in respect of which execution is sought, takes place.

A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian court for which a limitation period of 3 years has been specified under the Limitation Act, 1963 commencing from the date of the said judgment passed by foreign court.

Thus, application for winding up of the company could be filed on the basis of foreign juddgement, decree or award only it pass the test of section 13, 14 and 44A of CPC 1908, otherwise suit was to be fileld in the District Court.





Recommendation for adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997

The ILC has recommended the adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997 to deal with cross border insolvency issues. It shows that there is no inconsistency between the domestic insolvency framework and the proposed Cross Border Insolvency Framework.

It is envisages in the PREAMBLE of UNCITRAL Model Law on Cross-Border Insolvency that the purpose of this Law is to provide effective mechanism for dealing with cases of cross-border insolvency so as to promote the objective of:

- a. Cooperation between the courts and other competent authorities this State and foreign States involved in cases of cross-border insolvency;
- b. Greater legal certainty for trade and investment;
- c. Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- d. Protection and maximization of the value of the debtor's assets, and
- e. Facilitation of the rescue of financially troubled business, thereby protecting investment and preserving employment.

The necessity of having Cross Border Insolvency provisions under the Insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global footprint and many foreign companies have presence in multiple countries including India. Although the proposed Framework for Cross Border Insolvency will enable us to deal with Indian companies having foreign assets and vice versa, it still does not provide for a framework for dealing with enterprise groups, which is still work in progress with UNCITRAL and other international bodies. The inclusion of the Cross Border Insolvency Chapter in the Insolvency and Bankruptcy Code of India, 2016, will be a major step forward and will bring Indian Insolvency Law on a par with that of matured jurisdictions.





The model law deals with four major principles of cross-border insolvency, namely direct access to foreign insolvency professionals and foreign creditors to participate in or commence domestic insolvency proceedings against a defaulting debtor; recognition of foreign proceedings & provision of remedies; cooperation between domestic and foreign courts & domestic and foreign insolvency practioners; and coordination between two or more concurrent insolvency proceedings in different countries. The main proceeding is determined by the concept of centre of main interest ("COMI").

Therefore, Insolvency Law Committee decided to attempt to provide a comprehensive framework for this purpose based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 which could be made a part of the Code by inserting a separate part for this purpose. Accordingly, this ILC Report provides recommendations of the Committee on adoption of the UNCITRAL Model Law and the modifications necessary in the Indian context. Globally, the UNCITRAL Model Law has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues and legislation based on the Model Law has been adopted in 44 countries in a total of 46 jurisdictions. The UNCITRAL Model Law ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the enacting country.

The Committee has recommended that the Model Law be adopted with necessary modifications. Broadly, the four main principles on which the Model Law is based on are as follows:

(i) Access: The Model Law allows foreign insolvency professionals and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor. Direct access with regards to foreign creditors is envisaged under the Code even presently. With respect to access by foreign insolvency professionals to Indian courts, the Committee has recommended that the Central Government be empowered to devise a mechanism that is practicable in the current Indian legal framework.





The provision is corresponding to the Supreme Court in *Roshanlal Kuthalia vs. R.B. Mohan Singh Oberoi* reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC.

(ii) *Recognition*: The Model Law allows recognition of foreign proceedings and provision of remedies by domestic courts based on such recognition. Relief can be provided if the foreign proceeding is either a main or a non-main proceeding. If domestic courts determine that the debtor has its centre of main interests ("COMI") in the foreign country, such a foreign insolvency proceeding is recognised as the main proceeding. If domestic courts determine that the debtor has an establishment (applying a test based on carrying on of non-transitory economic activity), such a foreign insolvency proceeding is recognised as the non-main proceeding. Recognition as a main proceeding will result in automatic relief, such as a moratorium on transfer of assets of the debtor, and allow the foreign representative greater powers in handling the estate of the debtor. For non-main proceedings, such relief is at the discretion of the domestic court. As per para (a) of Article 2 (Definitions) of INCITRAL Model Law on Cross-Border Insolvency, "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

Para (b) provides "Foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests. Para c envisages, "Foreign non-main proceedings" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article. It is provided in para 1.8 of the ILC Report that the Committee recommended that initially the Model Law may be adopted on a reciprocity basis. It is corresponding to various cases





Some of the key advantages of adopting the Model Law with specific carve outs as recommended by the Committee are as under:

- (i) *Increasing foreign investment:* Even though foreign creditors have a remedy under the Code presently, adoption of the Model Law will provide added
- avenues for recognition of foreign insolvency proceedings, foster cooperation and communication between domestic and foreign courts and insolvency professionals and so on. Popularity of the Model Law has increased in recent years and its adoption shall also enable India to align with global best practices in insolvency resolution and liquidation. Moreover, there will be significant positive signalling to global investors, creditors, governments, international organizations such as the World Bank as well as multinational corporations with regard to the robustness of India's financial sector reforms.
- (ii) *Flexibility:* The Model Law is designed to be flexible and to respect the differences amongst national insolvency laws. Therefore, necessary carve outs may be made in relation to the Model Law to maintain consistency with domestic insolvency law while adopting a globally accepted framework. For example, the moratorium under the Model Law may be tweaked to make it harmonious with the moratorium under section 14 of the Code; a reciprocity requirement may be incorporated for stakeholders in other countries.
- (iii) *Protection of domestic interest*: The Model Law enables refusal of recognition of foreign proceedings or provision of any other assistance if such action contradicts domestic public policy.7 Hence, it provides enough flexibility to protect public interest.
- (iv) *Priority to domestic proceedings:* The Model Law gives precedence to domestic insolvency proceedings in relation to foreign proceedings. For example, a moratorium due to recognition of a foreign proceeding will not prevent commencement of domestic insolvency proceedings.





(v) *Mechanism for cooperation:* The Model Law incorporates a robust mechanism for cooperation and coordination between courts and insolvency professionals, in foreign jurisdictions and domestically. This would facilitate faster and effective conduct of concurrent proceedings. The overseas Corporate Insolvency will create an internationally aligned and comprehensive insolvency framework for corporate debtors under the Code, which is most essential in a globalised environment.

Treatment of Foreign Judgment or decree under the Insolvency & Bankruptcy Code, 2016.

The foreign judgement, decree was held by the Adjudicating Authority to be admitted on passing the test of section 13, 14 & 44A of the CPC, 1908, i.e. on the same basis. *In the matter of Usha Holding LL.C. & Anr. [Applicant/Operational Creditors v. Francorp Advisors Pvt. Ltd.* [Respondent/Corporate Debtor]. Date of Judgment: 11.12.2017, NCLT, Principal Bench, New Delhi wherein the Adjudicating Authority by detailed order held:-

- (a) In absence of a certifieid copy of a decree of any of the superior courts of any reciprocating territory, the said decree cannot be executed;
- (b) Foreign judgement is not conclusive where it has not been pronounced by a Court of competent jurisdiction and founded on an incorrect view of international law;
- (b). The Court shall presume, upon the production of any document purporing to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.
- 2. While holding so, the Adjudicating Authority by impugned order dated 11th December, 2017, also held as follows:
- "28. A conjoint reading of Section 44A of CPC along with Section 13 & 14 would show that the petitioner need to satisfy a number of requirements.





- (A) A certified copy is sine qua non for recognizing a decree as valid in India. Moreover, its compliance with the principles of natural justice also need to be shown.
- (B) it is required to be executed in the District Court of this Country.
- (C) It is also required that the decree should be pronounced by a Court of competent jurisdiction and on merits.
- (D) The decree must not have been obtained by fraud and its must not be founded on a breach of any law in force in this Country.
- 29. The petitioner has founded its claim and consequential default on the basis of decree dated 5.10.2015 and the order dated 27.3.2014. Both the documents placed on record are not certified copies of the decree and order. We further dind that the decree needs to be made rule of the Court before the District in India if at all its is executable. The petitioner has miserably failed to show any notification of the reciprocation between United States and India in terms of Section 44 of CPC.
- 3. The Adjudicating Authority while rejecting the application under Section 9 of the I&B Code preferred by the Appellants for the grounds mentioned above, also held that the Appellants do not come within the meaning of Operational Creditors as the amount due has not been regarded as an 'Operational Creditors within the meaning of Section 5(21) of the "I&B Code".

The appeal was raised against the order. The Appellate Authority in the matter of *Usha Holding LL.C. & Anr.* v. *Francorp Advisors Pvt. Ltd; Company Appeal (AT)(Insolvency) No.44 of 2018:* Date of decision 30th November, 2018. The NCLT observed, we also find force in the agreements that the decree dated 5.10.2015 and the order dated 27.03.2014 is in violation of the law prevailing in India in as much as Section 8 of the Arbitration and Conciliation Act, 1996 has not been followed" (para-2, page-3). *Reversing* the order, the Appellate Authority held that Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of a foreign judgement and decree in an application under Section 7 or 9 or 10 of the I&B Code.





The reliance was placed upon the case of *Binani Industries Limited Vs. Bank of Baroda & Anr.-Company Appeal (AT)(Insolvency) No.82 of 2018. In the matter of Arcelor Mittal Indi Pvt. Ltd Vs. Satish Kumar Gupta and Ors.*

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 held that Adjudicating Authority not being a Court or Tribunal and Insolvency Resolution Process not being a litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal. Whatever findings the Adjudicating Authority has given with regard to legality and propriety of foreign decree in question being without jurisdiction is nullity in the eye of law.

In Mrs. Jai Kumar & Anr. Vs. Stanbic Bank Ghana Limited, C.S.(Comm. Div.) D.No.41401 of 2018, in the High Court of Judicature at Madras; Date of Decision 4.12.2018. The contention of the plaintiff that the judgement/decree/order dated 8.8.2017 made by the U.K.Court, is in violation of Section 13 of the "The Code of Civil Procedure, 1908' and placing reliance on Section 44-A of CPC. On the basis of that decree application u/s 7 of IBC was filed in NCLT Chennai. The NCLT admitted the application and declared moratorium against the corporate debtor. The appeal was filed in NCLAT. NCLAT in its order particularly in paragraphs 11 and 12 has clearly said that validity of foreign decree cannot be challenged before NCLAT and that it has to be done before an appropriate forum. The order was challenged in the Supreme Court, the Hon'ble Court held that it does not find any reason to interfere with the impugned order dated 29.8.2018 passed by the National Company Law Appellate Tribunal, New Delhi and dismissed the appeal. The Hon'ble High Court held that this suit to be not maintainable, but reserving the rights of corporate debtor (second defendant) to approach to NCLT under section 60(5) if the IB Code and further reserving the right of Resolution Professional to file a suit on the same ground with regard to the same issue if the NCLT permits the Resolution Professional to do so.



NEWSLETTER

Insolvency proceedings in two countries

Insolvency proceedings is continued in India, wherein the registered office of the corporate Debtor (Company) is existed and in the another country where in the assets of the corporate debtor is existed. *In the matter of* State Bank of India & Ors. Vs. Jet Airways (India) Limited u/s 7 & 9 o the I & B Code in CP 2205(IB)/MB/2019, CP1968 (IB)/(MB)/2019, CP 1938(IB)/MB/2019, NCLT Mumbai Bench: Date of order 20.06.2019. The Adjudicating Authority discussed that judgement of NOORD-HOLLAND, Neitherland District court dated 21.05.2019, neither submitted on affidavit nor the original/certified copy of the Judgement is submitted along with the translated copy. It is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognise the judgement of an insolvency court of any Foreign Nation. So we cannot take the order on record (para 21). It is provided in contention of the Administrator regarding insolvency order passed by Holland Court, inter-alia in para 24(d) even though the provisions of law, Section 234 and 235 of the IBC have not been given effect to by the Central Government, there is no bar or prohibition under the IBC for the Adjudicating Authority recognising the Insolvency proceedings in a foreign jurisdiction.; in para (e) the provisions of sections 13, 14 and 44-A of the Code of Civil Procedure, 1908 do not apply to insolvency proceedings. They deal with the procedure of recognition an enforcement of foreign judgement/decree/orders etc.; in para (f), the judgement dated 21 May 2019 has been passed by the court of competent jurisdiction is final and binding on the Corporate Debtor and lenders. Despite notice the corporate debtor and State Bank of India have to file any appeal against the judgement till date. It is stipulated in para (g) two parallel proceedings are likely to obstruct smooth and uninterrupted, sustainable and certain proceedings. (para-24, p-8).

It is pertinent to mention that Section 234-235 of the IBC, 2016 deals with the matter regarding the agreement with foreign countries and the letter of request to a country outside India in the insolvency Resolution Process where the assets of the corporate debtor exist outside India (para-26, p-8). The adjudicating authority discussed that the above provision of IB Code is yet to be notified, hence not enforceable.





The Adjudicating Authority is not empowers to entertain the order passed by the foreign jurisdiction, where the registered office of the corporate debtor company is situated in India and the jurisdiction lies with Indian court (para-27).

The adjudicating authority admitted the petition u/s 7 of the Code for initiating corporate insolvency resolution proceedings and directed the interim resolution professional to proceed in the matter without being influenced by order of the Neitherland.

In the matter of Jet Airways (India) Limited (Offshore Regioal Hub) Vs. State Bank of India & Anr., NCLAT New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019. NCLAT Date of decision. 12.7.2019. The question arises for consideration in this Appeal is whether separate proceeding(s) in Corporate Insolvency Resolution Process against Common corporate Debtor in two different countries one having no territorial jurisdiction over the other. The Appellate Authority observed that separate Corporate Insolvency Resolution Process/liquidation proceedings have been initiated against same Corporate Debtor namely-Jet Airways (India) Limited, one in India where Registered office of the Corporate Debtor is situated and another in Neitherland (North Holland), where the Regional Hub of the Corporate Debtor is situated. A Joint Agreement or understanding between the Resolution Professional of Corporate Debtor in India and Administration from was made. In the same case the Appellate Authority vide its order dated 21.8.2019 held to ensure that insolvency proceedings both by Administrator, appointed by Neitherland (North Holland) court and Resolution Profession, appointed by state Bank of India is doing in the same spirit.

In the matter of *Jet Airways (India) Ltd (*Offshore Regional Hub/office) Holland Vs. State Bank of India & Anr. National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019, Date of order 4.09.2019.





The NCLAT ordered that in view of the duties empowered on the Interim Resolution Professional', he is required to collate the claim of all offshore creditors' or take control and custody of the assets of the corporate debtor situated outside India (in Holland) or other places, but for giving it effect the 'Resolution Professional' is required to reach an arrangement/agreement with the Administrator appointed pursuant to the proceeding initiated at Holland (para 4).

In the same case of *Jet Airways (India) Limited* NCLAT New Delhi order dated 26.09.2019. Company Appeal (AT)(Insolvency) No.707 of 2019 it is observed that an agreement between the Administrator of Jet Airways (India) Limited and the Resolution Professional of Jet Airways (India) Limited, termed as "Cross Border Insolvency Protocol" to run the parallel proceedings. The Aim of the Protocol is the parties recognise that the Company being an Indian company with its centre of main interest in India, the Indian Proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings (para 3, p-5).

The NCLAT, therefore, made clear that the 'Dutch Trustee (Administrator) will work in cooperation with the 'Resolution Professional of India' and if any suggestion is required to be given, he may give it to the Resolution Professional. It should be treated as a direction and it would be mandatory to comply with the order of this Appellate Tribunal subject to the other procedures which are to be followed in terms of the Insolvency and Bankruptcy Code, 2016. Thus, the Appellate Authority set aside part of the order passed by the Adjudicating Authority so far it relates to the observations that the 'Dutch Court' has no jurisdiction in the matter of corporate insolvency resolution process of Jet Airways (India) Limited (Offshore Regional Hub) and the consequential direction as given to the Resolution Professional in respect of offshore proceedings. The appellate authority allowed to continue joint insolvency Resolution Process in accordance with the I& B Code. In view of above, the NCLAT New Delhi has also directed the Resolution Professional to take custody of the assets situated Neither land and receive claims of outside India. The registered office of the corporate debtor (company) is within India, therefore, corporate insolvency resolution process is to be carried out in India Therefore, it is required to make amendment in the law





In view of the above, the judgement, decree passed by forein courts without complying with the provisions of section 13, 14 and 44A of CPC, 1908 have been made eligible to file application under Insolvency and Bankruptcy Code, 2016. The application for winding up on the basis of foreign judgement, decree have been admitted on passing the test of section 13, 14 & 44-A of CPC, 1908. of **reciprocating territory**.

As well, it has held in the matter of State Bank of India & Ors. Vs. Jet Airways (India) Limited by Adjudicating Authority that it is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognise the judgement of an insolvency court of any Foreign Nation. Section 234 and 235 of the IBC have not been given effect to by the Central Government. But the insolvency/liquidation proceedings in the case of Jet Airways (India) Limited (Offshore Regional Hub) is going in both countries. As against, there is no provision to initiate insolvency proceedings against a foreign corporate debtor for non payment of debt existed in India. Therefore, it is required to be made Amendment in the Code to this effect.



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INVESTOR EDUCATION AND PROTECTION FUND-COMPLETE OVERVIEW



(1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(2) There shall be credited to the Fund—

- (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub- section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;





- (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (I) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) such other amount as may be prescribed:

Comment: No such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

- (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;



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- (c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed:

Comment: The person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

<u>Comment: The disgorged amount refers to the amount received through disgorgement or disposal of securities.</u>

- (4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.
- (5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.



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(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

<u>Note:</u> Sub-Section (6) is Notified - except with respect to the manner of administration of the Investor Education and Protection Fund.

Note: Manner of administration of the Investor Education and Protection Fund has been notified on 7th September, 2016

- (7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.
- (8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.
- (9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).
- (10) The accounts of the Fund shall be audited by the Comptroller and Auditor- General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.
- (11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.



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IEPF Compliance Checklist for a Financial Year

Updated as per Section 125 of Companies Act, 2013 and Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

S. No.	Particulars of compliance	Timelines
1	Form IEPF-3	Within 30 days of the end of the Financial Year
2	The Company shall inform the shareholders regarding the transfer of shares to IEPF Authority	3 months before the due date of transfer of such shares to IEPF Authority
3	0 11 0	3 months before the due date of transfer of such shares to IEPF Authority
4	Form IEPF-7	Within 30 days of remitting the dividend to the IEPF Authority. Also, to be filed within 30 days of remitting the payment to the authority in case the company gets delisted or wound up.
5	Dividend shall be paid or claimed	Within 30 days from the date of declaration of dividend
6	Amount of dividend still unpaid or unclaimed shall be deposited in UNPAID DIVIDEND A/C.	Within 7 days from the expiry of above 30 days mentioned in point 5.



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S. No.	Particulars of compliance	Timelines				
7	Any amount remaining unpaid or unclaimed for the period of 7 years from the date of such transfer, shall be transferred by the company to the IEPF Authority	Amount to be paid via online mode within 30 days of amounts due to be credited to the fund				
8	Form IEPF-1 and statement in excel template	to be filed while remitting the amount of unpaid dividend via online mode to IEPF Authority				
9	Form IEPF-2	Filing of details of appointment of Nodal Officer or Deputy Nodal Officer with IEPF Authority.				
10	Form IEPF-2 — Details of amount transferred to IEPF Authority in Form IEPF-1	To be filed within 60 days of AGM or the date on which it should have been held, whichever is earlier.				
11	Disclosures on website	Every company shall within a period of 60 days after the holding of AGM and every year thereafter till completion of the seven years, identify the unclaimed amounts, as referred in sub-section 2 of section 125 of the Act, as on the date of holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information through Form No. IEPF-2, separately for each year containing the following information: a) Names & Last known addresses of persons entitled to receive the sum (b) Nature of amount (c) The amount to which each person is entitled (d) Due date for transfer to IEPF				



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S. No.	Particulars of compliance	Timelines			
12	•	Within 30 days of such shares becoming due to be transferred to IEPF Authority			
13	Form IEPF-4	within 30 days of transfer of shares to the Authority			
14	Statement containing names, last known addresses and unpaid dividend to be paid to each person	To be placed on the website of the Company, if any, within 90 days of making transfer to UNPAID DIVIDEND A/C and also on any other website as approved by the Central Government for this purpose as may be prescribed			
15	Form IEPF-5	Any shareholder can claim the unclaimed dividend and shares by filing form IEPF-5. After successful submission of FORM IEPF-5 by the shareholder, it shall be directly transmitted online to the Company for verification.			
16	To send e-verification report along with scanned documents sent by the claimant to IEPF Authority.	Company shall file an e-verification report in a specified format along with scanned documents, to IEPF Authority, within 30 days of receipt of online IEPF-5.			
17	The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details, etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records.				



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MIMANSA RULES OF INTERPRETATION: A LOST LEGACY

India can take pride in its rich treasure of ancient knowledge, substantial part of which is still lying unearthed in our ancient texts. Many people are largely ignorant about the great intellectual achievements our ancestors and the intellectual treasury which they have bequeathed. The Mimansa Principals of Interpretation is part of that great intellectual treasury, but it is distressing to note that apart from the reference to these principles in the judgment of Sir John Edge, the then Chief Justice of Allahabad High Court, in **Beni Prasad v. Hardai Bibi 1892 ILR 14 All 67 (FB)**, over a hundred years ago and in some judgments of Shri. Markandey Katju (Former Judge, Supreme Court of India) & Asok Kumar Ganguly (Former Judge, Supreme Court of India) there has been almost no utilization of these principles even in our own country.

It is to be regretted that the subject of interpretation of law has not in modern times received that decree of attention which it deserves. The rules of Interpretation may well rank as an important branch of what is called the adjective law. The part of that these rules play in the administration of justice by no means less important than the rules of procedure or the rules of evidence. Primarily the Court of law have to deal with three things:

- (1) Law dealing with rights & liabilities;
- (2) Facts which establish such rights and liabilities in particular case, and
- (3) The machinery of administering the law and of ascertaining facts.



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Leaving the last matter apart, as being rather of an incidental character, the main duty of the court is, to deal with the substantive law, with which they are supplied by the State, and with the facts, with which the parties propose to supply them. To assist them in respect of the latter duty, there is law of Evidence. To assist them as regards of the former duty, there are the rules of interpretation. Thus the rules of interpretation stand side by side with the rules of evidence.

The Mimansa Principles of Interpretation, as laid down by Jaimini around the 5th century B.C. in his sutras and as explained by Sabar, Kumarila Bhatta, Prabhakar, Mandan Mishra, Shalignath, Parthasarathy Mishra, Apadeva, Shree Bhat Shankar, etc. were regularly used by our renowned jurists like Vijneshwara (author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit (author of Dattaka Mimansa), etc. whenever there they found any conflict between the various Smritis, e.g., Manusmriti and Yajnavalkya Smriti, or ambiguity, ellipse or absurdity in any Smriti. Thus, the Mimansa principles were our traditional system of interpretation of legal texts. Although originally they were created for interpreting religious texts pertaining to the Yagya (sacrifice), they were so rational and logical that gradually they came to be utilized in law, philosophy, grammar, etc., that is, they became of universal application. Thus, Shankaracharya has used the Mimansa Adhikaranas (principles) in his bhashya on the Vedanta sutras.



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Most of the books on Mimansa are in Sanskrit, the best exposition of these principles in English is K.L. Sarkar's 'Mimansa Rules of Interpretation' which is a collection of Tagore Law Lectures delivered in 1905 and K.L. Sarkar's 'Mimansa Rules of Interpretation' Tagore law Lectures – 1905, Edited by Justice Markandey Katju (Former Judge, Supreme Court of India).

A Mimansa Case Study – Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa & Anr.

In the aforementioned case the question before Hon'ble Supreme Court was whether the Appellant i.e. Dr. Rajbir Singh Dalal fulfils the requisite academic qualification for appointment to the post of Reader in Public Administration in Chaudhary Devi Lal University, Sirsa i.e. Respondent No. 1.

Brief fact of the case are, The Respondent-university issued an advertisement for direct recruitment for various posts, including the post of Reader in Public Administration. The Appellant herein, claiming to be fully eligible and qualified for the post of Reader in Public Administration, applied for the aforementioned post on the prescribed format. A Selection Committee interviewed the Appellant on 18.7.2004 as per the call letter dated 8.7.2004. The Appellant was selected as Reader and he joined as such on 4.4.2005.

Applying the *anusanga* principle of Mimansa, Hon'ble Supreme Court arrived at the decision in this case. In Mimansa, *casus omissus* is known as *adhyahara*. The adhyahara principle permits us to add words to a legal text. However, the superiority of the Mimansa Principles over Maxwell's Principles in this respect is shown by the fact that Maxwell does not go into further detail and does not mention the sub-categories coming under the general category of casus omissus. In the Mimansa system, on the other hand, the general category of adhyahara has under it several sub-categories, e.g., anusanga, anukarsha, vakyashesha, etc.



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Hon'ble Supreme Court, in the case applied the *anusanga* principle for interpretation of UGC Regulations & stated the expression 'relevant subject' should also be inserted in the qualification for the post of Reader after the words 'at the Master's degree level'. The omission in the Regulations cannot be said to be unintentional or a case of casus omissus. The expression 'appropriate subject' was intended to cover the post of Reader and once the expert bodies had indicated that the appellant who held a post-graduate degree in Political Science was eligible to be appointed to the post of Reader in Public Administration and had been rightly appointed to such post, it is normally not for the Courts to question such opinion, unless it has specialised knowledge of the subject.

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Compliance Checklist



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Compliance Calendar for June 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							





Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of May, 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*
- Issue of TDS certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of April, 2020*
- Quarterly TDS Certificate (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2020*
- First instalment of advance tax for the assessment year 2021-22*
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2019-20*
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2020*
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of May, 2020*
- Return in respect of securities transaction tax for the financial year 2019-20*

Note: The CBDT vide the <u>Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance</u>, 2020 dated 31-03-2020 has extended all respective due dates, falling during the period from 20-03-2020 to 29-06-2020, till June 30, 2020.

The benefit of extended due date shall not be available in respect of payment of tax. However, any delay in payment of tax which is due for payment from 20-03-2020 to 29-06-2020 shall attract interest at the lower rate of 0.75% for every month or part thereof if same is paid after the due date but on or before 30-06-2020.





FEMA Related Compliances

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
- Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS)
- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the month of February





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