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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

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 immense pleasure to share the 48th Edition of “WINS – e-newsletter” for April 2021, covering legal updates released during the month of March 2021, articles shared by respected professionals and compliance calendar for the month of April 2021.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable 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, every month.

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. **Importer Exporter Code (IEC) Registration Procedure & Benefits**
 - ii. **Auditing Standard on Secretarial Audit**
 - iii. **Benefits- Acquisitions of companies under Insolvency Process in I&B Code.**
3. Compliance checklist for the month of **April 2021**.

Trust, we not only help you to keep yourself updated, but will also save your time, by providing a summary of the updates, in the form of Editor's Quick Take.

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 is valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at vinayshukla@whitespan.in

with Warm Regards,

TEAM WINS (Whitespan Information and News Services)

March 31, 2021

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

1. **Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
2. **Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
3. **Mr. Himanshu Gupta**, an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce.
4. **Ms. Trishna Choudhary** an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Commerce from Delhi University.
5. **Ms. Divya Shukla**, a graduate in Law and Commerce from Christ University, Bengaluru.

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Ministry of Corporate Affairs (MCA)

1. The Companies (Amendment) Act, 2017

Date of Notification- March 05, 2021

Effective Date – April 01, 2021

Link : http://www.mca.gov.in/Ministry/pdf/CommencementNotification_11032021.pdf

MCA vide its notification dated March 05, 2021 notified Section 23(i) of the Companies (Amendment) Act, 2017.
Corresponding section of Companies Act, 2013 – Section 92

Key highlights of the amendment are:

- Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed
- Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

2. The Companies (Management and Administration) Amendment Rules, 2021

Date of Notification- March 05, 2021

Effective Date – Date of Publication in the Official Gazette

Link : http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_11032021.pdf

MCA vide its notification dated March 05, 2021 notified the Companies (Management and Administration) Amendment Rules, 2021.

Key highlights of the amendment are:

- Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company.
- One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A

3. The Companies (Incorporation) Third Amendment Rules, 2021.

Date of Notification- March 05, 2021

Effective date: Date of publication in the Official Gazette

Link : http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdAmndtRules_11032021.pdf

MCA vide its notification dated March 05, 2021 notified the Companies (Incorporation) Third Amendment Rules, 2021 amending the Companies (Incorporation) Rules, 2014.

As per the amendment companies shall now have an option to undergo Aadhar authentication for GSTIN registration along with companies' registration. Form INC-35 AGILE PRO has been revised to include the option of Aadhar authentication for GSTIN registration.

4. Establishment of a Central Scrutiny Centre (CSC)

Date of Notification- March 18, 2021

Effective Date – March 23, 2021

Link:

<http://ebook.mca.gov.in/notificationdetail.aspx?acturl=6CoJDC4uKVUR7C9F14rZdatyDbeJTgg3mARderbboyGgx97hn0IFfA==>

MCA vide its notification dated March 18, 2021 established a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Act and the rules made thereunder.

The CSC shall function under the administrative control of the e-governance Cell of the Ministry of Corporate Affairs.

The CSC shall carry out scrutiny of the aforesaid forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Act and the rules made thereunder.

The CSC shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.

5. Amendments to Schedule V of the Companies Act, 2013

Date of Notification- March 18, 2021

Effective Date –March 18, 2021

Link : http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf

MCA vide its notification dated March 18, 2021 notified amendments to Schedule V of the Companies Act, 2013

Schedule V provides for the conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the central government appointments.

As per the amendment, in case the Board of Directors of a company are willing to further increase the remuneration of both the non-executive and executive directors beyond the upper limit, special resolution will have to be passed for the same.

6. The Companies (Amendment) Act, 2020

Date of Notification- March 18, 2021 and March 24, 2021

Effective Date –March 18, 2021 and March 24, 2021

Link : http://www.mca.gov.in/Ministry/pdf/CommencementNotification_19032021.pdf
http://www.mca.gov.in/Ministry/pdf/CommencementNotification_24032021.pdf

MCA vide its notification dated March 18, 2021 and March 24, 2021 notified the following sections:

S. No	Companies (Amendment) Act, 2020.	Companies Act, 2013	Particulars
1	Section 32	Section 149	Company to have Board of Directors: If a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.
2	Section 40	Section 197	Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits: Section 197 of the Principal Act, in sub-section (3), after the words “whole-time director or manager,”, the words “or any other non-executive director, including an independent director” shall be inserted.
3	Section 23	Section 124	Unpaid Dividend Account
4	Section 45	Section 247	Valuation by Registered Valuers

7. Amendments to Schedule III of the Companies Act, 2013

Date of Notification- March 24, 2021

Effective Date – April 01, 2021

Link : http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

MCA vide its notification dated March 24, 2021 amended the Schedule III of the Companies Act, 2013.

Schedule III provides for general instructions for preparation of balance sheet and statement of profit and loss of a company. Key highlights of the amendments are:

- Companies are now required to round off the figures appearing in the financial statements.
- Criteria for rounding off shall be based on “total income” in place of “turnover”.
- All Companies now have to disclose shareholding of promoters, current maturities of long term borrowings, trade payables & trade receivables ageing schedule to be given, details of all the immovable whose title deeds are not held in the name of the company, disclosures to be made where loans or advances in the nature of loans are granted to promoters, directors, KMPs and related parties, capital-work-in progress & intangible assets under development ageing schedule shall also be given, disclosure of any proceedings initiated or pending against the company for holding any Benami property under the Benami Transactions (Prohibition) Act, 1988.
- Balance sheet to mention if a company is a declared willful defaulter by any bank or financial Institution or other lenders, Disclosure of any transactions with companies struck-off, and where any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof.

8. The Companies (Audit and Auditors) Amendment Rules, 2021

Date of Notification- March 24, 2021

Effective Date – April 01, 2021

Link : http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_24032021.pdf

MCA vide its notification dated March 24, 2021 notified the Companies (Audit and Auditors) Amendment Rules, 2021 by amending the Companies (Audit and Auditors) Rules, 2014 by inserting clause (e) to (g) as follows:

“Clause (e)(i) Whether the management has represented that, to the best of it’s knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it’s knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities (“Funding Parties”), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

- (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.
- (f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.
- (g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.”.

9. The Companies (Accounts) Amendment Rules, 2021

Date of Notification- March 24, 2021

Effective Date – April 01, 2021

Link : http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

MCA vide its notification dated March 24, 2021 notified the Companies (Accounts) Amendment Rules, 2021

Key highlights of the amendments are:

- For the financial year commencing on or after the 1st day of April 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.
- The Report of the Board shall contain the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year.
- The Report of the Board shall also contain details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

10. E-Form Updates

Date of Update- March 31, 2021

Link : <http://www.mca.gov.in/>

MCA has updated the following E-Forms on its website:

- E-Form CSR-1 for Registration of Entities for undertaking CSR Activities is now available for E-filing.
- E-Form INC-6 for One Person Company- Application for Conversion has been revised as per Companies (Incorporation) Second Amendment Rules, 2021.



Securities Exchange Board of India (SEBI)

1. Prior Approval for Change in Control: Transfer of Shareholdings among Immediate Relatives and Transmission of Shareholdings and Their Effect on Change in Control

Date of Circular- March 25, 2021

Effective Date - March 25, 2021

Link: <https://www.sebi.gov.in/legal/circulars/mar-2021/prior-approval-for-change-in-control-transfer-of-shareholdings-among-immediate-relatives-and-transmission-of-shareholdings-and-their-effect-on-change-in-control-49663.html>

SEBI vide its circular dated March 25, 2021 with respect to transfer of shareholding among immediate relatives and transmission of shareholding clarified that:

In the following scenarios, change in shareholding of the intermediary will not be construed as change in control:

- a) Transfer of shareholding among immediate relative. Immediate relative shall be construed as defined under Regulation 2(l) of SEBI SAST Regulations and includes any spouse of that person, or any parent, brother, sister or child of the person or of the spouse;
- b) Transfer of shareholding by way of transmission to immediate relative or not.

In case of an intermediary being a proprietary concern, the transfer or bequeathing of the business/capital by way of transmission to another person is a change in the legal formation or ownership and hence by the definition of change in control, such transmission or transfer shall be considered as change in control

Transfer /transmission of ownership interest in case of partnership firm type intermediary: Change in partners and their ownership interest of the partnership firm type intermediary shall be dealt in the manner as provided in the circular.

2. SEBI Advises Registered Entities including MIIs to Comply with TRAI's TCCCP Regulations, 2018

Date of Press Release - March 23, 2021

Effective Date - February 09, 2021

Link: https://www.sebi.gov.in/media/press-releases/mar-2021/sebi-advises-registered-entities-including-miis-to-comply-with-trai-s-tcccp-regulations-2018_49619.html

SEBI vide its press release dated March 23, 2021 directed all SEBI registered entities including MIIs (which use bulk SMS for providing their services to the investors) to ensure strict compliance with the Telecom Regulatory Authority of India's (TRAI) Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCP Regulations).

Non-compliance with the provisions of said regulations may result in disruption of delivery of their messages to the investors.

It has come to the notice of SEBI that unsolicited messages containing stock tips/ investment advice with respect to listed companies are increasingly being circulated through bulk SMS, inducing investors and the general public to invest in or purchase the stocks of certain listed companies. The circulation of misleading messages is not only detrimental to the interest of the investors but also adversely affects the integrity of the securities market.

3. The Securities and Exchange Board of India (Annual Report) Rules, 2021

Date of Notification : March 12, 2021

Effective Date : Date of publication in the Official Gazette

Link: https://www.sebi.gov.in/legal/rules/mar-2021/sebi-annual-report-rules-2021_49611.html

SEBI vide its notification dated March 12, 2021 has notified the Securities and Exchange Board of India (Annual Report) Rules, 2021.

As per the said rules, the Board shall submit a report to the Central Government giving a true and full account of its activities, policies and programmes during the previous financial year as per the annexure provided in these rules. The report shall be submitted within ninety days after the end of each financial year.

4. Rollout of Legal Entity Template

Date of Circular : March 10, 2021

Effective Date : March 10, 2021

Link: <https://www.sebi.gov.in/legal/circulars/mar-2021/rollout-of-legal-entity-template-49461.html>

SEBI vide its circular dated March 10, 2021 has directed the Registered Intermediaries (RIs) to ensure that in case any Listed Entity (LE) are accounts opened prior to April 1, 2021, the KYC records are to be uploaded on to CKYCR as and when the updated KYC information is obtained/received from the client.

RIs shall ensure that during such receipt of updated information, the clients' KYC details are migrated to current Client Due Diligence (CDD) standards.

Further, to ensure that all existing KYC records of individual clients are incrementally uploaded on to CKYCR, RIs shall upload the KYC records pertaining to accounts of individuals opened prior to August 01, 2016, as and when updated KYC information is obtained/received from the client. Where a client, for the purpose of establishing an account based relationship, submits a KYC Identifier to a RI, with an explicit consent to download records from CKYCR, then such RI shall retrieve the KYC records online from CKYCR using the KYC Identifier and the client shall not be required to submit the same KYC records or information or any other additional identification documents or details, unless there is a change in the information of the client as existing in the records of CKYCR. Once KYC Identifier is generated by CKYCR, the RIs shall ensure that the same is communicated to the individual/legal entity.

5. Reduction in Unblocking/Refund of Application Money

Date of Circular - March 31, 2021

Effective Date - March 31, 2021

Link:<https://www.sebi.gov.in/legal/circulars/mar-2021/reduction-in-unblocking-refund-of-application-money-49722.html>

SEBI vide its circular dated March 31, 2021 has reduced the timelines for refund of money to investors as under:

1. In case of non receipt of minimum subscription – The issuer is mandated to refund all the application monies within a period of four days from the closure of the issue
2. In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed regulation – The Issuer shall refund the entire monies received within four days of receipt of intimation from stock exchanges rejecting the application for listing of specified securities.



Reserve Bank of India (RBI)

1. Extension of Cheque Truncation System (CTS) Across all Bank Branches in the Country

Date of Notification- March 15, 2021

Effective Date –March 15, 2021

Link: https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12039

RBI vide its notification dated March 15, 2021, with a view to leverage the availability of CTS and provide uniform customer experience irrespective of location of her/his bank branch, has extended CTS across all bank branches in the country.

To facilitate this, banks shall have to ensure that all their branches participate in image-based CTS under respective grids by September 30, 2021. They are free to adopt a model of their choice, like deploying suitable infrastructure in every branch or following a hub & spoke model, etc. and concerned banks shall coordinate with the respective Regional Offices of RBI to operationalise this.

2. Investment by Foreign Portfolio Investors (FPI): Investment Limits

Date of Circular- March 31, 2021

Effective Date –March 31, 2021

Link: https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12049

RBI vide its Circular dated March 31, 2021 has revised the investment limits for FPI's as follows:

- a. The limits for FPI investment in Corporate bonds remains unchanged at 15% of outstanding stock of securities for FY 2021-22. Accordingly, the revised limits for FPI investment in corporate bonds, after rounding off, shall be as under:

Table - 1: Limits for FPI investment in Corporate bonds for FY 2021-22

	(₹ Crore)
Current FPI limit	5,41,488
Revised limit for HY Apr 2021-Sep 2021	5,74,263
Revised limit for HY Oct 2021-Mar 2022	6,07,039

- b. The revised limits for FPI investment in Central Government securities (G-secs) and State Development Loans (SDLs) for FY 2021-22 will be advised separately. Till such announcement, the current limits, shall continue to be applicable.

Table - 2: Limits for FPI investments in G-Sec and SDL

(₹ Crore)				
	G-Sec General	G-Sec Long Term	SDL General	SDL Long Term
FPI investment limits	2,34,531	1,03,531	67,630	7,100



Central Board of Excise and Customs (CBEC)

1. Clarification on Refund Related Issues

Date of Circular- March 12, 2021

Effective Date –March 12, 2021

Link: https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_147.pdf

CBIC vide its circular dated March 12, 2021 has issued clarification on refund related issues in respect of the following:

- i. Claim by recipient of Deemed Export Supply;
- ii. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared;
- iii. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.



Central Board of Direct Taxes (CBDT)

1. The Income-Tax (2nd Amendment) Rules, 2021

Date of notification- March 09, 2021

Effective Date - Date of publication in the Official Gazette

Link: https://www.incometaxindia.gov.in/communications/notification/notification_no_13.pdf

CBDT vide its notification dated March 09, 2021 has notified the Income-tax (2nd Amendment) Rules, 2021.

Vide this amendment a new proviso has been added to provide that the provisions of sub-rules (3) to (12) of rule 10VA shall, mutatis mutandis, apply to the application made under the second proviso as they apply to application made under sub rule (2) of the said rule.

Also, the provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on April 01, 2021 and made on or before February 01, 2021.

2. Residential Status of Certain Individuals under Income-Tax Act, 1961

Date of Circular- March 03, 2021

Effective date – March 03, 2021

Link: <https://www.incometaxindia.gov.in/communications/circular/residency-circular-02-of-2021.pdf>

CBDT vide its circular dated March 03, 2021 clarified that if any individual is facing double taxation even after taking into consideration the relief provided by the respective DTAAs, he/ she may furnish the information in Form -NR annexed to this, circular by 31st March, 2021.

This form shall be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation) at the web address provided in the circular.

Miscellaneous Laws

1. Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021

Date of Notification- March 04, 2021

Effective Date – Date of publication in the Official Gazette

Link: <https://ibbi.gov.in/uploads/legalframework/2a0408cf690dc73b21a2faa8805281fe.pdf>

IBBI vide its notification dated March 04, 2021 notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.

As per the amendment, the liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims and such list has to be filed on the electronic platform of the Board for dissemination on its website.

Above amendment shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.

2. Cognizance for Extension of Limitation

Date of Order – March 08, 2021

Effective Date – March 08, 2021

Link: <https://ibbi.gov.in/uploads/order/8cb5eb11db26a2711ee77eadedda29d43.pdf>

The Hon'ble Supreme Court of India vide its order dated March 08, 2021 has lifted the extension of the limitation period for filing of cases granted by the Court in March last year on account of COVID-19 pandemic and the national lockdown.

For the purpose of computation of period of limitation for any suit, appeal, application or proceeding, the period from March 15, 2020 till March 14, 2021 shall be excluded. The balance period of limitation remaining as on March 15, 2020, if any, shall become available with effect from March 15, this year.

With regard to the cases where limitation period would have expired during the period from March 15, 2020 till March 14, 2021, the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 15, 2021 and in the event the actual balance period of limitation remaining, with effect from March 15, 2021, is greater than 90 days, that longer period shall apply.

3. National Company Law Appellate Tribunal

Date of Circular- March 03, 2021 and March 24, 2021

Effective Date – March 04, 2021

**Link: <https://nclat.nic.in/Useradmin/upload/1078699382605b30f8c6b90.pdf>
<https://nclat.nic.in/Useradmin/upload/1739571386603f7d98be08c.pdf>**

NCLAT vide its circular dated March 03, 2021 announced that w.e.f. March 04, 2021, VC links shall be shared through registered Email ids as well as by SMS on registered mobile numbers of the Ld. Advocates/Parties-in-person/Authorized Representatives.

The information of the Ld. Advocates/Parties-in person/Authorized Representatives for recording of appearance in the Record of Proceedings concerned may send their appearance slip via email through their registered email ids only as per the proforma provided in the circular.

The email should be sent to the email id provided in the circular dated March 24, 2021 by 10:15 AM on the day when the matter is listed.

4. The Code on Wages (Central Advisory Board) Rules, 2021

Date of Notification- March 01, 2021

Effective Date: Date of publication in the Official Gazette

Link:

[https://labour.gov.in/sites/default/files/Code on Wages %28Central Advisory Board%29 Rules%2C2021.pdf](https://labour.gov.in/sites/default/files/Code_on_Wages_%28Central_Advisory_Board%29_Rules%2C2021.pdf)

Ministry of Labour and Employment vide its notification dated March 01, 2021 notified the Code on Wages (Central Advisory Board) Rules, 2021. The rules provide for constitution of the board, Additional functions of the Board, meeting of the board, notice of meetings, Functions of Chairperson, proceedings of meetings, Summoning of witnesses and production of documents etc.

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5. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021

Date of Notification- March 15, 2021

Effective Date – Date of publication in the Official Gazette.

Link: <https://ibbi.gov.in/uploads/legalframework/32795d31dcbe1c6f81318044a753bd71.pdf>

IBBI vide its notification dated March 15, 2021 notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021.

Key highlights of the amendment are:

Insertion of regulation 12A on updation of claims - A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

Regulation 40B – In case any activity requires filing of Form CIRP 7 and if same is not completed within the specified date, the interim resolution professional or resolution professional, as the case may be, shall file Form CIRP 7 within 3 days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete. However, subsequent filing of Form CIRP 7 shall not be made until thirty days have lapsed from the filing of an earlier Form CIRP 7

6. FDI on Downstream Investment made by Non-Resident Indians

Date of Press Release- March 19, 2021

Effective Date – Date of Publication in the Official Gazette.

Link: <https://dipp.gov.in/sites/default/files/pn1-2021.PDF>

Ministry of Commerce and Industry vide its press release dated March 19, 2021, made following addition in the Consolidated FDI Policy Circular of 2020.

An investment made by an Indian entity that is owned and controlled by an NRI on a non-repatriation shall not be considered for the calculation of indirect foreign investment.

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7. Amendment to the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020

Date of press release- March 11, 2021

Link: <https://www.ibbi.gov.in/uploads/legalframework/af68aec6a9ff864bb2ea1a13ec1ac66f.pdf>

The Insolvency and Bankruptcy Board of India vide its press release dated March 11, 2021 extended the validity of the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 30th September, 2021.

Article 1

IMPORTER EXPORTER CODE (IEC) REGISTRATION PROCEDURE & BENEFITS

POWER OF THE GLOBAL ECONOMY

In the age of globalization and the high competition all over the world, expanding your business internationally is an option many companies. It not only enables you to explore new markets, attract new customers and increase your sales & revenue but also enables you to take brand awareness to global scale.

However, expanding into other countries doesn't just happen, in fact, it often comes with significant challenges w.r.t obtaining various permits, licenses, registration & approvals. In this article we will discuss about one such License i.e **Importer Exporter Code (IEC)**

The first and foremost requirement before you start an import/ export business in India is to obtain an IEC.

ABOUT IMPORT EXPORT CODE (IEC)

Importer Exporter Code (IEC) is a **ten-digit alpha numeric number** granted by Directorate General of Foreign Trade to a person who wish to undertake any export/import activity in India. It is mandatory to obtain IEC to do any export/import activity in India unless exempted.

Any bonafide person/ company starting a venture of international trade require IEC. IEC forms a primary document for recognition by Government of India as an Exporter/ Importer.

“Section -7 of Foreign Trade (Development and Regulation) Act, 1992

Importer-Exporter Code Number – “No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General.”

In case of import or export of services or technology, IEC is necessary only when the service or technology provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies.

Important Note: As per the Trade Notice issued by Ministry of Commerce and Industry, for the new application, applicant PAN will be authorised as IEC and for residuary category under Para 2.07 of HBP 2015-20, the IEC will be either UIN issued by the GSTN and authorised by DGFT or any common number to notified by DGFT.

FEATURES OF IEC

- IEC forms the primary document for recognition by Government of India as an Exporter/Importer.
- Only one IEC can be issued against a single PAN. Permanent Account Number (PAN) is pre-requisite for grant of an IEC.
- An IEC number allotted to an applicant shall be valid for all its branches / divisions / units / factories.
- It is the permanent number till it is surrendered or cancelled and no need to renew the same.
- There is no compliance requirement for IEC, no need to file any periodical returns etc.
- Even individuals who are proprietors of a business can obtain IE Code in their name. It is not necessary to incorporate a business entity for obtaining IE Code.

BENEFITS OF IMPORT EXPORT CODE

1. Online Registration

In order to promote the “Ease of Doing Business”, and to obtain IEC hassle free, Government has launched an online facility to file IEC application online along with the requisite documents on DGFT portal (<http://dgft.gov.in>). The application can be filled by sitting at home or office in 24X7 environments. Application fee can also be paid online from linked banks or by using debit/credit card.

2. INCENTIVES & SUBSIDIES

Registered entities can avail various schemes launched by the Ministry of Commerce and Industries under Foreign Trade Policy. Few of the schemes are given below:

2.1 Exports from India Schemes

Under this scheme following two schemes are launched:

- a. Merchandise Exports from India Scheme (MEIS)
- b. Service Exports from India Scheme (SEIS)

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS which can be used for payment of Custom Duty & Central excise duties.

2.2 Duty Exemption /Remission Schemes

Under this scheme following schemes are launched:

- a. Advance Authorization Scheme
- b. Advance Authorization for annual requirement
- c. Duty Drawback of Customs/Central Excise Duties/Service Tax
- d. Duty Free Import Authorization (DFIA) Scheme
- e. Rebate of Service tax through all industry rates

The above schemes to enable duty free import of inputs for export production including replenishment of inputs or duty remission.

Apart from the above two scheme there are various other schemes for different categories of Imports and Exports

3. ENTRY TO GLOBAL ECONOMY

IEC open up the doors for entrepreneur who wish to go global and expand the business through diversification. Expanding your business internationally naturally provides opportunities for faster growth. An international expansion opens new doors and gives you access to a whole new set of customers who have never seen your product or service before.

WHO ARE EXEMPT FROM OBTAINING IEC NUMBER?

Following categories of importers or exporters are exempted from obtaining IEC number:

1. Traders who have obtained GST number and the PAN of the trader shall be construed as new IEC code for the purpose of import and export
2. Importers covered by clause 3(1) [except sub clauses (e) and (l)] and exporters covered by clause 3(2) [except sub-clauses (i) and (k)] of Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993.
3. Ministries / Departments of Central or State Government.
4. Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.
5. Persons importing / exporting goods from / to Nepal, Myanmar through Indo Myanmar border areas and China (through Gunji, Namgaya Shipkila and Nathula ports), provided **Cost**, Insurance and Freight (CIF) value of a single consignment does not exceed Indian Rs. 25,000. In case of Nathula port, the applicable value ceiling will be Rs. 1,00,000/-. The exemption from obtaining IEC shall not be applicable for export of Special Chemicals, Organisms, Materials, Equipment's and Technologies (SCOMET) as listed in Appendix - 3, Schedule 2 of ITC (HS) except in case of exports by category (ii) above.

STEPS FOR OBTAINING IEC

-  **STEP 1- VISIT DGFT WEBSITE www.dgft.gov.in**
-  **STEP 2- CLICK ON IEC ONLINE APPLICATION**
-  **STEP 3- ENTER PAN AND FILL ENTITY DETAILS**
-  **STEP 4- ATTACH REQUIRED DOCUMENTS**
-  **STEP 5- PAY FEE**
-  **STEP 6- SUBMIT YOUR APPLICATION**

Once the application is completely verified by the department, the Directorate General of Foreign Trade will allot an IE Code for your business

LIST OF DOCUMENTS REQUIRED TO BE UPLOADED ALONG WITH APPLICATION

1. Cancelled cheque bearing pre-printed applicant entities name OR Bank Certificate in prescribed format ANF-2A
2. Address proof of the entity

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Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.

AUTHOR:

**DIKSHANT MALHOTRA,
Fellow Member of ICSI
CFO in Corporate Accretion
(M) 9999466414
dikshant@corporateaccretion.com**



Article 2

Auditing Standard on Secretarial Audit

Applicability

Auditing Standard on Secretarial Audit is applicable to every audit undertaken pursuant to section 204 of the Companies Act, 2013.

Effective Date

The Standard is effective and recommendatory for Secretarial Audit accepted by the Auditor on or after 1st July, 2019 and mandatory for Secretarial Audit accepted by the Auditor on or after 1st April, 2021.

S. No.	Area to be Checked/ Serious of Recommendatory Source/ Proposed Action Events
1	Identification and segregation of Applicable laws can be segregated basis the nature of industry of the auditee. applicable laws
2	Verification of corporate conduct i. Website of the regulators; and compliance of laws during ii. Website of the Auditee; the audit period iii. Statutory records including books and papers, interaction with the Management and in any other appropriate manner
3	Verification of Compliance of all i. Records of the Auditee event and calendar based ii. Database or website of the regulators compliances

S. No.	Area to be Checked/ Serious of Events	Recommendatory Source/ Proposed Action
5	Framework of legal and procedural compliances of the Auditee including but not limited to internal regulations, control, guidance and governance.	<ul style="list-style-type: none"> i. Records maintained by the Auditee; ii. Understanding compliance responsibility centers, control points, matrix, flow of information, escalation of non-compliances to different levels, reporting of any non-compliance; iii. Assessing compliance mechanism and understanding its extent, coverage and severity mapping; iv. Manual/standard operating procedures, if any, available with the Auditee; v. Show cause notices received, prosecution initiated, fine or penalties levied, imprisonment ordered, qualification, adverse remark or observations in the statutory, internal or industry specific audit, orders passed by regulatory bodies or judicial/quasi-judicial authorities.
6	Detection of Fraud	<p>Exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of Section 143(12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014.</p> <p>In case of suspicion of commission of any fraud, collect further evidence for the same.</p>

S. No.	Area to be Checked/ Serious of Events	Recommendatory Source/ Proposed Action
7	Reporting of Fraud	<p>If the Auditor has sufficient reason to believe that there is commission of fraud and have justifiable grounds for the same, he/ she shall:</p> <ol style="list-style-type: none"> Report to Audit Committee/Board/Central Government as per the process laid down under the Companies Act, 2013 and include the same in Secretarial Audit Report. To verify if the Audit Committee/ Board has given any comments on the fraud reported by the auditors in their report in terms of the provisions of the Companies Act, 2013. To verify if the fraud detected by other Auditor has been reported to the Audit Committee/Central Government and report the same in the Secretarial Audit Report.
8	Identification and Reporting of the events/actions having major bearing on Auditee's affairs	To report all events/actions having major bearing on the Auditee's affairs in pursuance of the applicable laws, act, rules, regulations, guidelines, standards, etc. i.e. any event/ action having major bearing on Auditee's affairs if it affects its going concern or alters the charter or capital structure or management or business operation or control, etc.

Every auditor undertaking audit pursuant to Section 204 of the Act, is required to adhere to the Auditing Standards on – (a) Audit Engagement (CSAS-1); (b) Audit Process and Documentation (CSAS-2); and (c) Forming of Opinion (CSAS-3).

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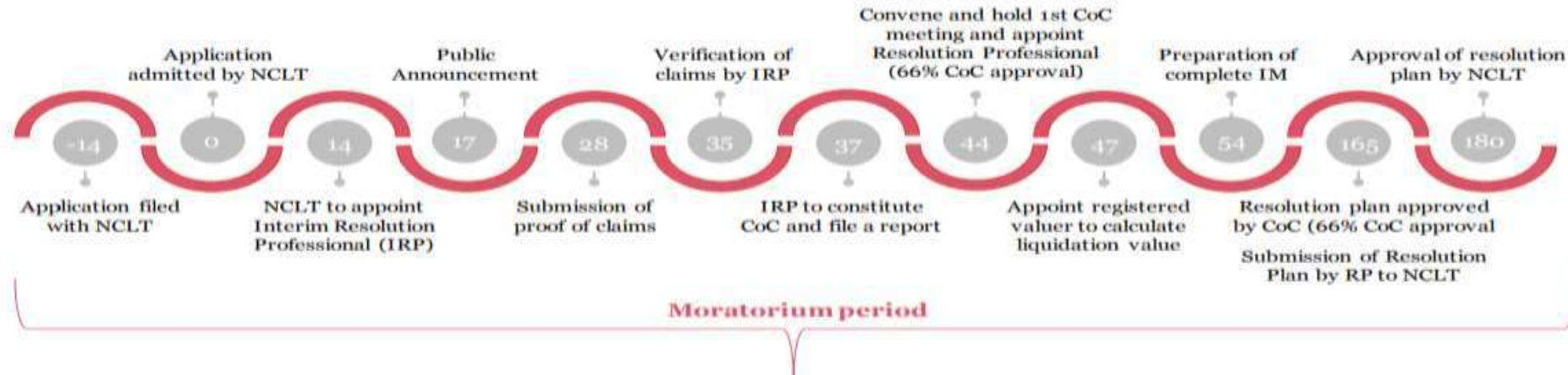
Team Whitespan Advisory
152 P, LGF, Sector – 38, Gurugram – 122002, Haryana
Mobile No. +91 – 99588-50190
Ph: 0124 – 2204262/63
www.whitespanadvisory.com

Article 3

Benefits- Acquisitions of companies under Insolvency Process in I&B Code.

Preface The companies made default in honouring the financial liabilities to the Banks, Financial Institutions etc, are usually declared as insolvent by the NCLT Order and the Corporate Insolvency Resolution Process starts by appointing the Insolvency Resolution Professional. Such companies are open for sale by the Committee of Creditors (“**COC**”) constituting Banks / Lenders of such companies to the potential buyers in the market.

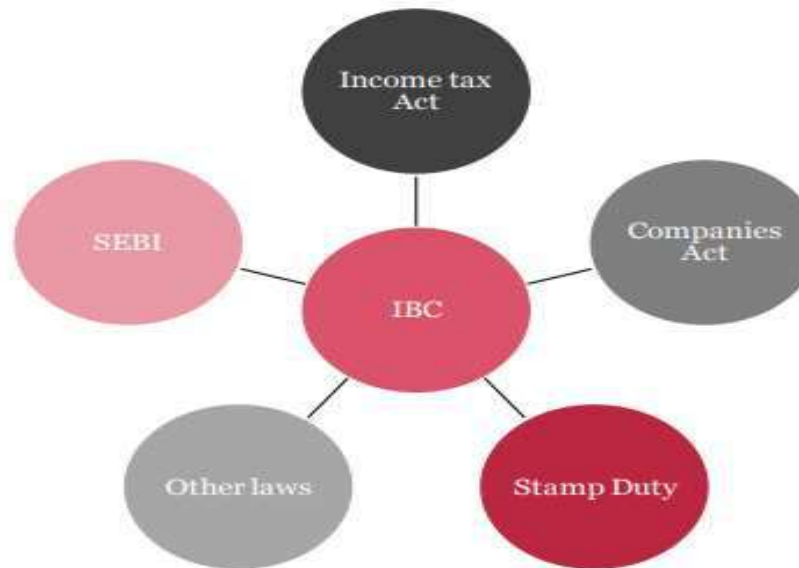
Process / Sequence of Events:



Benefits: Acquisition of companies under Corporate Insolvency Resolution Process (“**CIRP or Insolvency Process**”) administered by the National Company Law Tribunal (“**NCLT**”) as per the provisions of I&B Code, 2016 (“**Code**” or “**IBC**”). Code / IBC is the Act / Legislation passed by the Parliament in the year 2016 as Insolvency & Bankruptcy Code, 2016.

1. **Clean Company:** If the company is bought under Insolvency Process, the buyer gets a clean company irrespective of any old defaults. It means the buyer need not worry about the defaults and any other non-compliances made by the company including Tax obligations if any. While approving the transaction of acquiring such companies NCLT ensures that Resolution Plan submitted by the potential buyer is complied with all the norms. Accordingly, potential buyer will get a CLEAN company in hand and it can be run smoothly & effectively.
2. **Customised Payment Terms:** Terms of making payments to the Banks / Lenders can be customised and need not make the full payment of purchase consideration upfront. It can be made in tranches as per the resolution plan proposed & finalised between the COC & potential buyer/s.
3. **Loan Facilities:** Potential buyer/s can avail the loan facilities from the new Banks / Financial Institutions to fund the acquisition process. In some cases it is observed that even the funds are raised based on the potential business in future & mortgage of assets of the company as well.
4. **Haircut by Lenders:** Banks / Lenders are normally willing to take good amount of haircut on total existing loan exposure and hence such deals can be materialized in a best and the most reasonable cost consideration with the added advantage of support of additional loan funds from new Banks / FIs / ARCs etc.
5. **Consortium of Buyers:** Bidding in the process is allowed for the consortium of potential eligible buyers. Hence, more than one person / company can come together to participate in the Bidding process and take advantage of cost effective potentially good deals of buying a company under CIRP under IBC.

Regulatory Aspects:



Direct Tax Issues:

Section 41(1) & 28(iv)	Taxability of write back of loans	favourable
Section 115JB	Applicability of MAT provisions	neutral
Section 79	Implications of change in shareholdings on carry forward of tax-losses	favourable
Section 50CA & 56	Difference of shares issue price & fair value – to lenders for consideration	neutral

SEBI Regulations:

LODR	<ul style="list-style-type: none"> • Role & responsibilities of BoD with IRP or RP • Shareholders' approval for transactions with related parties or for disposal of material subsidiary done away with if disclosed to stock exchanges. • Relaxation from reclassification of existing promoter or promoter group. • Schemes not to require SEBI & stock exchanges approval
ICDR	<p>Listed entities with approved resolution plans:</p> <ul style="list-style-type: none"> • Exemption from preferential issue procedure for equity shares and convertible securities. • Lock-in restrictions still apply
Takeover Code	<p>Acquisition pursuant to resolution plan:</p> <ul style="list-style-type: none"> • Exemption from open offer • Acquirer can hold more 75% in a listed entity
CSRR	<p>Due to implementation of resolution plan, if public shareholding falls:</p> <ul style="list-style-type: none"> • Below 25%: Increase to 25% within 3 years • Below 10%: Increase to at least 10% within 18 months
Delisting	<p>Listed entities with approved resolution plans:</p> <ul style="list-style-type: none"> • Exemption from delisting regulations if specific procedure for delisting is laid and exit option to existing public shareholders at a price not less than liquidation price • No tenure restriction to re-apply for listing

Companies Act:

Section 53 – Prohibition on issue of shares at discount	<ul style="list-style-type: none"> • Section 53 of the Companies Act, 2013 prohibits a company to issue shares at a discount. • However, an exemption has been provided in this respect when shares are issued to creditors at a discount, on conversion of their debt into shares in pursuance of any statutory resolution plan or debt restructuring scheme specified by RBI or specified under the Banking (Regulation) Act, 1949.
MCA circular for deemed shareholders approval - dated 25 Oct 2017	<ul style="list-style-type: none"> • Approval of shareholders/ members for implementation of resolution plan deemed to be received on approval by NCLT
OL, RD, ROC approvals required ?	<ul style="list-style-type: none"> • No separate approval/s required.
Stamp Duty aspects:	No specific exemptions given for the payment of stamp duties as may be applicable on acquisition of companies under CIRP.

Conclusion:

IBC is still an evolving legislation and getting mature with every new Judgement of Hon. Supreme Court, High Courts, NCLAT & NCLT. The purpose of introducing IBC was to clear the NPAs & give a fresh start to the Indian industry by keeping aside the defaulters & providing opportunities to better marker players by acquiring the insolvent companies under CIRP as clean companies irrespective of their old defaults & non compliances.

Under the IBC regime the efforts have been made to resolve the NPA issues by giving considerable relaxations to the new acquirers of such defaulting companies as described in above paragraphs & to create a smooth environment to deal with challenges of creating value for the nation as well as for the new acquirers.

It is observed that smart players are taking advantage of this new regime to create values & the success stories of Ruchi Soya Industries (acquired by Patanjali of Shri Ramdeo Baba) & Alok Industries (acquired by Reliance Industries along with JM Financials) and many more resolutions have been taking place.

Hence, potential acquirers along with other parties as consortium / JVs may come up & take advantage the IBC regime to create substantial values for the nation & corporates.

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Please feel free to contact the undersigned in case you require any further information/ clarification on the above article

Authors:

CS Prashant Thakre
Practicing Company secretary
(M) +91 7758821782
Email id : cspsthakre@gmail.com



Compliance Checklist

Compliance Calendar for April 2021

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

Income Tax Related Compliances

	<ul style="list-style-type: none"> Due date for deposit of Tax deducted/collected for the month of March 2021. 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
	<ul style="list-style-type: none"> Due date for issue of certificate for tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of March, 2021
	<ul style="list-style-type: none"> Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of march, 2021 has been paid without the production of a challan Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of March, 2021 Due date for deposit of TDS for the period January 2021 to March 2021 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

FEMA Related Compliances

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

	<ul style="list-style-type: none"> Monthly return (NBS-6) on exposure to capital market Monthly Return on Important Financial Parameters
	<ul style="list-style-type: none"> 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 March

GST Related Compliance

- GSTR 1(Monthly) for March 2021
- GSTR 3B (Monthly) for March 2021
- GSTR 3B (Jan-Mar, 2021) for North India
- GSTR-1 (Jan-Mar, 2021) for QRMP

Companies Act Related Compliance

- Due date for MSME-1 for half year ended March 2021
- Due Date for DIR -3 KYC & Web based KYC
- Due date for PAS-6 for the half year ended March 2021

FOR FURTHER INFORMATION PLEASE CONTACT:

vinayshukla@whitespan.in

NCR OF DELHI
LGF, 152P, Sector 38,
Mumbai – 400 023
Near Medanta, the Medicity,
Gurgaon 122-002
Telephone – 0124-2204242, 63

MUMBAI
506, Arcadia, 195, Nariman Point,

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