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AT A GLANCE

ACQUISORY NEWS CHRONICLE MAY, 2018

ARTICLE

IBC: New Amendments strengthening the spirit of the Law

Hon'ble President on June 06, 2018 gave his assent to promulgate the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018. These Sections shall come into force with immediate effect. An attempt has been made in this document to shed light on the key changes in the insolvency legislation.

In a major change, homebuyers would now be treated as financial creditors or, in other words, on par with banks. The amendment enables homebuyers (either as an individual or group) to initiate insolvency proceedings against errant builders. Homebuyers shall have the right to be represented in the committee of creditors (CoC), which takes the key decision regarding revival of the company or its liquidation.

BOND ETF – A New Tool Of Investment

Bond exchange traded funds (ETF), similar in structure and intent to the stock ETF, could debut soon in India, where the government is seeking to enhance liquidity in debt investments and expand the scope for retail savings.

Bond ETFs permit both retail and institutional investors to take exposure in a larger pool of fixed income securities than they normally could have access to. Multiple bonds are clubbed in smaller chunks defined by the ETF price and size, catering to all appetites. Bond ETFs, perceived to be helping enhance debt-market liquidity, have gained currency in G-7 countries.

LEGAL UPDATES

MCA Notifies applicability of few more provisions of Companies (Amendment) Act, 2017 wef 07th May, 2018 -

The MCA hereby appoints the 7th May, 2018 as the date on which the various provisions of the Companies Act, 2017 shall come into force.

MCA issues Clarification w.r.t. Section 135(5) of the Companies Act, 2013 for spending the amount earmarked for Corporate Social Responsibility activities.

- MCA has issued Clarification with regard to provisions under Section 135(5) of the Companies Act, 2013. The Section 135(1) provide that the Board of every company, shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy and preference shall be given to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. It has been clarified and reiterated that the above provisions has to be followed in letter and spirit

27th GST Council Meeting Highlights -

Ministry of Finance vide Press Release dated 4th May, 2018 has announced the major key takeaways for GST Council Meeting: 1. Incentive to promote Digital Transactions: Proposal to provide concession of 2% in GST rate [where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates] on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivise promotion of digital payment. 2. Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol.

IBC: NEW AMENDMENTS STRENGTHENING THE SPIRIT OF THE LAW

The Cabinet has approved a promulgation of an ordinance to amend the 16-month-old Insolvency and Bankruptcy Code (IBC).

The present amendment is based on recommendations of a 14-member government appointed committee that had last month suggested a slew of measures, including addressing difficulties of home buyers and making recoveries easier for lenders plus disqualifying certain classes of promoters from back door entry into the resolution process.



image source- <http://legalnewsupdates.is-best.net>

Report of the Insolvency Law Committee

On 26th March 2018, the Insolvency Law Committee submitted a report addressing various pressing issues in relation to the Code. One of the key recommendations of this report was to streamline the application of section 29A in order to prohibit only those who have contributed to the defaults and have consequently run the company a ground, or are otherwise undesirable, from participating in the insolvency resolution process.

The recommendations in relation to this section include the deletion of “if such person, or any other person acting jointly or in concert with such person” from the first line of the provision. This aims at preventing the interpretation of the phrase “person acting jointly or in concert” in accordance with the definition provided in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. This is a commendable step as such an interpretation was proving to be counter productive owing to the wide range of individuals who stood disqualified from the resolution process due to wide-ranging scope of the definition.

Other positive recommendations include the exclusion of pure play financial entities from the ambit of clause (c) of section 29A, as the Committee rightly observed that it is highly probable for them to be related to companies that are categorised as non-performing assets (NPA). Another pragmatic suggestion in relation to this clause is the addition of a proviso stating that the section will not apply if the NPA is held solely due to the acquisition of a corporate debtor under the process prescribed by the Code for a period of three years from the date of approval of the previous resolution.

IBC:NEW AMENDMENTS STRENGTHNING THE SPIRIT OF THE LAW

Further, the suggestions to narrow down clause (d), which relates to conviction for offences punishable with imprisonment of two years or more and clause (e), which deals with disqualification to act as director under the Companies Act 2013, are indeed laudable steps towards a more progressive application and implementation of this section. The Committee observed that these two clauses are personal in nature and need not be extended to the related parties of the resolution applicant. Moreover, clause (d) might further be narrowed down by incorporating a schedule of offences to exclude those offences which have absolutely no connection with the ability of an applicant to successfully manage a corporate debtor. Lastly, the ambit of this clause may also be tapered down if the Government agrees to the suggestion that it will not be applicable if an appeal has been preferred against the concerned order within the prescribed statutory period.

Clause (g) of the section also has been constricted in its application. This provides the necessary safeguard for applicants who have acquired corporate debtors, who have previously engaged in a preferential, undervalue, fraudulent or extortionate credit transaction. Furthermore, the Committee has provided for the necessary change in phrasing of clause (f) in order to ensure it is in consonance with the decision of the NCLT.

However, while addressing the issue of compliance with section 29A being too onerous and self-defeating as it prolonged the resolution process indefinitely, the Committee merely stated that applicants would be required to submit an affidavit confirming their eligibility under this provision. Additionally, the committee was of the opinion that the presence of section 30(2)(e) which mandates the resolution plan to be in consonance with the law, would ensure compliance with section 29A. Lastly, it clarified that this section would be prospective in its application to prevent any sort of hindrances in cases, which are already at an advanced stage.

Code Reboot

1] Home buyers to be treated as financial creditors

What it means:
Help buyers get home or refund

2] Special dispensation for MSMEs

What it means:
Promoters eligible to bid; will spur resolution of cos

3] Changes in voting structure, lower threshold for resolution approval

What it means:
Promote resolution over liquidation

4] Streamlining of eligibility provisions

What it means:
Will provide clarity on eligibility, reduce dispute

Image source: <https://economictimes.indiatimes.com/>

Classification of Debt: Advantage to Home buyers

Home buyers had so far been treated as "unsecured creditors" which means they do not have the first charge on the assets of the bankrupt firm. The President has given his assent to the Ordinance. This proposal classifies home buyers as 'Financial Creditors' at par with lenders to help them quickly get refunds from defaulting companies/developers.

Now by amending the provisions and By treating them as financial creditors, they will now move up the priority list of creditors, substantially raising the prospects for clawing back a part of their investment.

Earlier, if a realty firm went bankrupt, the units for which home buyers had paid money would become the property of banks which could auction them without bothering about the dues of the home buyer. The Ordinance creates a favorable situation for home buyers. Home buyers who have been left high and dry by unscrupulous promoters of bankrupt realty companies will enjoy the rights and privileges of financial creditors under the Insolvency and Bankruptcy Code (IBC).

IBC: NEW AMENDMENTS STRENGTHENING THE SPIRIT OF THE LAW

Impact

The invocation of section 29A not only significantly influences the procedure of resolution but also engenders a material economic impact. The procedure has become more complex as the resolution professional or the liquidator is given the additional responsibility to determine the eligibility of the applicants. Moreover, this obligation to determine the eligibility of an applicant also dampens the prospect of completing the resolution process within the prescribed time period of 180 (or 270) days.

In addition to the procedural obstacles, it is imperative to note that the disqualifications enshrined in this section have the potential to hinder several innocent applicants who may be deemed ineligible due to mere technicalities and trivialities. The diminution in the number of applicants inhibits the necessary competition in the bidding process, which in turn pares down the ultimate financial value of the resolution plan. Moreover, the ambit of the section is so wide that ineligibilities have become common, making liquidation not merely a possibility but also a probability. Liquidation must be avoided at all costs as it is not only detrimental to the creditors, compelling them to take inordinate haircuts, but also obliterates the organisation capital of firms. This negatively impacts both corporate sentiments and jobs, affecting the growth of the economy. Thus, it is evident that the consequence of this section extends way beyond what it originally intended to accomplish.

The way forward

Even though prospective application is both desirable and creditable, the Committee has so far been not able to address the larger question of how it seeks to increase the inclusion of promoters, minimise the adverse economic impact caused by inordinate delays, restrict the involvement of the adjudicating authorities and prevent unnecessary risks posed by frivolous litigation. The submission of an affidavit confirming eligibility is not viable as competing parties can always unearth some minor technicality disqualifying their competitor by virtue of the sheer dimensions of the section.

More importantly, the Government needs to answer the question of the conundrum created by the legal interpretation in the Bhushan Steel case that litigations are not to be included within the time frame of 270 days established by the Code. This defeats the very purpose of having a deadline for the resolution process and must be addressed in the subsequent Amendment Act, if not in the Ordinance.

Moreover, to differentiate between innocent and unscrupulous promoters, a body like the pre-pack pool in the United Kingdom could be established. This would essentially entail the establishment of a body of experienced business persons appointed by the Insolvency and Bankruptcy Board of India who could independently review promoters or connected party purchases. Promoter inclusion is also imperative because their complete exclusion dissuades them from cooperating with the resolution professional who requires relevant information from them to invite bidders. Lastly, exclusion is dangerous by virtue of the possibility of the promoter



image source- <https://economictimes.indiatimes.com/news/economy/policy/big-relief-for-home-buyers-president-approves-ordinance-to-treat-them-as-creditors/articleshow/64478712.cms?from-mdr>

IBC:NEW AMENDMENTS STRENGTHNING THE SPIRIT OF THE LAW

indulging in asset stripping and other high-risk behaviour if the company is undergoing recurring losses and is on the brink of insolvency. Thus, promoters who have not indulged in any malfeasance must be given the opportunity to bid for their own companies.

We believe, section 29A has till date created more problems than it has solved. Instead of barring defaulting promoters, it has created a gateway to obstruct any resolution process by way of litigation. While the procedural and economic impact may be beyond the control of the Government, the need to streamline the application of this provision is imminent. Therefore, as the Code is on the verge of being overhauled, it is incumbent on the Government to incorporate the necessary modifications to transform the fledgling insolvency regime in India into a more advanced legal mechanism.

BOND ETF – A NEW TOOL OF INVESTMENT

What is Bond ETF?

Bond ETF is a type of exchange traded fund, which makes investments strictly and exclusively in Bonds. In a way it is like mutual fund with the only difference being the product of investment.

ETFs are like bond mutual funds as they hold a portfolio of bonds with different strategies, viz. U.S. Treasuries bonds and long-term and short-term bonds. Bond ETFs are passively managed and trade much like stock ETFs on a major exchange. This helps promote market stability and depth by adding liquidity and transparency during times of stress.



Although bond ETFs, just like the other ETFs, make a correlating index or underlying investment product, they are not as simple as the others. Bonds are usually fixed-income assets and are not very liquid. Hence, investors hold these bonds until maturity and do not usually trade them on secondary markets like stocks and indexes. Another important aspect about these bonds is that their pricing information is not traditionally transparent. This is where a bond ETF makes a difference. A Bond ETF work just like any stock ETF. They also track a correlating bond index or product.

Bond ETFs need to be liquid, and available to the secondary markets. Also, these cannot afford to have unclear pricing. These are a few areas that a bond ETF needs to overcome.

Features of Bond ETF

- Bond ETF provides a pooled investment facility with easy trading on exchange as well as over the counter.
- Bond ETF is a long term core investment activity unlike speculation activity of equity market.
- It provide monthly fixed income based on the coupon rate and further they may provide annual dividend.
- Being ETF these Bonds are traded globally, so there is a worldwide market for this instrument.
- Diversification of investment provides a better caution in the time of adverse market situation.
- There is a stipulated regulatory authority, which over watch the activities and methodologies used by the fund houses.
- Bond ETFs are transparent about where the portfolio is invested and what the proportion of investment is in a particular segment or sector.
- Bond ETFs do allow investors to invest with precision in the bond market. They can create their own model portfolios, so it lets investors be in the driver's seat.
- Usually an order to purchase or sell the ETF is executed at the price at the end of the day, so there is no need to keep a continuous watch throughout the day.

BOND ETF – A NEW TOOL OF INVESTMENT

- Most of the ETFs are indexed funds they are having lower expense ratio, hence resulting into lower cost of investing.
- Bond ETF continuously keeps investing in different bonds, so everyday there is a maturity of some bond and entry of new bond. So, eventually there is no maturity date or period for Bond ETF.
- Bond ETF is also traded in derivative market, providing leverage to an investor against potential loss.
- Bond ETF provides fixed coupon rate, so in case of hike of interest rate in an open market; there may be some loss of income.
- No Bond ETF give protection against the capital invested as it is an index traded fund and therefore the price may vary on daily basis.



Global Scenario of Bond ETF

Globally, Bond ETFs have survived many crises for 2008, European debt crisis, US Treasury downgrade to oil sell-off of 2014 etc. During all these times it was seen that very fewer bond were trading over the counter, while on the other hand Bond ETF was facing manifold increase in trading activity. In terms of crisis, bond ETFs trading volume increases manifold.

However, There is a long way to go. Bond ETF market penetration remains incredibly low relative to equities. The U.S. fixed-income market is roughly twice the size of the equity market today, commanding nearly \$50 trillion, but bond ETFs represent only 0.9% of the entire fixed-income market. By comparison, equity ETFs represents 8.5% of the total equity market.

Indian Market Aspirations

Currently Bond ETFs are not allowed to be traded on any of the Indian Stock Exchange. However, the government is keen to make a start soon and has already initiated the process of ground level work. Government has floated Request for Proposal (RFP) to appoint advisors for creating the Bond ETF market. One of the objectives to launch Bond ETF is to cater to the central public sector enterprise or public sector banks and public sector units (PSUs) by leveraging their aggregate strength. About a year ago India had introduced Bharat 22 ETF to achieve disinvestment targets. It is an open ended ETF that will invest in similar composition and weightages as they appear in the Bharat 22 Index. It could be a game changer for many corporates; fund houses and investment bankers. It may also take the public financial markets in India to a greater level.

Historically bond market have been illiquid as compared to stocks and therefore inaccessible to retail investors. Large issue sizes also prohibit retail investor.

The nature of trading, which is almost entirely over the counter leading to price opacity, and large issue sizes of the bonds all combine to make it out of reach for the average Indian investor.

Bond ETFs can solve this issue considerably. Bond ETFs have soared in popularity in developed markets in recent times, because they appear to solve some of the concerns mentioned above. The widespread perception is that bond ETFs help bring liquidity to the market.

BOND ETF – A NEW TOOL OF INVESTMENT

Bond ETFs allow both institutional and retail investors to partake in a larger pool of fixed income securities than they normally could have access to. Multiple bonds are bought in smaller chunks defined by the ETF price and size, catering to all appetites. This solves the large issuance size issue.

In the case of the Indian government bond G-Sec, an ETF provides smooth rollover benefit, where the latest bond issue replaces the earlier one with no associated cost for the investor. It can prove to be very cost effective for the average retail investor to manage. In addition, the corporate bond market ETFs can be designed to capture desired duration and yield, which makes targeted exposure far easier to achieve. Bond ETFs allow for low execution costs and price discovery. Buyers and sellers can offset each other removing the need for frequent buying and selling of underlying securities.

As bonds ETFs rise in popularity, buying and selling of such ETFs can far exceed that of the underlying securities, which contribute to the overall increase in market liquidity. Price discovery happens as the price of the ETF is a reflection of the index underlying it, which in turn is determined by the weighted sum of the underlying securities.

In addition, the act of trading on stock exchanges, unlike for the underlying securities, brings transparency to a very opaque market. While investors can buy and sell ETFs as a single block, they do not have to trade in the underlying securities. Authorised participants are permitted to trade in the underlying securities of the ETFs with the ETF sponsor fulfilling the important role of keeping the NAV (net Asset value) of the ETF in line with the value of the underlying securities. Even during times of market stress, a bond ETF is at least as liquid as the underlying securities. Finally, ETFs mandate the underlying securities to be made public on a daily basis, which makes the investment even more transparent than a bond fund.

Will Government Bond ETF be successful?

Bond exchange traded funds (ETF), similar in structure and intent to a stock ETF, could debut soon in India, where the government is seeking to enhance liquidity in debt investments and expand the scope for retail savings.

Government of India had floated a Request for Proposal (RFP) to appoint advisors for creating the bond ETF market, which is now beginning to rival stock ETFs in their depth and maturity overseas. The bid closed May 16.

Bond ETFs would permit both retail and institutional investors to take exposure in a larger pool of fixed income securities than they normally could have access to. Multiple bonds are clubbed in smaller chunks defined by the ETF price and size, catering to all appetites.

The bond ETF market is still in a very nascent stage. In fact, some reports suggest that as on June 2015, this genre of ETFs held about \$318 million in assets under management or less than 1% of the total market. So, even if bond ETFs were to see a downfall, the event would not impact the bond market at all. Also, unlike regular bonds where payments happen at fixed intervals, bond ETFs hold different maturity dates for the different assets. Since these are expected to be due for a coupon payment at any given time, the bond ETFs pay interest every month with the value of the coupon changing from month to month.

RBI issues Guidelines on Stripping/Reconstitution of Government Securities – Removal of restrictions on the securities eligible for Stripping/Reconstitution by Primary Dealers (PDs).

RBI vide Notification dated 3rd May, 2018 has issued guidelines on Stripping/Reconstitution of Government Securities. With a view to meeting the diverse needs of investors and making Separate Trading of Registered Interest and Principal of Securities (STRIPS) more aligned with market requirements, it has been decided to revise the existing guidelines. Accordingly, it is proposed to remove the restrictions on the securities eligible for Stripping/Reconstitution as well as the requirement of authorization of all requests for Stripping/Reconstitution by Primary Dealers (PDs).

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11269&Mode=0>

RBI issues notification w.r.t. Monitoring of Foreign Investment Limits in listed Indian Companies

RBI has issued notification w.r.t Monitoring of foreign investment limits in listed Indian companies. Currently, Reserve Bank of India receives data on investment made by Foreign Portfolio Investors (FPI) and Non-resident Indians (NRI) on stock exchanges from the custodian banks and Authorised Dealer Banks for their respective clients, based on which restrictions beyond a threshold limit is imposed on FPI/ NRI investment in listed Indian companies. In order to enable listed Indian companies to ensure compliance with the various foreign investment limits, Reserve Bank in consultation with Securities and Exchange Board of India (SEBI), has decided to put in place a new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, shall be made available by the depositories. All listed Indian companies are required to provide the specified data/ information on foreign investment to the depositories. The requisite information may be provided before May 15, 2018. The listed Indian companies, in non-compliance with the above instructions will not be able

to receive foreign investment and will be non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and regulations made thereunder.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11270&Mode=0>

MCA Notifies applicability of few more provisions of Companies (Amendment) Act, 2017 wef 07th May, 2018

The MCA hereby appoints the 7th May, 2018 as the date on which the various provisions of the Companies Act, 2017 shall come into force.

http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentNoti_07052018.pdf

Key highlights of amendments to various Rules under Companies Act, 2013 with Effect from May 07,2018

The Central Government has notified amendment to various rules under Companies Act, 2013. The amendments are effective from May 07, 2018. The amended provisions have been discussed as under:

1. Amendment relating to meeting of board and its powers:

MCA has amended the Companies (Meetings of the Board and its Powers) Rules, 2014. A new provision has been inserted to Rule 4 of the said rules providing that any other director may participate through video conferencing or other audio visual means if there is quorum in a meeting through physical presence of directors.

http://www.mca.gov.in/Ministry/pdf/CompaniesBoardsPowersRules_07052018.pdf

2. No more ratification of appointment of Auditor in AGM:

MCA has amended the Companies (Audit and Auditors) Rules, 2014. Amendment has been made to rule 3 whereby proviso to sub-rule 7 of Rule 3 and explanation thereunder have been omitted. Which means that the requirement of ratification of appointment of Auditor in every annual general meeting (AGM) till the conclusion of sixth AGM has been removed. Further Rule 9 of the said rules has been omitted. Rule 10A and Rule 14 have also been amended.

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsRules_07052018.pdf

3. 15 days' time for re-submission in case of reservation of name through RUN:

MCA has amended the Companies (Registration Office and Fees) Rules, 2014. A new provision has been inserted under to Rule 10(3) providing that - Registrar shall allow fifteen days' time for re-submission in case of reservation of name through web service -RUN for rectification of defects if any. Earlier re-submission was not allowed in case of re-submission of application through RUN.

http://www.mca.gov.in/Ministry/pdf/CompaniesOfficesFeesRules_07052018.pdf

4. Additional fee payable on delayed annual filing:

An amendment has been made in Annexure I of the Companies (Registration Office and Fees) Rules, 2014 prescribing additional fee of Rs. 100 per day effective from July 1, 2018 for delayed in filing of annual return and financial statements. The additional fee shall also be applicable to revised financial statement or board report as well as Secretarial audit report.

http://www.mca.gov.in/Ministry/pdf/CompaniesOfficesFeesRules_07052018.pdf

5. Norms for appointment of Independent Directors:

MCA has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 whereby amendment has been made to Rule. The revised norm provides that in case of appointment of Independent Director, none of the relatives of such independent director should be indebted to the company, its holding subsidiary or associate Company or their promoters, or directors; or has given a guarantee or provided any security in connection with indebtedness of any third person to its holding, subsidiary or associate company or their promoter or directors for an amount of Rs. 50 Lakhs at any time during the two immediately preceding financial years or during current financial year.

http://www.mca.gov.in/Ministry/pdf/AppointmentDirectorsRules_07052018.pdf

6. Amendment relating to prospectus and allotment of securities:

MCA has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. The amendment prescribes omission of rule 4 - Reports to be set out in the Prospectus, rule 5- Other matters and reports to be stated in the prospectus and rule 6- Period for which information to be provided in certain cases.

http://www.mca.gov.in/Ministry/pdf/CompaniesProspectusRules_07052018.pdf

Insolvency: Government Notifies Norms for Maintenance of Accounts by IBBI

Central Government has framed Insolvency and Bankruptcy Board of India (Form of Annual Statement of Accounts) Rules, 2018 prescribing norms for maintenance of accounts by IBBI.

MCA Clarification-Condonation of Delay Scheme, 2018

MCA vide Circular dated 17th May, 2018 has issued clarification on difficulties and doubts in the corporate world regarding the filing requirements under the circumstances where the company has already filed the petition before National Company Law Tribunal (NCLT) under section 252 [Appeal to Tribunal in case of removal of name of companies from the registrar of companies] of the Companies Act, 2013 during the availability of the scheme and orders are pending from the National Company Law Tribunal (NCLT) and whether such struck off companies can file CODS upon availing orders after discontinuance of this scheme i.e. May 01, 2018.

It has been clarified that in such cases the concerned Registrar of Company(ies) ROC shall raise a ticket through Change Request Form (CRF) on the portal of MCA i.e. MCA21 along with a copy of the order of National Company Law Tribunal (NCLT) and e-governances shall re-activate the DIN of the directors of such struck off companies that have been revived through NCLT, to file e-CODS. However there is also one condition as a pre-requisite for re-activation of DIN as follows: The director shall not be on the Board of Directors of the

Company which has been struck off under section 248 (1).

http://www.mca.gov.in/Ministry/pdf/CODSCircular_17052018.pdf

IBC – Cabinet approves Ordinance to Change Bankruptcy Rules

The Cabinet Approves Ordinance to Change Bankruptcy Rules. A 14-member Insolvency Law Committee had earlier made suggestions to the Ministry of Corporate Affairs including addressing the situation of home buyers, expanding the pool of potential bidders, making recoveries easier for lenders, and expediting the decision-making process by creditors. Also in the Ordinance, it appears (Law Minister Ravi Shankar Prasad would not give details) are provisions for micro, small and medium scale enterprises (MSMEs), easing some conditions for the segment. Also, the panel had recommended that the committee of creditors for a company decide whether an application for insolvency resolution could be withdrawn after being admitted by the National Company Law Tribunal. Recommendation to treat homebuyers as financial rather than operational creditors could affect the credit rating of lenders top realty developers, while boosting protection for the end-customer. Further, the assent of the President is required for the Ordinance to take effect.

MCA issues Clarification w.r.t. Section 135(5) of the Companies Act, 2013 for spending the amount earmarked for Corporate Social Responsibility activities.

MCA has issued Clarification with regard to provisions under Section 135(5) of the Companies Act, 2013. The concerns have been raised by some stakeholders regarding non-compliance of the first proviso to sub-section (5) of section 135 of the Companies Act, 2013, which lays down that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. The Section 135(1) provide that the Board of every company, shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three

immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy and preference shall be given to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. It has been clarified and reiterated that the above provisions has to be followed in letter and spirit.

http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf

MCA issues Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Third Amendment Rules, 2017 – amendment has been made w.r.t. shares transferred to IEPF and any other amount realised by IEPF the details of these amounts shall be furnished to the Authority in Form No. IEPF 7

The Central Government hereby makes the following rules, further to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, which may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Third Amendment Rules, 2017 and shall come into force with effect from the 22nd May 2018. Currently Dividend on shares transferred to IEPF, Proceeds realized on delisting of

companies with respect to shares transferred to IEPF, Proceeds realized on winding up of companies with respect to shares transferred to IEPF and any other amount realised by IEPF are required to be transferred to specified account of the IEPF Authority maintained in the Punjab National Bank. Now onwards the details of these amounts shall be furnished to the Authority in Form No. IEPF 7 within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules [i.e. 22nd May 2018.], as the case may be.

<http://www.egazette.nic.in/writereaddata/2018/185780.pdf>

SEBI issues circular for effective enforcement of the Listing Regulations

SEBI has issued a circular specifying the uniform structure for imposing fines as a first resort for Noncompliance with provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Standard Operating Procedure for suspension and revocation of trading of specified securities in case the non-compliance is continuing and / or repetitive. Henceforth, the stock exchanges shall, having regard to the interests of investors and the securities market take action in case of non-compliances with the Listing Regulations as specified in this Circular, and follow the Standard Operating Procedure (“SOP”) for suspension and revocation of suspension of trading of specified securities as also specified in this Circular. The Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing. Further, if a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this Circular in consultation with each other. This Circular shall come into force with effect from compliance periods ending on or after September 30, 2018. The Most important Violation as mentioned in Regulation 6(1) w.r.t Non compliance with appointment of CS as Compliance officer shall be punishable with fine of Rs. 1,000/- per day, apart from the other violations as mentioned in the circular. The amount of fine realized as per the above structure shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.

<https://www.sebi.gov.in/legal/circulars/may-2018/non-compliance-with-provisions-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-specified-securi-38841.html>

SEBI notifies SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2018 which shall come into force w.e.f. April 1, 2019. Some of the major Amendments includes the following:

1. Regulation 24A - Every Listed Entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its annual report, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be specified with effect from the year ended 31st March, 2019.

2. Regulation 17 (1) - i) The Board of Directors of the Top 500 Listed Entities shall have at least One Independent Woman Director by 1st April, 2019 and the Board of Directors of the Top 1000 Listed Entities shall have at least One Independent Woman Director by 1st April, 2020.

ii) The Board of Directors of the Top 1000 Listed Entities (with effect from 1st April, 2019) and the Top 2000 Listed Entities (with effect from 1st April, 2020) shall comprise of not less than Six (6) Independent Directors.

3. Regulation 17 (1A) - No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

4. Regulation 17 (1B) - The top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall be a non-executive director and not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013.

5. Regulation 17 (2A) - The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

6. Regulation 17 (6) - The approval of shareholders by Special Resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive Director exceeds fifty per cent of the total annual remuneration payable to all non-executive Directors, giving details of the remuneration thereof.

7. Regulation 17A - The directors of listed entities shall not be eligible for appointment as director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020 and shall not serve as an independent director in more than seven listed entities. Further, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

8. Regulation 19 - The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance. The nomination and remuneration committee shall meet at least once in a year.

9. Regulation 24 - At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not. The term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

10. Regulation 25 - No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018. Further, every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

11. Regulation 25(10) - With effect from October 1, 2018, the top 500 listed entities by market capitalization, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as

may be determined by its board of directors.

12. Regulation 32(7A) - Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

13. Regulation 33(8) - The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.

14. Regulation 34 - The listed entity shall submit to the stock exchange and publish on its website a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders and in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting. The amendment in this clause shall be applicable in respect of the Annual report filed for the year ended March 31, 2019 and thereafter.

15. Regulation 44 - The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year. Further, the top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

16. In Corporate Governance Report, additional certificate from a company secretary in practice is required to be attached that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority.

https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018_38898.html

Amendment to SEBI Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 and Circular No. IMD/FPIC/CIR/P/2018/74 dated April 27, 2018 on Monitoring of Foreign Investment limits in listed Indian companies

SEBI vide Circular dated 17th May, 2018 has decided to amend earlier circular w.r.t. Monitoring of Foreign Investment Limits in listed Indian Companies. It has been decided that the deadline for the companies to provide necessary data to the depositories has been extended to May 25, 2018. Also, the new system for monitoring foreign Investment limits in listed Indian Companies shall be made operational on June 1, 2018.

<https://www.sebi.gov.in/legal/circulars/may-2018/amendment-to-sebi-circular-no-imd-fpic-cir-p-2018-61-dated-april-5-2018-and-circular-no-imd-fpic-cir-p-2018-74-dated-april-27-2018-on-monitoring-of-foreign-investment-limits-in-listed-indian-compa-38977.html>

SEBI issues Master Circular for Underwriters registered with SEBI

SEBI has come out with a Master Circular for Underwriters registered with SEBI. SEBI has been issuing various circulars/directions from time to time. In order to enable the users to have an access to the applicable circulars/directions at one place, Master Circular for Underwriters registered with SEBI has been prepared. This Master Circular is a compilation of the circulars issued by SEBI up to March 31, 2018, which are operational as on the date of this circular. Further, references in the circular to the statutes / Regulations which now stand repealed, have been suitably updated. In case of any inconsistency between the Master Circular and the applicable circulars, the contents of the relevant circular shall prevail. The Master Circular is a compilation of all the existing / applicable circulars issued by the Market Intermediaries Regulation and Supervision Department of SEBI to Underwriters.

https://www.sebi.gov.in/legal/master-circulars/may-2018/master-circular-for-underwriters_38907.html

SEBI issues Circular w.r.t. Segregated Nominee Account Structure in International Financial Service Centre (IFSC)

SEBI has issued circular w.r.t Segregated Nominee Account Structure in International Financial Service Centre (IFSC). With a view to further facilitate ease of market access for foreign investors in IFSC and based on feedback received from market participants, it has been decided to permit Segregated Nominee Account Structure in IFSC wherein orders of foreign investors may be routed through eligible Segregated Nominee Account Providers for trading on stock exchanges in IFSC while adhering to regulatory requirements, inter alia, relating to identification of end-client, Unique Client Code, order placement at client level, client level margining and position limits. It shall be obligatory on the stock exchanges, brokers and Providers' to furnish to SEBI, inter alia, information relating to trades on stock exchanges in IFSC originated by/through Providers, including KYC details of their end-clients, as and when requested.

<https://www.sebi.gov.in/legal/circulars/may-2018/segregated-nominee-account-structure-in-international-financial-service-centre-ifsc-39042.html>

SEBI to Implement System Driven disclosures for non-promoters

SEBI to Implement System Driven disclosures for non-promoters. In the next phase, the system-driven disclosures under certain sections of SAST (Substantial Acquisition of Shares and Takeovers) regulations would be made applicable for non-promoters. Markets regulator SEBI will soon put in place system-driven disclosures for non-promoters, directors and certain class of employees of listed companies. The system-driven disclosures in securities market was introduced in December 2015 and is being implemented in a phased manner. According to the circular, disclosures under a section of PIT (Prohibition of Insider Trading) norms pertaining to directors and employees would also be included. The CEO and up to two levels below CEO of a company shall be deemed as employees for the purpose of system-driven disclosures, with respect to the particular section of PIT regulations. However, the system-driven disclosure under the SAST regulations would not be applied to a scheduled commercial bank or public financial institution as pledgee irrespective of whether such a pledge is for securing

SEBI Updates

indebtedness in the ordinary course of business or not. The regulator noted that the system would continue to run in parallel with the existing system. The depositories and stock exchanges shall make necessary arrangements so that the aforesaid disclosures pertaining to SAST regulations and PIT regulations are disseminated on the websites of respective stock exchanges from August 1, 2018.

https://www.sebi.gov.in/legal/circulars/may-2018/system-driven-disclosures-in-securities-market_39066.html

Taxation Updates

Important Announcements and Approvals made by Pension Fund Regulatory and Development Authority (PFRDA)

Ministry of Finance vide Press Release dated 4th May, 2018 has announced the certain approvals made during the Board Meeting of PFRDA.

Budget announcement- Rating criteria for investments- Corporate Bonds rating changed from AA to A.

Introduction of a Common Stewardship Code:

Modification in Partial Withdrawal rules under NPS: Partial withdrawals allowed to NPS subscribers who wish to improve their employability or acquire new skills by pursuing higher education/ acquiring professional and technical qualifications. Also for who wish to set up a new business/ acquire new business will also be allowed to make partial withdrawals from his contributions.

Increasing cap on equity investment in active choice to 75% from current 50% for Private Sector Subscribers:

27th GST Council Meeting Highlights

Ministry of Finance vide Press Release dated 4th May, 2018 has announced the major key takeaways for GST Council Meeting:

1. Incentive to promote Digital Transactions:

Proposal to provide concession of 2% in GST rate [where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates] on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivise promotion of digital payment.

2. Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol

GST: Assam Notifies E-Way Bill from 16th May

Assam Government has notified that the provisions of the e-way bill rules for intra-State movement of goods will be applicable from 16th May 2018.

GST: Maharashtra to Rollout E-Way Bill from 25th May

Maharashtra Government has notified that the provisions of the E-Way Bill will be applicable for intra-State movement of goods from 25th May 2018.

Government waives off the late fee payable in case of failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018

The Central Government, on the recommendations of the Council, hereby waives the late fee payable under section 47 of the said Act for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018, for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27th day of December, 2017. Further provided that such registered persons should have filed the declaration in FORM GST TRAN-1 on or before the 10th day of May, 2018 and the return in FORM GSTR-3B for each of such months, should also be filed on or before the 31st day of May, 2018.

http://www.cbec.gov.in/resources/htdocs-cbec/gst/Notification-22-2018-central_tax-English.pdf

Roll out of e-Way Bill system for intra-State movement of goods in the States of Assam & Rajasthan from 16th May, 2018 and 20th May, 2018 respectively

Ministry of Finance vide Press Release dated 14th May, 2018 has informed that e-Way Bill system for intra-State movement of goods would be implemented in Assam from 16th May, 2018 & Rajasthan from 20th May, 2018.

With the roll-out of e-Way Bill system in these States/ Union Territory, it is expected that trade and industry will be further facilitated insofar as the transport of goods is concerned, thereby eventually paving the way for a nation-wide single e-Way Bill system. Trade and industry and transporters located in these States/ Union Territory may obtain registration/ enrolment on e-Way Bill portal namely <https://www.ewaybillgst.gov.in> at the earliest without waiting for the last date.

Taxation Updates

DGFT extends the last date for mandatory digital payments through e-MPS to 01.06.2018

DGFT has extended the last date for mandatory digital payment through e-MPS. A facility for digital payment for miscellaneous applications (e-MPS) was launched recently and was made mandatory w.e.f 01-05-2018. While DGFT RAs can access e-MPS through login id & password, however exporters are required to have a DSC (IEC embedded) to make digital payment through e-MPS. It has been reported by RAs that there are users who do not possess DSC, could not make digital payments through e-MPS. The issue is being resolved by making changes in e-MPS to delink it from DSC for login purpose for the convenience of the exporters. In the meantime, the date for mandatory digital payment through e-MPS is extended to 01.06.2018.

Government extends the due date for filing GST summary Sales returns for April till 22nd May, 2018

The government has extended the due date for filing GST summary sales returns for April by two days till May 22, 2018. An official statement said that certain technical issues are being faced by the taxpayers during the filing of GSTR-3B for April. In order to resolve the same, emergency maintenance is being carried out on the system. Therefore, in the interest of taxpayers it has been decided to extend the last date for filing of returns in GSTR-3B for the month of April by 2 days. Taxpayers can now file their April GSTR-3B return till May 22. Filing GSTR 3B is mandatory for all those who have registered for the Goods and Services Tax (GST).

Intra-state E-way Bill Applicability in Goa from June 1, 2018

Ministry of Finance vide notification dated 18th May, 2018 has decided to enforce the e-way bill for intra-State movement of goods from 1st June, 2018.

Lakshadweep UT to roll out intra-state e-way bill w.e.f. 25.05.2018

Ministry of Finance vide Notification dated 21st May, 2018 has announced that e-way bill shall be required to be generated where movement of goods commences and terminates within Union Territory (UT) of Lakshadweep w.e.f. 25th May 2018.

Andaman and Nicobar Islands to roll out intra-state e-way bill w.e.f. 25.05.2018

Ministry of Finance vide Notification dated 21st May, 2018 has announced that e-way bill shall be required to be generated where movement of goods commences and terminates within Union Territory (UT) of Andaman and Nicobar Islands w.e.f. 25th May 2018.

Chandigarh UT to roll out intra-state e-way bill w.e.f. 25.05.2018

Ministry of Finance vide Notification dated 18th May, 2018 has announced that e-way bill shall be required to be generated where movement of goods commences and terminates within Union Territory (UT) of Chandigarh w.e.f. 25th May 2018

Dadra and Nagar Haveli UT to roll out intra-state e-way bill WEF 25th May 2018

Ministry of Finance vide Notification dated 18th May, 2018 has announced that e-way bill shall be required to be generated where movement of goods commences and terminates within Union Territory (UT) of Dadra and Nagar Haveli w.e.f. 25th May 2018

CBDT directs the I-T Department to form a special team of officers to complete the task of filing these Appeals under Section 252(1) of the Companies Act, 2013 in various NCLT benches

The Central Board of Direct Taxes (CBDT) has directed the I-T Department to form a special team of officers to complete the task of filing these Appeals under Section 252(1) of the Companies Act, 2013 in various NCLT benches across the country by this month-end, and has written to the Ministry

of Corporate Affairs seeking its help. The Income Tax (IT) Department is an "aggrieved creditor" to many de-registered shell companies and will petition the National Company Law Tribunal (NCLT) to recover tax dues of crores of rupees. The CBDT, the policy-making body for the department, is concerned over crores of rupees of its "legitimate" taxes being stuck, after these shell firms were de-registered by the government in the recent past as part of its drive against black money and fraud business operations. A standard operating procedure (SOP) has been issued by the CBDT last year for the tax department for filing such appeals that stated that shell firms against whom the department has pending cases of departmental appeal, penalty and prosecution among others will be petitioned before the NCLT. The CBDT said that the Ministry of Corporate Affairs has informed it about issuing "suitable directions to all regional directors and Registrar of Companies (RoCs) to extend cooperation to the tax department while filing applications for restoration of name of struck off/de-registered companies before the jurisdictional NCLT bench. The ministry has also told the CBDT that its regional directors and RoCs will "not oppose" the tax department's applications before the NCLT.

CBDT issues notification to alter the provisions of Section 56(2)(viib) of Income Tax Act, 1961 w.r.t. exempt Startups from issue of share at price in excess of face value i.e No Tax to be paid on issue of share capital by eligible start-ups for excess premium

The Central Board of Direct Taxes, has issued a notification to alter the provisions of Section 56(2)(viib) of the said Income Tax Act, 1961. The amendment is made to exempt Startups from issue of share at price in excess of face value i.e No Tax to be paid on issue of share capital by eligible start-ups for excess premium. The provisions of the said Section shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Department of Industrial Policy and Promotion. Further, this notification shall be deemed to have come into force retrospectively from the 11th April, 2018.

https://www.incometaxindia.gov.in/communications/notification/notification24_2018.pdf

Other Updates

EPFO declares interest Rate on EPF for the year 2017-18

The Ministry of Labour and Employment, Government of India, has conveyed the approval of the Central Government under Para 60(1) of Employees' Provident Funds Scheme, 1952 to credit interest @ 8.55% for the year 2017-18 to the account of each member of the EPF Scheme as per the provisions under Para 60 of EPF Scheme, 1952.

Admin charges payable by employer on EPF amended w.e.f. 01.06.2018

Government reduces normal administrative expenses payable by the employer with effect from 1st June, 2018 at 0.50 per cent of the pay subject to a minimum sum of seventy-five rupees per month for every non-functional establishment having no contributory member and five hundred rupees per month per establishment for other establishments. Earlier the charge was revised to 0.65 per cent from 01.04.2017 and will remain applicable till 31st May 2018.

Glossary

CBDT	Central Board of Direct Taxes	MCA	Ministry of Corporate Affairs
CGST	Central Goods and Service Tax	MoU	Memorandum of Understanding
CA 2013	Companies Act 2013	MSME	Micro Small and Medium Enterprises
DIN	Director Identification Number	NCLAT	National Company Law Appellate Tribunal
ETF	Exchange Traded Fund	NCLT	National Company Law Tribunal
FPI	Foreign Portfolio Investors	NBFC	Non Banking Financial Company
FRDI	Financial Resolution & Deposit Insurance	NPA	Non-Performing Assets
FDI	Foreign Direct Investment	NRI	Non resident Indian
GST	Goods and Services Tax	OTP	One Time Password
GIC	GST Implementation Committee	OCI	Overseas Citizens of India
ICDS	Income Computation and Disclosure Standards	PAN	Permanent Account Number
IGST	Integrated Goods and Services Tax	PIO	Person of Indian Origen
ITC	Input tax Credit	RBI	Reserve Bank Of India
IFRS	International Financial Reporting Standards	ROC	Registrar of Companies
ITR	Income Tax Return	SEBI	Securities and Exchange Board of India
IBC	Insolvency and Bankruptcy Code	TAN	Tax Account Number
IPs	Insolvency Professionals	UTGST	Union Territory Goods and Service Tax
Ind AS	Indian Accounting Standards	VAT	Value Added Tax
IBBI	Insolvency and Bankruptcy Board of India	IEPF	Investor Education and Protection Fund
IUs	Information Utilities	ISD	Input Service Distributer

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