

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS



**A MONTHLY NEWSLETTER BY
CORPORATE LAW TEAM
FEBRUARY 2024**

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*"Business opportunities
are like buses, there's
always another one
coming."*

– Richard Branson





COMPANIES ACT, 2013



SECTION I- COMPANIES ACT, 2013

I. REGULATORY INSIGHTS

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
Ministry of Corporate Affairs	Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024.	Notification dated 24th January, 2024	The Notification outlines the provisions for Listing on permitted stock exchanges within permissible jurisdictions, as follows: 1. An unlisted public company, which does not fall under the Rule 5 (exemption list) and has no partly paid-up shares, is authorized to issue equity shares for the purpose of listing on a stock exchange in a permissible jurisdiction.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			2. An unlisted public company, listing its equity shares on permitted stock exchanges in permissible jurisdictions and with the intention of also securing listing on any recognized stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956, is obligated to comply with the requirements of SEBI. 3. The unlisted public company is required to submit the prospectus in e-Form LEAP-1, along with the applicable fees within seven days on the permitted exchange. 4. Following the listing of equity shares on any stock exchange in a permissible jurisdiction, the company is required to adhere to the Indian Accounting Standards outlined in the Companies (Indian Accounting Standards) Rules, 2015. Companies not eligible for Listing on permitted stock exchanges in permissible jurisdictions: Company shall not be eligible for issuing its equity shares for listing in accordance with these rules, in case it:

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			1. Has been registered under section 8 or declared as Nidhi under section 406 of the Act; 2. Is a company limited by guarantee and also having share capital; 3. Has any outstanding deposits accepted from the public as per Chapter V of the Act and rules made thereunder; 4. Has a negative net worth; 5. has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture-holder or any other secured creditor; 6. has made any application for winding-up under the Act or for resolution or winding-up under the IBC, 2016 and in case any proceeding against the company is pending. 7. has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

II. CHECKLIST

PROCEDURE FOR SHIFTING OF REGISTERED OFFICE FROM ONE ROC TO ANOTHER WITHIN SAME STATE				
Compliance title	Description	Section/ rule/ regulation	Timeline	Prescribed form
Calling Board Meeting	Issue Notice, including the agenda, notes to the agenda, and the draft Board Resolution for the Board Meeting, to all Directors at their registered addresses.	Section 173(3) and Secretarial Standard-1	At least 7 days before the date of Board meeting; *Board Meeting can be conducted on Shorter Notice with the consent of directors	NA
Hold a Board Meeting	Hold a Board Meeting to deliberate on the proposal for: - 1. Shifting of Registered Office from one ROC to another ROC within the same State; 2. Fixing day, date, time and venue of the Extra-Ordinary General Meeting; 3. Consider and approve the notice of the Extra-Ordinary General Meeting; 4. To authorise a consultant to represent before the authorities.	Section 173 and Secretarial Standard-1	In the case of proper notice, i.e., more than 7 days, the meeting can be scheduled for the specified day mentioned in the notice. *In case of shorter notice, i.e., less than 7 days, the meeting can be scheduled for the specified day mentioned in the notice.	NA

Preparation and circulation of Draft Minutes	The draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board for their comments.	Clause 7.4 of the Secretarial Standard-1	Within 15 days from the date of the conclusion of the Meeting.	NA
Calling of Members Meeting	The notice for an Extraordinary General Meeting must be provided, in writing, at least 21 clear days before the scheduled date. This notice can be delivered by hand, ordinary post, speed post, registered post, courier, facsimile, email, or any other electronic means.	Section 101 and Secretarial Standard-II	Before 21 clear days from the date of General Meeting; *In case of shorter notice, any day decided by the board subject to the following condition: - The consent of the majority in number of members entitled to vote, representing not	N/A

	A General Meeting may be convened at shorter notice with the consent of the majority in number of members entitled to vote, representing not less than ninety-five percent of the paid-up capital as gives a right to vote at the Meeting.		The consent of the majority in number of members entitled to vote, representing not less than ninety-five percent of the paid-up capital as gives a right to vote at the Meeting.	NA
Recipients of Extraordinary General Meeting Notice	Notice will be sent to -Directors -Members -Auditors of Company and -to others who are entitled to receive the notice of the General Meeting.	Section 101 and Secretarial Standard-II	From the date of issue of notice and before the date of the meeting.	NA
Contents of EGM Notice	Notice of General Meeting shall specify the following: - Date - Day - Time	Section 101, 102 Secretarial Standard-II	N/A	NA

Hold an EGM	Hold an EGM and pass special resolution for shifting of Registered Office within a State from the jurisdiction of one ROC to another ROC.	Section 12 and Rule 28 Companies (Incorporation) Rules, 2014	NA	NA
Minutes of General Meeting	Prepare and arrange for signing of the minutes of the General Meeting.	Secretarial Standard -2	Minutes entered Within 30 days from the Date of General Meeting.	NA
Submission of Form MGT-14	File Form-MGT 14 and attached as attachment: - CTC of Shifting of Registered Office from one ROC to another ROC within the same State; Altered copy of Memorandum of Association.	Rule 24 Companies (Management & Administration) Rules, 2014	Within 30 days from the date of passing the Resolution.	MGT-14
Submission of Form INC-23	The company shall file an application in Form INC-23 with the Regional Director, along with the required fees and the following attachments:	Rule 28 Companies (Incorporation) Rules, 2014	No time period is prescribed (Please filing of the physical application to the Regional Director).	INC-23

	1. Board Resolution for shifting of registered office; 2. Special Resolution of the members of the company approving the shifting of registered office; 3. a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof; 4. a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending; 5. acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting			
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	and that the employees' interest is not adversely affected consequent to proposed shifting.			
Regional Director's approval	If no objections are received within the stipulated time, the Regional Director will issue a confirmation notice within fifteen days from the date of receipt of the application.	Rule 28 Companies (Incorporation) Rules, 2014	Within fifteen days of the receipt of application	N/A
Submission of Form INC-28	The certified copy of the Regional Director's order approving the alteration of the memorandum for the transfer of the registered office within the same state must be filed in Form No. INC-28 along with the required fee, submitted to the Registrar of the State within thirty days from the date of receiving the certified copy of the order.	Rule 28 Companies (Incorporation) Rules, 2014	Within thirty days from the date of receiving the certified copy of the order.	INC-28

Submission of INC-22	The company shall file an application in Form INC-22 with the Regional Director, along with the required fees and the following attachments: Proof of Registered Office address (Conveyance/Lease deed/Rent Agreement etc. along with the rent receipts) along with standard NOC in case of Leased or rented property; Copies of the utility bills (not older than two months); Copy of the approval order from Regional Director; List of all the companies (specifying their Corporate Identification Number or CIN) that share the same registered office address, if applicable.	Rule 27 Companies (Incorporation) Rules, 2014	Within fifteen days of the change the jurisdiction of Registrar.	INC-22
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III. SECTION ANALYSIS

Unlocking Growth: An Introduction to Rights Issue of Shares

Introduction:

In the dynamic landscape of corporate finance, companies often seek innovative ways to fuel their expansion and capitalize on emerging opportunities. One such strategic financial maneuver is a "Rights Issue of Shares." This unique financial instrument extends an exclusive invitation to existing shareholders, granting them the first right to subscribe to additional shares. In this introduction, we delve into the fundamentals of a rights issue, exploring its purpose, mechanics, and the compelling benefits it offers both the company and its loyal investors. Join us on a journey to understand how this financial mechanism becomes a catalyst for growth, fostering a symbiotic relationship between a company and its shareholders.

Applicable Law:

1. Companies Act, 2013 – Section 62(1)(a) and (2), Section 39(4) and Section 56(4)(b)
2. Rule 12A of Companies (Share capital and Debenture) Rules, 2014 and Rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Eligible Persons:

Existing shareholders are entitled to participate in the rights issue of shares in proportion to the paid-up share capital held by them.

Provisions:

Under Section 62(1)(a) and (2) in conjunction with Rule 12A of the Companies (Share Capital and Debenture) Rules, 2014, as stipulated by the Companies Act, 2013, existing shareholders of the company are afforded an opportunity, either in preference to acquire a greater stake in the company or through the right of first refusal to acquire shares of the company.

1. To commence the issuance of shares through a Rights Issue, the company must send an offer letter, in the form of a notice, to the existing shareholders.
2. The offer letter will be sent via registered post, speed post, electronic mode, courier, or any other mode with proof of delivery, at least three days prior to the opening of the issue.
3. The offer letter must clearly state the number of shares being offered and the time limit within which the shareholders should accept the offer. This time limit should not be less than 7 days and not more than 30 days from the date of the issue of the offer letter. Failure to accept the offer within this timeframe will be deemed a decline.
4. Shareholders should possess the right to renounce the offer to acquire existing shares, unless otherwise specified in the Articles of Association of the Company. Moreover, the

offer letter should explicitly state the availability of the option to renounce.

5. After the expiration of the specified time limit, the Board of Directors of the Company may dispose of the shares in a manner that is not disadvantageous to both the shareholders and the company, if the existing shareholders have neither accepted the offer nor renounced it in favour of any person.

Procedure:

1. Check the Articles of Association to identify any restrictions on the renunciation of shares. If necessary, take appropriate steps to amend the Articles of Association of the Company, adding a clause for the renunciation of shares.

2. Check whether the company have sufficient authorised share capital for issue of further share capital of the company. If required take necessary step to increase the authorised share capital of the company if the right issue not within the total authorised share capital.

3. Dispatch a notice, including the agenda, notes to the agenda, and the draft Board Resolution for the Firsts Board Meeting, to all Directors at their registered addresses at least 7 days before the scheduled Board Meeting. If urgent, a meeting may be convened through Shorter Notice. [As per Section 173(3) & Secretarial Standard-1].

4. Hold a Board Meeting to deliberate on the proposal for the Rights Issue of Equity

Shares. Pass the requisite Board Resolution to authorize the issuance. Authorise the Company Secretary or any Director to sign and file the necessary forms with the Registrar of Companies, along with undertaking any necessary acts, deeds, and tasks to implement the Board's decision.

5. Prepare and circulate the draft minutes within 15 days from the conclusion of the Board Meeting to all Directors for their comments. Circulate the draft minutes by hand/-speed post/registered post/courier/email.

6. The letter of offer shall be sent to all existing shareholders through registered post, speed post, electronic mode, courier, or any mode with proof of delivery, at least three days before the opening of the issue. [Section 62(2)];

7. After the expiration of the time specified in the notice or upon receiving an earlier intimation from the person to whom such notice is given, expressing a decline to accept the offered shares, the Board of Directors may dispose of them in a manner deemed fit, ensuring it is not disadvantageous to the shareholders and the company.

8. Dispatch a notice, including the agenda, notes to the agenda, and the draft Board Resolution for the Second Board Meeting, to all Directors at their registered addresses at least 7 days before the scheduled Board Meeting. If urgent, a meeting may be convened through Shorter Notice. [As per Section 173(3) & Secretarial Standard-1].

9. Convene a Board Meeting to allot the Right Issue of Equity Shares and pass the Board Resolution for the allotment of the Right Issue of Equity Shares. Authorise the Company Secretary or any Director to sign and file the necessary forms with the Registrar of Companies, and to do such acts, deeds, and tasks to implement the Board's decision.

10. The Company must submit the PAS-3 form for the return of allotment within 30 days from the date of the allotment of securities. Additionally, the issuance of share certificates should be completed within 60 days from the date of the allotment of shares.

11. Prepare and circulate the draft minutes within 15 days from the conclusion of the Board Meeting to all Directors for their comments. Circulate the draft minutes by hand/-speed post/registered post/courier/email.

Penalty:

If any company and directors fail to comply with the provisions of the right issue, there is no direct penal provision specified in the governing regulations.

However, as per Section 450 of the Companies Act, 2013, in cases where no specific penalty or punishment is stipulated in the Act, the company and every officer of the company who is in default as defined under Section 2(60), or any other person, shall be liable to a fine of up to Rs. 10,000/-, and an additional fine of up to Rs. 1,000/- for every day following the first day during which the contravention continues. The maximum

penalty is capped at two lakh rupees for a company and fifty thousand rupees for an officer in default or any other person.



SEBI



IV. REGULATORY INSIGHT

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
Security and Exchange board of India	Streamlining of Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians	Circular No. SEBI/HO/AF-D/AFD-SEC-2 /P/- CIR/2024/8	1. For ease of compliance reporting and for regulatory purposes all DDPs and Custodians shall submit the reports specified by the Board from time to time. 2. The list of reports mentioned in the as mentioned in circular shall be submitted on the SEBI Intermediary Portal (SI Portal) by DDPs and Custodians. 3. These reports shall be submitted by DDPs and Custodians on the SI portal on monthly, quarterly, half

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			yearly and annual basis as specified. The monthly and quarterly reports shall be uploaded within 15 calendar days from the end of each month and quarter, respectively.
Security and Exchange board of India	Extension of timeline for verification of market rumours by listed entities	Circular No. SEBI/HO/CFD/CFD-PoD-2 / P / - CIR/2024/7	As per the circular, it has been decided to extend the timeline for effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to June 1, 2024 and for top 250 listed entities by market capitalization, to December 1, 2024 to mandatorily verify and confirm, deny or clarify market rumors.
Security and Exchange board of India	Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism	Circular No. SEBI/HO/MRD / M - RD-PoD-3/P/ CIR/2024/6	1. In order to enhance efficiency, ease of compliance and reduce cost and based on deliberations in the Secondary Market Advisory Committee of SEBI and discussions with stock exchanges and clearing corporations, it has been decided that the promoters can offer the shares to employees in Offer For Sale (OFS) through the Stock Exchange Mechanism, relevant provisions regarding the same are:

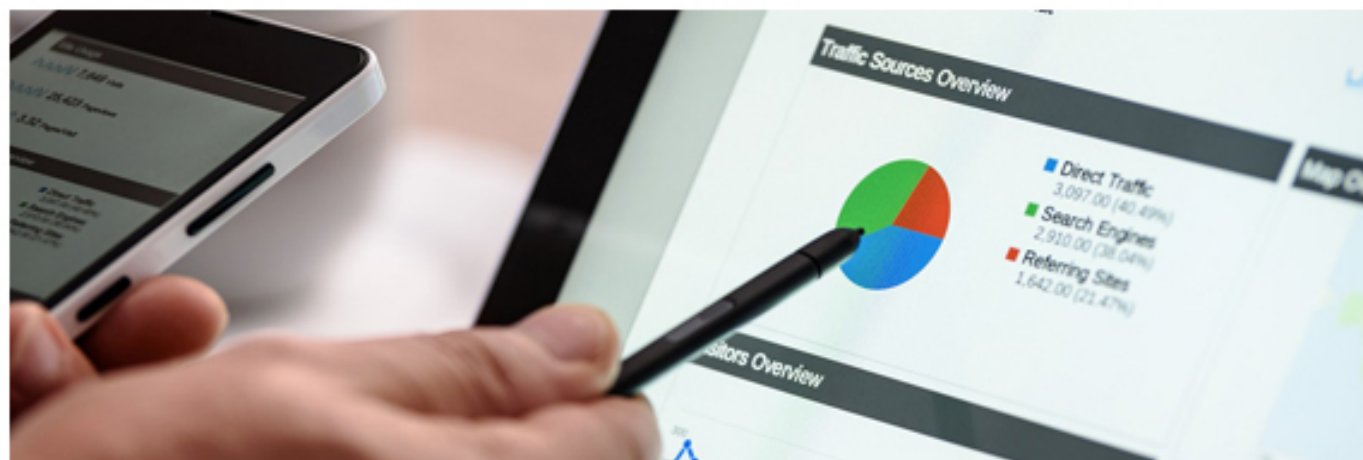
Name of the Act/Rules/Regulations etc	Heading	Notification/ circular No and Date	Details
			Promoters shall be permitted to sell shares within period of 2 weeks (Two) from the OFS Transaction to the employees of such companies which shall be considered as a part of said OFS Transaction. Promoters may at their discretion offer these shares to employees at price arrived in said OFS Transaction or at discounted price. Promoters shall ensure to make necessary disclosures in the OFS notice to the exchange including number of shares offered to employees or discount offered (if any). 2. Earlier the process/ procedure is happening outside the stock exchange mechanism but is now amended because of drawbacks of earlier procedure.
Security and Exchange board of India	Ease of doing business- Changes in reporting	Circular No. SEBI/HO/MIR S - D/MIRSD-Po D - 1 / P / - CIR/2024/03	In order to combat the issue of duplication of monitoring mechanisms and difficulties in uploading data to exchanges the circular has provided changes in reporting and certain reports are discontinued which are:

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			The earlier requirement for uploading the data by the stock broker to the stock exchanges, is no longer required. Stock exchanges shall put in place, mechanism for monitoring of clients' funds ('G' principle) lying with the stock brokers on the principle that is Total Available Funds i.e., cash and cash equivalents with the stock broker and clearing corporation/ clearing member should always be equal to or greater than clients' funds as per ledger balance. The tables for Funds of credit balance clients used for settlement obligation of debit balance clients or for own purpose, Funds of clients used for Margin obligation of proprietary trading and Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading stands deleted.
Security and Exchange board of India	Ease of Doing Investments by Investors-	Circular No. SEBI/HO/MIRSD / -POD-1/P/-CIR/2024/4	Pursuant to consultation with the Brokers' Industry Standards Forum (ISF) and to promote ease of doing business and ease of investment, it has been decided that the frame

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			work for Trading Members to provide the facility of voluntary freezing/blocking the online access of the trading account to their clients on account of suspicious activities shall be laid down on or before April 01, 2024, by the ISF, under the aegis of stock exchanges, in consultation with SEBI.



FEMA



V. FAQs

FAQ'S on Purchase of Immovable Property

Purchase of Immovable property outside India by Resident Individuals

Q.1 Can a resident continue to hold immovable property outside India which was acquired by him when he was a non-resident?

Ans. According to section 6(4) of the FEMA, a person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.

Q.2. Can a resident individual send remittances and purchase property outside India?

Ans. A resident individual can send remittances under the Liberalised Remittance

Scheme (LRS) for purchasing immovable property outside India. The remittance under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being person resident in India, comply with the terms and conditions of the Scheme.

Q.3 To whom do the restrictions of transferring property outside India not apply?

Ans. The prohibition of a resident acquiring property outside India is not applicable if:

- a. The resident is a foreign national; or
- b. The property was acquired before July 8, 1947 and continued to be held after obtaining permission of Reserve Bank; or
- c. If it is acquired on a lease not exceeding five years

Q.4 How can immovable property be acquired outside India by a resident?

Ans. Immovable property can be acquired outside India:

(i). A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition.

(ii). A person resident in India may acquire immovable property outside India from a person resident outside India–

(a) by way of inheritance;

(b) by way of purchase out of foreign exchange held in RFC account;

(c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being person resident in India, comply with the terms and conditions of the Scheme;

(d) jointly with a relative who is a person resident outside India;

(e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time;

Purchase of immovable property in India by Non-Resident Individuals

Q.1 How can a Non-resident Indian (NRI) and an Overseas Citizen of India (OCI) acquire immovable property in India?

Particulars	NRI/OCI (NDI Rules, 2019)
Purchase (other than agricultural land/farmhouse/plantation etc.) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/farmhouse/ plantation etc.) from	Acquire as gift (other than agricultural land/farmhouse/ plantation etc.) from
Resident/ NRI/ OCI [24(b)] who is a relative	Resident/ NRI/ OCI [24(b)] who is a relative
Acquire (any IP) as inheritance from	Acquire (any IP) as inheritance from
a. Any person who has acquired it under laws in force [24(c)];	a. Any person who has acquired it under laws in force [24(c)];
b. Resident [24(c)]	b. Resident [24(c)]
Sell (other than agricultural land/farmhouse/plantation etc.) to	Sell (other than agricultural land/farmhouse/plantation etc.) to
Resident/ NRI/ OCI [24(e)]	Resident/ NRI/ OCI [24(e)]

Q.2 What are the accepted modes of payment for property acquired in India?

Ans. Payment for immovable property has to be received in India through banking channels and is subject to payment of all taxes and other duties/ levies in India. The payment can also be made out of funds held in NRE/ FCNR(B)/ NRO accounts of the NRIs/O-CIs. Payments should not be made through travellers' cheque and foreign currency notes.

Q.3 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?

Ans. Foreign Embassy/ Diplomat/ Consulate General, can purchase/ sell immovable property (other than agricultural land/plantation property/ farm house) in India provided –

- a. Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
- b. The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

Q.4 Can foreign nationals acquire property in India?

Ans. a. Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea (DPRK), irrespective of their residential status, cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. This prohibition shall not be applicable to an OCI.

b. Foreign nationals of non-Indian origin resident in India (except 11 countries listed at (a) above) can acquire immovable property in India.

c. Foreign nationals of non-Indian origin resident outside India can acquire/ transfer immovable property in India, on lease not exceeding five years and can acquire immovable property in India by way of inheritance from a resident.

All other acquisitions/ transfers by foreign nationals will require the prior permission of RBI.

Q.5 How can a Long Term Visa (LTV) holder acquire property in India?

Ans. Citizen of Pakistan, Bangladesh or Afghanistan belonging to minority community (Hindu, Christian, Sikh, Parsi, Buddhist, Jain) in that country and residing in India who has been granted an LTV by the Central government can purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment. However, such acquisition is subject to the conditions as specified under Rule 28 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.6 Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?

Ans. A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property

(other than agricultural land/ farm house/plantation property), jointly with his/ her NRI/ OCI spouse subject to the conditions laid down in Rule 25 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.7 Can a non-resident repatriate the sale proceeds of immovable property in India?

Ans. (a) A person who has acquired the property U/s 6(5) of FEMA or his successor cannot repatriate the sale proceeds of such property without RBI approval.

(b) Repatriation up to USD 1 million per financial year is allowed, along with other assets under (Foreign Exchange Management (Remittance of Assets) Regulations, 2016) for NRIs/ PIOs and a foreign citizen (except Nepal/ Bhutan/ PIO) who has (i) inherited from a person referred to in section 6(5) of FEMA, or (ii) retired from employment in India or (c) is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India.

(c) NRIs/ PIOs can remit the sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) in India subject to the following conditions:

- i. The immovable property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.;
- ii. The amount for acquisition of the property was paid in foreign exchange received through banking channels or out of the funds

held in foreign currency non-resident account or out of the funds held in non-resident external account;

- iii. In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Q.8 What is the meaning of transfer?

Ans. As per section 2(ze) of FEMA transfer means, sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possessions or lien.

Source: www.rbi.org.in





Non-Banking Financial Institutions (NBFC)



VI. NON-BANKING FINANCIAL COMPANY (NBFC)

Account Aggregator

Meaning:

Account Aggregator” means a non-banking financial company as notified under in sub-clause (iii) of clause (f) of section 45-I of the Act, that undertakes the business of an account aggregator, for a fee or otherwise, as defined at clause (iv) of sub-section 1 of section 3 of these directions.

Conditions for Registration: For the application to be considered for registration, the Bank must be satisfied that the following conditions are met:

1. The company possesses the required resources and capabilities to provide these services to customers.
2. The company possesses a sufficient capital structure to undertake the business of an account aggregator.
3. The promoters of the company are fit and proper.

4. The company has formulated a robust plan for its Information Technology system.

5. The company's leverage ratio should not exceed seven.

6. The issuance of a certificate of registration to the Account Aggregator should align with the public interest in commencing or continuing business in India.

7. Any additional conditions, as specified by the Bank from time to time, are considered necessary to ensure that conducting business in India does not adversely affect public interest.

Duties and Responsibilities of an Account Aggregator:

1. The Account Aggregator will offer services to a customer only with the explicit consent of the customer.
2. The Account Aggregator must ensure that the provision of services to a customer is supported by suitable agreements /

2. authorizations involving the Account Aggregator, the customer, and the financial information providers.
3. The Account Aggregator is not allowed to facilitate transactions on behalf of customers.
4. The Account Aggregator must implement suitable mechanisms for accurate customer identification.
5. The Account Aggregator will share information mentioned in paragraph 3(iv) only with the customer it pertains to or any other authorized financial information user, as per the terms of the customer's provided consent.
6. The Account Aggregator is restricted from engaging in any business other than account aggregation. However, it is allowed to deploy investible surplus in non-trading instruments.
7. The Account Aggregator is not permitted to retain any financial information of the customer obtained from financial information providers.
8. The Account Aggregator is prohibited from employing the services of a third-party service provider for conducting the business of account aggregation.
9. The Account Aggregator is not allowed to access the user authentication credentials of customers associated with accounts from different financial information providers.
10. The Account Aggregator must establish a Citizen's Charter ensuring the explicit protection of customer rights. It is prohibited from disclosing any information obtained from or on behalf of a customer without the customer's explicit consent.

11. If there is a discrepancy in the financial information between the statement generated by the Account Aggregator and the books of the Financial Information Provider, the position recorded in the Financial Information Provider's records shall be deemed as accurate.

Cases of Cancellation of registration: The Bank holds the authority to revoke the certificate of registration granted to an Account Aggregator if:

1. The company discontinues the business of an Account Aggregator in India.
2. It fails to adhere to any conditions stipulated during the issuance of the certificate of registration.
3. The Bank becomes aware that the Account Aggregator is no longer eligible for holding the certificate of registration.
4. At any point, it fails to meet the conditions:
 -
 - Condition for Registration;
 - Within twelve months, the company must establish the technology platform, finalize all necessary legal documents for operational readiness, and report compliance with the terms of the granted in-principal approval to the Bank.

Corporate Governance:

An Account Aggregator must establish robust internal mechanisms to review, monitor, and evaluate its controls, systems, procedures, and safeguards. The integrity of IT systems must be maintained continuously, and necessary precautions must be taken to prevent the loss, destruction, or tampering of records.

Nomination Committee:

An Account Aggregator is required to establish a Nomination Committee comprising a minimum of three members from its Board of Directors to assess the 'fit and proper' status of proposed or existing directors.

Explanation I: This Nomination Committee, formed under this provision, shall possess the same powers, functions, and duties as outlined in Section 178 of the Companies Act, 2013.

Risk Management Committee:

1. The account aggregator must institute a comprehensive risk management framework, encompassing:

- A secure and robust technology risk management framework.
- Enhancement of system security, reliability, resiliency, and recoverability.

- Implementation of robust authentication methods to safeguard access to customer data and systems.
- Considering factors like reputation, customer confidence, consequential impact, and legal implications when investing in controls and security measures for computer systems, networks, data centres, operations, and backup facilities.

2. To oversee integrated risk management, an Account Aggregator must establish a Risk Management Committee comprising a minimum of three members from its Board of Directors. The committee's responsibilities include:

- Considering factors like reputation, customer confidence, consequential impact, and legal implications when investing in controls and security measures for computer systems, networks, data centres, operations, and backup facilities.
- Exercising oversight of technology risks to ensure the organization's IT function aligns with its business strategies and objectives.



Insolvency and Bankruptcy Code, 2016



VII. CASE LAW

ORDER OF HON'BLE SUPREME COURT OF INDIA, CIVIL APPELLATE JURISDICTION

DATED 17TH JANUARY, 2024

CIVIL APPEAL NO(S). 4480-4481 OF 2023

WITH CIVIL APPEAL NO. 4247 OF 2023

IN THE MATTER OF
ANSAL CROWN HEIGHTS FLAT
BUYERS ASSOCIATION

.....APPELLANT

VERSUS
M/S. ANSAL CROWN
INFRABUILD PVT. LTD. & ORS.

.....RESPONDENTS

Facts of the Case:

1. The Homebuyers' Association ("Appellant Association") of a project developed by M/s Ansal Crown Infrabuild Pvt. Ltd. ("Developer Company") filed a complaint before the National Consumer Disputes Redressal Commission ("NCDRC").
2. The NCDRC passed an order directing the Developer Company to complete the Project and handover the possession of allotted flats to the members of Appellant Association within specified time. The Homebuyers were also given an option to seek refund of

deposited amount along with interest, instead of taking possession of the flat.

3. The Appellant Association was obligated to file execution application before NCDRC for getting the said order executed.

4. Thereafter, a petition under Section 9 of IBC was filed before the National Company Law Tribunal ("NCLT"), seeking initiation of CIRP against the Developer Company. The NCLT initiated CIRP against the Developer Company and imposed moratorium under Section 14 of IBC.

5. The Appellant Association filed execution application before NCDRC, seeking execution of the order against the Developer Company and certain individuals (Respondents No. 2 to 9) including the Directors and Officers of the Developer Company.

6. However, the NCDRC declined to execute its order while holding that the decree cannot be executed due to the operation of moratorium under Section 14 of IBC.

7. The Appellant Association filed an appeal against the NCDRC order before the Supreme Court, contending that under IBC there is no prohibition on proceeding against the directors/officers of the company which is under-going moratorium.

Appellant Contentions:

1. The Appellant contended the view taken by the National Commission and held it erroneous.

2. He contended that under the provisions of the IBC, there is no prohibition on proceeding against the directors/officers of the company, which is under moratorium under Section 14 of the IBC.

3. Appellant placed reliance on section 32A of IBC, case of **P. Mohanraj vs. Shah Bros. Ispat (P) Ltd. and Anjali Rathi and others vs. Today Homes and Infrastructure Pvt. Ltd. And Others.**

Respondent Contentions:

1. The Respondent denied the contentions of appellant and the findings of the case mentioned by appellant and there is no finding recorded by the National Commission that in view of any particular provision of the IBC, moratorium will apply to the directors/officers of the company.

Issue Involved: Whether decree can be executed against directors/ officers if company is under moratorium under section 14 of IBC, 2016?

Hon'ble Supreme court held that:

1. The Supreme Court held that the imposition of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC") has no effect on the execution of a decree against the Directors or Officers of the Company (Corporate Debtor), which is undergoing Corporate Insolvency Resolution Process ("CIRP") under IBC.

2. The Bench placed reliance on the Supreme Court judgment in *P. Mohanraj vs. Shah Bros. Ispat (P) Ltd.*, (2021), wherein it was held that moratorium under Section 14 of IBC would apply only to the Corporate Debtor. Thereafter, in *Anjali Rathi and others vs. Today Homes and Infrastructure Pvt. Ltd. and Ors*, (2021), the Supreme Court held the liability of directors/officers of the Company (Corporate Debtor) undergoing CIRP would continue irrespective of operation of moratorium under IBC.

3. The Bench opined that the protection of moratorium is not available to the directors/officers of the Company (Corporate Debtor)-*"Therefore, we are of the view that only because there is a moratorium under Section 14 of the IBC against the company, it cannot be said that no proceedings can be initiated against the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) for execution, provided that they are otherwise liable to*

abide by and comply with the order, which is passed against the company. The protection of the moratorium will not be available to the directors/officers of the company."

4. The Order of the NCDRC whereby execution of its order was denied was set aside by the Bench. The execution application was remitted to the NCDRC with a direction to continue that execution against the remaining parties except for the Developer Company in the execution application.

5. The appeal has been allowed partly.



VIII. CASE LAW

ORDER OF HON'BLE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

ORDER DATED 12TH JANUARY, 2024

CP(IB) NO. 100 / NCLT / AHM / 2022

**In the matter of
Deccan Charters Private Limited
Creditor**

...Applicant/ Financial

Vs.

GSEC Monarch and Deccan Aviation Pvt Ltd

...Respondent/ Corporate

Facts of the Case:

1. GSEC Monarch and Deccan Aviation Pvt. Ltd. (Corporate Debtor) was incorporated as a Joint Venture between the Corporate Debtor and Deccan Charters Pvt. Ltd. (Applicant).

2. On 30.11.2018, a Business Undertaking Transfer Agreement ('BTA') was executed for the Corporate Debtor to undertake the entire business of the Applicant for a consideration of Rs. 11.50 crores and the payment of liabilities of the Applicant, both current and non-current liabilities.

3. Various reminders were sent for the payment of the outstanding debt. The date of default is 30.11.2018. Presently, CIRP application has been filed under Section 7 of IBC against the Corporate debtor.

The applicant filed written statement on 08.11.2023 and held that:

(i) The Applicant stated that the applicant and respondent formed a joint stock company as per the MOU binding Term sheet dated 12.12.2017 and agreed that corporate debtor will have a 50% of the shareholding in the GMDAPL and the applicant will have remaining 50% of the shareholding.

(ii) The parties to the JV will infuse funds in the respondent company to sustain its business operations.

(iii) The applicant as per the MOU infused a sum of Rs.5 crores to the respondent for funding the JV.

(iv) The amount was taken as a loan by the applicant through respondent company Directors owned NBFC namely M/s. Krone Finstock Pvt Ltd and infused the same in respondent company, with the understanding that the

(iv) liability of repayment will be transferred to the respondent in lieu of the BTA to be executed.

(v) The applicant was only seeking payment of the Rs.5 crores which is over and above the amount in BTA in terms of MoU which has not been disputed by the respondent. It is stated by the applicant that this disbursement qualifies him to be a financial creditor under section 5(8) of the IBC 2016.

(vi) Applicant further held that any amount disbursed to improve the financial health of the company and boost its economic prospects, would have commercial effect of borrowing and would qualify as Financial Debt under Sec 5(8)(f) of the IBC 2016.

Respondent denied the averments of applicant and held that:

(i) The Respondent contended that the Applicant cannot claim the status of financial creditor as there was no disbursement for the time value of money.

(ii) Further, the agreement being a JV between both the parties, action cannot be initiated under Section 7 of the code and hence this application is not maintainable.

(iii) Furthermore, in the Business Undertaking Transfer Agreement on 05.03.2019 it is mentioned that GSEC ("Respondent") has

agreed and upon execution of this agreement allot 60,00,000 of equity shares of Rs.10/- each at par to DCPL and retain the debt as payable to DCPL. However, there is no mention of the Rs.5 crores as specific debt released. The amount of Rs.5 crores is shown as liability to Krone Finstock Pvt Ltd.

Issue Involved: Whether amount invested in JV project of promoter and investor is a Financial debt?

Hon'ble NCLT held that:

1. The NCLT Ahmedabad rejected the CIRP application and held that the amount invested in a Joint Venture Project of a promoter and investor is not a Financial Debt under IBC.

2. It observed that the Business Transfer Agreement and the intention of investment or debt provides that the transactions between the Applicant and the Corporate Debtor was for the purpose a Joint Venture. The debt and its service and its disbursement do not evidence any creditor-debtor arrangement. The debt is in-built in an agreement to be a joint venture for share of business and furtherance of business interests.

3. Thus, the nature of transactions and the disbursements do not correctly bring the status of the debt under IBC.

4. NCLT placed reliance on the judgement in the case of **M/s Jagbasera Infratech Pvt Ltd v Rawal Variety Construction Ltd** which held that the amount invested in a JV project of a promoter and investor is not a financial debt.

5. The application CP(IB) 100 of 2022 filed under Sec 7 was rejected.





GENERAL



IX. CORPORATE COMPLIANCE CALENDAR

S. No.	Due Date	Statute	Particulars of Form(s)/Return to be filed	Compliance
1.	January 01, 2024 to March 31, 2024	Companies Act, 2013	NA	Every Company to hold a minimum of 4 Board meetings in a calendar year subject to the gap between 2 Board Meetings not exceeding 120 days. It is recommended to hold at least one Board Meeting in every calendar quarter.
2.	At least 2 working days before the date of Board Meeting	SEBI (LODR) Regulations, 2015	NA	Prior intimation about the Meeting of the Board of Directors considering the following events to be sent to the concerned Stock Exchange at least 2 working days before the date of the Meeting <u>excluding the date of intimation and date of Meeting</u> :

				1. Proposal for buyback of securities; 2. Proposal for voluntary delisting; 3. Fund raising by way of FPO, rights issue, ADR/GDR/FCCB, QIP, debt issue, preferential issue etc. and for determination of issue price; 4. Declaration/recommendation of dividend, issue of convertible securities; 5. Proposal for declaration of bonus securities.
3.	At least 5 days before the date of Board Meeting	SEBI (LODR) Regulations, 2015	NA	Prior intimation about the Meeting of the Board of Directors considering the quarterly and year-to-date financial results to be sent to the concerned Stock Exchange at least 5 days before the date of the Meeting <u>excluding the date of intimation and date of Meeting.</u>

4.	Within 30 minutes of closure of the Board Meeting	SEBI (LODR) Regulations, 2015	NA	Listed entity to disclose to the concerned Stock Exchange, within 30 minutes of the closure of the meeting, held to consider the following: 1. Dividends/cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched; 2. Any cancellation of dividend with reasons thereof; 3. Decision on buyback of securities; 4. Decision with respect to fund raising proposed to be undertaken; 5. Increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched; 6. Reissue of forfeited shares/securities, or issue of shares/ securities held in reserve for future issue or the creation in any form or manner of new shares/securities or any other rights, privileges or benefits to subscribe to; 7. Alterations of capital, including calls; 8. Financial results; 9. Decision on voluntary delisting
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5.	Advance notice of at least 7 working days (excluding the date of intimation and the record date)	SEBI (LODR) Regulations, 2015	NA	Company to give advance notice to Stock Exchange in respect of record date or book closure specify the purpose of the same.
6.	Within 45 days from the end of quarter	SEBI (LODR) Regulations, 2015	Financial Results along with Limited review report/Auditor's report.	As per Regulation 33, the listed entity shall submit to the stock exchange the quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter.
7.	Within 45 days from the end of quarter	Regulation 32 (1) of SEBI (LODR) Regulations, 2015	Statement of deviation or variation.	As per Regulation 32, the listed entity shall submit to stock exchange the statement on a quarterly basis for public issue, right issue, preferential issue etc., indicating deviation and category wise variation.

X. CORPORATE NEWS

1. Sony Pictures Entertainment has called off the \$10 billion merger deal with Zee Entertainment Enterprises Ltd (ZEEL).

2. In a notice to ZEEL the company said, Culver Max Entertainment (CME) issued notice to Zee Entertainment Enterprises Ltd. (ZEEL) terminating the agreement dated December 22, 2021, to merge ZEEL and CME.

CCI gives approval for AU-Fincare merger

1. The Competition Commission of India (CCI) on January 23 gave approval for the merger between AU Small Finance Bank and Fincare Small Finance Bank.

2. AU SFB on October 30 announced that Fincare SFB will merge with the bank from February 1, 2024. The completion of this transaction was subject to several critical conditions, including approval from the shareholders of both Fincare SFB and AU SFB, regulatory nods from the RBI and the CCI, and a capital infusion of Rs 700 crores by the promoters of Fincare SFB.



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DELHI

A-16/9 & A-16/4, Vasant Vihar, New Delhi – 110 057.

+91-11-42591800, 42591818

delhi@llca.net

www.llca.net

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