

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS



**A MONTHLY NEWSLETTER BY  
CORPORATE LAW TEAM  
NOVEMBER 2023**

# What's Inside

## Companies Act, 2013



- Regulatory Insights
- Checklist
- Case Law
- Section Analysis

## SEBI

- Regulatory Insights



## FCRA

- Regulatory Insights



## FEMA

- FAQs



## NON-BANKING FINANCIAL INSTITUTIONS (NBFC)

- Regulatory Framework



## INSOLVENCY AND BANKRUPTCY CODE, 2016

- Case law (2)



## GENERAL

- Corporate Compliance Calendar
- Corporate News



*"Someone is sitting in the shade today because someone planted a tree a long time ago."*

*– Warren Buffett*





# 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 (Incorporation) Rules, 2014 | Notification No. G.S.R. 790(E) dated 20th October 2023 | <b>Rule 30 – Shifting of Registered Office from one state to another state</b><br><br>Where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, |

| Name of the Act/Rules/Regulations etc | Heading                                   | Notification/circular No and Date    | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------|-------------------------------------------|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |                                           |                                      | <p>investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Ministry of Corporate Affairs         | Limited Liability Partnership Rules, 2009 | Notification dated 27th October 2023 | <p><b>LLPs to maintain Register of Partners</b></p> <ol style="list-style-type: none"> <li>For a new LLP incorporated after this notification: From the date of its incorporation in Form 4A;</li> <li>In case of existing LLPs: Within 30 days of this notification in Form 4A;</li> <li>The register shall be kept at the registered office of the LLP.</li> <li>The entries in the register shall be made within 7 days pursuant to any change made in the contribution amount, or in name and details of partners or in case of cessation of partnership interest.</li> </ol> <p><b>Declaration by Registered Partners and Partners holding beneficial interest in contribution of an LLP</b></p> <ol style="list-style-type: none"> <li><b>Declaration by a Registered Partner who doesn't hold any beneficial interest fully or partly in contribution:</b><br/>To be given to the LLP in Form 4B within 30 days from the date on which his name is</li> </ol> |

| Name of the Act/Rules/Regulations etc | Heading | Notification/circular No and Date | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|---------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |         |                                   | <p>entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions.</p> <p><b>2. Declaration by a person who holds/acquires a beneficial interest in contribution of an LLP but whose name is not registered in the register of partners:</b> To be given to the LLP in Form 4C within 30 days after acquiring such beneficial interest in the contribution of LLP.</p> <p><b>3. LLPs</b> to record declarations in the register of partners and to file a return in Form 4D with the Registrar in respect of such declaration with fees, within 30 days from receiving the declaration.</p> <ul style="list-style-type: none"> <li>• Every LLP shall specify a designated partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest in contribution in the LLP to the Registrar or any other officer authorised by the Central Government and shall file information of such designated partner with the Registrar in Form 4.</li> </ul> |

| Name of the Act/Rules/Regulations etc | Heading                                                        | Notification/circular No and Date    | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|----------------------------------------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ministry of Corporate Affairs         | Companies (Management and Administration) Rules 2014           | Notification dated 27th October 2023 | <p><b>Companies to designate a person for providing information relating to beneficial interest in shares of the Company</b></p> <ol style="list-style-type: none"> <li>Every company to designate a person who shall be responsible for furnishing and extending co-operation for providing, information to the registrar or any other authorised officer with respect to beneficial interest in the shares of the company.</li> <li>Company may designate a Company Secretary/KMP/Director for this purpose and inform the details of such designated person in annual return.</li> <li>If the designated person is changed by company at any time, it shall intimate the same to the registrar in E-Form GNL-02.</li> </ol> |
| Ministry of Corporate Affairs         | Companies (Prospectus and Allotment of securities) Rules, 2014 | Notification dated 27th October 2023 | <p><b>Dematerialisation of securities of private company</b></p> <ol style="list-style-type: none"> <li>Every private company other than small company: <ul style="list-style-type: none"> <li>Shall issue the securities only in Dematerialisation form and facilitate the Dematerialisation of all its securities in accordance with provision of Depository Act, 1996.</li> </ul> </li> </ol>                                                                                                                                                                                                                                                                                                                               |

| Name of the Act/Rules/Regulations etc | Heading | Notification/circular No and Date | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------|---------|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |         |                                   | <ul style="list-style-type: none"> <li>• Shall on or after 31st March 2023, as per audited financial statements for such financial year shall within 18 months of closure of such financial year comply with provisions of Dematerialisation.</li> <li>• Making any offer for issue or buy back of any securities or issue of bonus shares or right offer after the date when it is required to comply the mentioned provision, shall ensure that before making such offer entire holding of its promoters, directors, key managerial personnel has been dematerialised.</li> </ul> <p>2. Every holder of securities who intends to transfer or subscribe the securities shall ensure that all the securities are in dematerialised form.</p> <p><b>Note:</b> The provisions of this rule are not applicable on Government Company.</p> <p><b>Every public company which had issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall:</b></p> <p>a. Within a period of 3 months of commencement of this notification inform the registrar about the details of such warrants in form PAS-07.</p> |

| Name of the Act/Rules/Regulations etc | Heading | Notification/ circular No and Date | Details                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------|---------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |         |                                    | <ul style="list-style-type: none"> <li>Within a period of 6 months of commencement of this notification requires the bearers of share warrants to surrender such warrants to the company and get the shares dematerialized in their account and company shall place a notice for the bearers of share warrants in Form PAS-08 on website of the company and also publish in newspapers.</li> </ul> |

## II. CHECKLIST

| CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA |                                                                                                                                                                                                                                                                                                                                                    |                           |                                                |                                                                                                                                                       |                 |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Compliance title                                | Description                                                                                                                                                                                                                                                                                                                                        | Section/ rule/ regulation | Name of section/rule/ regulation               | Timeline                                                                                                                                              | Prescribed form |
| Issue Notice for Board Meeting                  | <p>Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.</p> <p>Attachments to Notice:</p> <ul style="list-style-type: none"> <li>- Agenda</li> <li>- Notes to Agenda and</li> <li>- Draft Resolution to approve the following:</li> </ul> <p>Amendment in the object clause of MOA.</p> | Section 173 and Clause 1  | Companies Act, 2013 and Secretarial Standard-1 | <p>At least 7 days before the date of Board Meeting</p> <p><i>*Board Meeting can be conducted on Shorter Notice with the consent of Directors</i></p> | NA              |

## CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA

| <b>Compliance title</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Section/ rule/ regulation</b> | <b>Name of section/rule/ regulation</b>        | <b>Timeline</b>                                | <b>Prescribed form</b> |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------|------------------------------------------------|------------------------|
| Conven e Board Meeting  | <p>Board shall:</p> <p>i. Propose new objects of the company.</p> <p>ii. Pass board resolution after selection of object.</p> <p>iii. Get approval to change in the objects clause and recommending the proposal for member consideration by way of special resolution.</p> <p>iv. Fixing the day, date, time and venue of general meeting and authorising director or any other person to send the notice for the same to the members.</p> | Section 173 and Clause 1         | Companies Act, 2013 and Secretarial Standard-1 | Within 7 days from the date of issue of notice | NA                     |

## CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA

| <b>Compliance title</b>                        | <b>Description</b>                                                                                                                                                                                                                                                                    | <b>Section/ rule/ regulation</b> | <b>Name of section/rule/ regulation</b> | <b>Timeline</b>                                       | <b>Prescribed form</b> |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------|-------------------------------------------------------|------------------------|
| Preparation and circulation of Draft Minutes   | Draft minutes shall be prepared and circulated to all the members of the Board by Hand/- Speed Post/Registered Post/Courier/E-mail for their comments.                                                                                                                                | Clause 7.4                       | Secretarial Standard-1                  | Within 15 days from the date of Board Meeting         | NA                     |
| Issue Notice of Extra-ordinary General Meeting | Notice of Extra-ordinary General Meeting shall be given at least clear 21 days before the actual date of a General Meeting in writing, by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means | Section 101                      | Companies Act, 2013                     | Before 21 clear days from the date of General Meeting | NA                     |

### CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA

| <b>Compliance title</b>                                         | <b>Description</b>                                                                                                                                                                     | <b>Section/ rule/ regulation</b>         | <b>Name of section/rule/ regulation</b> | <b>Timeline</b> | <b>Prescribed form</b> |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-----------------------------------------|-----------------|------------------------|
|                                                                 | A General Meeting may be conducted at shorter notice with the consent of at least majority in number and ninety five percent of such part of the paid-up share capital of the company. |                                          |                                         |                 |                        |
| To whom the Notice of Extra-ordinary General Meeting to be sent | Notice will be sent to<br>-Directors<br>-Members<br>-Auditors of Company and<br>- to others who are entitled to receive the notice of the General Meeting.                             | Section 101                              | Companies Act, 2013                     | -               | NA                     |
| Contents of Notice of Extra-ordinary General Meeting            | Notice of General Meeting shall specify the following:<br>- Date<br>- Day<br>- Time<br>- Venue of Meeting<br>- Explanatory Statement                                                   | Section 101 and 102 read with section 13 | Companies Act, 2013                     | -               | NA                     |

### CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA

| <b>Compliance title</b>                | <b>Description</b>                                                                                                                                                                                                                                       | <b>Section/ rule/ regulation</b> | <b>Name of section/rule/ regulation</b> | <b>Timeline</b>                                        | <b>Prescribed form</b> |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------|--------------------------------------------------------|------------------------|
| Convene Extra-ordinary General Meeting | Hold the General Meeting and pass special Resolution for approval of alteration of MOA.                                                                                                                                                                  | Section 13                       | Companies Act, 2013                     | -                                                      | NA                     |
| Minutes of General Meeting             | Prepare and arrange for signing of the minutes of the General Meeting.                                                                                                                                                                                   | Clause 17                        | Secretarial Standard -2                 | Within 30 days from the Date of General Meeting        | NA                     |
| Filing of Form MGT-14                  | File Form-MGT 14 with the registrar along with the requisite filing within 30 days of passing the special resolution along with following documents:<br>i. Copy of special resolution<br>ii. Copy of notice of the meeting.<br>iii. Copy of altered MOA. | Section 117                      | Companies Act, 2013                     | Within 30 days from the date of passing the Resolution | Form MGT-14            |

| CHECKLIST FOR AMENDMENT IN OBJECT CLAUSE OF MOA |                                                     |                           |                                  |          |                 |
|-------------------------------------------------|-----------------------------------------------------|---------------------------|----------------------------------|----------|-----------------|
| Compliance title                                | Description                                         | Section/ rule/ regulation | Name of section/rule/ regulation | Timeline | Prescribed form |
| Certification by ROC                            | The ROC shall register the change in object clause. | Section 13                | Companies Act, 2013              | -        | NA              |



### **III. CASE LAW**

**ORDER OF HON'BLE HIGH COURT  
JAMMU & KASHMIR AND LADAKH AT JAMMU  
CP NO. 3/2013**

**In the matter of:**

**Mr. Naveen Bhatnagar**

**..... Appellant/Petitioner**

**V/s**

**M/s Sudarsham Consolidated Limited**

**The Registrar of Companies, Jammu**

**Union of India, Ministry of Corporate Affairs**

**..... Respondents**

#### **Facts of the Case**

1. The Appellant was appointed as a Director of the Respondent-Company on 06.02.2009 and on 17.09.2010, he addressed a resignation letter to the Board of Directors of the Respondent-Company, which was duly received and acknowledged by the Respondent-Company.

2. On 21.09.2010, a communication was addressed by one of the Directors of the Respondent-Company, to the Appellant informing him that his resignation as on 17.09.2010 has been noted in the records of the Company and that he has been relieved with effect from 21.09.2010.

3. The Appellant was also informed that his Form 32 will be filed with the Registrar of the Companies, but the same was not filed

and Appellant made various representations to the Respondent-Company as well as to the Registrar of the Companies in this regard but no action was taken in the matter.

4. The Appellant approached the Company Law Board seeking a direction upon Respondent-Company to submit Form 32 of the Appellant with the ROC, which was declined by the Company Law Board and instead it was held that the Appellant has automatically ceased to be the Director with effect from 01.07.2011 on the ground that he has not attended any board meetings of the Respondent Company.

5. Accordingly, a direction was issued to the Respondent-Company to file Form 32 in respect of cessation of the Directorship of the

Appellant with effect from 01.07.2011 within thirty days and make necessary corrections in the statutory records.

**Appellant contentions:**

1. Respondent-Company admitted the receipt of resignation letter from the Appellant and conveyed to him its acceptance vide letter dated 21.09.2010, there was no reason for the Respondent-Company not to submit Form 32 in due course of time.

2. The Company Law Board has failed to take note of the resignation letter dated 17.09.2010 and the acceptance letter issued by the Respondent-Company on 21.09.2010.

**Issue Involved: What would be the effective date of resignation of Appellant.**

**Hon'ble High Court dismissed the appeal and held that:**

1. There is no provision for vacancy by resignation of director as per Companies Act, 1956.

2. If the Articles of Association of a Company makes a provision for resignation, the same has to be resorted to in accordance with the provisions contained in the Articles of Association and in the absence of any indication, a resignation would take effect immediately. (As per Palmer's Company Precedents).

3. The Appellant has not placed on record anything to even remotely suggest that any meeting of the Board of Directors had taken place for considering his letter of resignation and even the letter of acceptance dated 21.09.2010 does not bear any reference to any resolution of the Board of Directors of the Respondent-Company on the basis of which, the said letter of acceptance has been issued.

4. Clause 95 of the Articles of Association of the Respondent-Company clearly provides that the office of the Director would become vacant on resignation of the Director by notice in writing and its acceptance by the Board, meaning thereby that unless the resignation is accepted by the Board of Directors, the same would not take effect.

5. Therefore, the Company Law Board is right in holding that resignation of the Appellant would take effect only if his letter of resignation is considered and accepted by the Board of Directors, which in the instant case, has not been done.

6. The contention of the Appellant that the moment resignation was tendered by him, the same would take effect, is not tenable because the resignation of the Appellant was not accepted in the manner as provided under the Articles of Association.

### III. SECTION ANALYSIS

#### MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM

##### Applicable Law:

- I. Companies Act, 2013 - Section 120 and Section 128
- II. Companies (Management and Administration) Rules, 2014 - Rule 27
- III. Companies (Accounts of Companies) Rules, 2014 - Rule 3

##### Manner of Books of Account to be Kept in Electronic Mode – Rule 3 of Companies (Accounts of Companies) Rules, 2014

1. The books of account and other relevant books and papers maintained in electronic mode **shall remain accessible in India, at all times** so as to be usable for subsequent reference.

2. Every company which uses **accounting software** for maintaining its books of account, shall use only such accounting software which has a feature of **recording audit trail of each and every transaction**, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

3. The books of account and other relevant books and papers shall be **retained completely in the format** in which they were originally generated, sent or

received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

4. The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

5. The information in the electronic record of the document shall be capable of being displayed in a **legible form**.

6. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

##### 7. **Back up of books of accounts:**

a. the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, **shall be kept in servers physically located in India on a daily basis**.

b. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-

- the name of the service provider;
- the internet protocol address of service provider;
- the location of the service provider (wherever applicable);

- where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
- where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

### **Applicability as per Section 120**

Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

**Records** means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

### **Maintenance and Inspection of Document in Electronic Form**

1. Any document, record, register, minutes, etc. are –
  - a) Required to be kept by a company; or
  - b) Allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form.

2. The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit.

3. The records shall be maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under.

4. The information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference.

5. The records must be capable of being readable, retrievable and reproducible in printed form.

6. The records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under.

7. The records, once dated and signed digitally, shall not be capable of being edited or altered.

8. The records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.



# SEBI



## V. REGULATORY INSIGHT

| Name of the Act/Rules/ Regulations etc | Heading                                                                                                                            | Notification/ circular No and Date                                            | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Security and Exchange Board of India   | Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 | Circular No. SEBI/HO/CF-D/CFD-PoD-2 /P/- CIR/2023/16 7 dated October 07, 2023 | The applicability of regulation 36(1)(b) of the LODR Regulations i.e. Sending Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered and regulation 44(4) of the LODR Regulations i.e. the listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution is been relaxed and extended till September 30, 2024. |



# FCRA



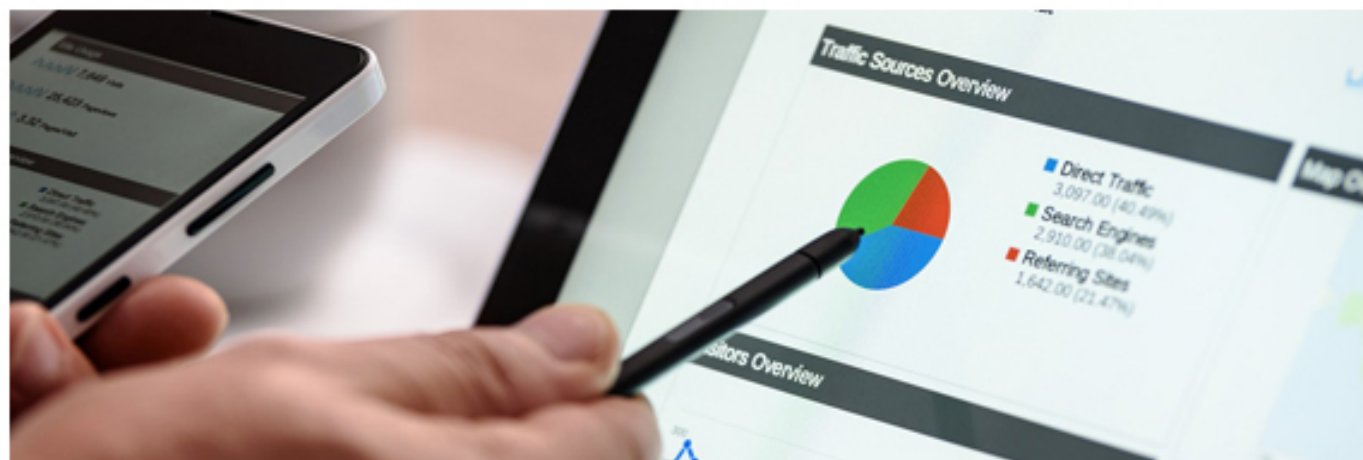
## VI. REGULATORY INSIGHTS

|                          |                                                             |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------|-------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ministry of Home Affairs | Extension of the validity of FCRA registration certificates | Public Notice No. ii/21022/23(22)/2020-FCR A-III | <p>The Central Government has decided to extend the validity of FCRA registration certificates of the following categories of FCRA registered entities:</p> <p>1. The validity of registration certificates of such entities whose validity was extended till 30.09.2023 in terms of public notice dated 24.03.2023 and whose renewal application is pending will stand extended till 31.03.2024 or till date of disposal of renewal application, whichever is earlier.</p> |
|--------------------------|-------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                          |                                               |                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------|-----------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          |                                               |                                                               | <p>2. The validity of those FCRA entities whose 5 years validity period is expiring during 01.10.2023 to 31.03.2024 and who applied/will apply for renewal before expiry of 5 years validity period, will stand extended upto 31.03.2024 or till the date of disposal of renewal application, whichever is earlier.</p> <p><b>Note:</b> In case of refusal of the application for renewal of certificate of registration, the validity of the certificate shall be deemed to have been expired on the date of refusal of application of renewal and the FCRA registered associations shall not be eligible either to receive the foreign contribution or utilise the foreign contribution received.</p> |
| Ministry of Home Affairs | Foreign Contribution (Regulation) Rules, 2011 | Notification No. G.S.R. 6 8 3 ( E ) dated 22nd September 2023 | Amendments in Form FC-04 relating to details of movable assets created out of foreign Contribution (as on 31st March of Financial Year) and Details of immovable properties acquired out of foreign contribution (as on 31st March of Financial Year).                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



# FEMA



## VII.FAQS

### FAQ'S on Liberalised Remittance Scheme

#### Q1. What is the Liberalised Remittance Scheme (LRS) of USD 2,50,000?

**Ans.** Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. Further, resident individuals can avail of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of FEM (CAT) Amendment Rules 2015, dated May 26, 2015, within the limit of USD 2,50,000 only.

The Scheme was introduced on February 4, 2004, with a limit of USD 25,000. The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions.

In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

#### Q2. What are the prohibited items under the Scheme?

**Ans.** The remittance facility under the Scheme is not available for the following:

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.

iv. Remittance for trading in foreign exchange abroad.

iv. Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as “non-cooperative countries and territories”, from time to time.

Vi. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

vii. Gifting by a resident to another resident, in foreign currency, for the credit of the latter’s foreign currency account held abroad under LRS.

**Q3. What are the purposes under FEM (CAT) Amendment Rules, 2015, under which a resident individual can avail of foreign exchange facility?**

**Ans.** Individuals can avail of foreign exchange facility for the following purposes within the LRS limit of USD 2,50,000 on financial year basis:

- i. Private visits to any country (except Nepal and Bhutan)
- ii. Gift or donation
- iii. Going abroad for employment
- iv. Emigration
- v. Maintenance of close relatives abroad
- vi. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up

vii. Expenses in connection with medical treatment abroad

viii. Studies abroad

ix. Any other current account transaction which is not covered under the definition of current account in FEMA 1999.

The AD bank may undertake the remittance transaction without RBI’s permission for all residual current account transactions which are not prohibited/ restricted transactions under Schedule I, II or III of FEM (CAT) Rules, 2000, as amended or are defined in FEMA 1999. It is for the AD to satisfy themselves about the genuineness of the transaction, as hitherto.

**Q 4. Under LRS are resident individuals required to repatriate the income earned on investments abroad, over and above the principal amount?**

**Ans.** The investor who has remitted funds under LRS can retain and reinvest the income earned from his investments made under the Scheme. However, the received/realised/unspent/unused foreign exchange, unless reinvested, shall be repatriated and surrendered to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India, as the case may be.

Further, any additional repatriation requirement with respect to investments made under Overseas Investments Rules and Regulations 2022 shall also be adhered to.

**Q 5. Can remittances under the LRS facility be consolidated in respect of family members?**

Ans. Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account and investment, if they are not the co-owners/co-partners of the investment/overseas bank account. Remittances for acquiring immovable property outside India from a person resident outside India, may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme.

**Q 6. Is the AD required to check permissibility of remittances based on nature of transaction or allow the same based on remitter's declaration?**

Ans. AD will be guided by the nature of transaction as declared by the remitter in Form A2 and will thereafter certify that the remittance is in conformity with the instructions issued by the Reserve Bank in this regard from time to time. However, the ultimate responsibility is of the remitter to ensure compliance to the extant FEMA rules/regulations.

**Q 7. Is it mandatory for resident individuals to have Permanent Account Number (PAN) for sending outward remittances under the Scheme?**

Ans. Yes, it is mandatory for the resident individual to provide his/her Permanent Account Number (PAN) for all transactions under LRS made through Authorized Persons.

**Q 8. Are there any restrictions on the frequency of the remittance?**

Ans. There are no restrictions on the frequency of remittances under LRS. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 2,50,000. Once a remittance is made for an amount up to USD 2,50,000 during the financial year, a resident individual would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

**Q 9. Resident individuals (but not permanently resident in India) can remit up to net salary after deduction of taxes. However, if he has exhausted the limit of USD2,50,000 as net salary remittance and desires to remit any other income under LRS is it permissible as the limit will be over and above USD 2,50,000?**

Ans. Resident individuals (but not permanently resident in India) who have remitted their entire earnings and salary and wish to further remit 'other income' may approach RBI with documents through their AD bank for consideration.

**Q 10. Para 5.4 of AP DIR Circular 106 dated June 01, 2015 states that the applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance for capital account transactions. Whether this restriction applies to current account transactions?**

Ans. No. The rationale is that remittance facility for current account transactions under Schedule III of FEM (CAT) Amendment Rules, 2015, such as private and business visits, upto the LRS limit of USD 250, 000 can also be provided by FFCs. As FFCs cannot maintain accounts of remitters, the proviso (as mentioned in para 5.4 of the circular *ibid*) has been confined to capital account transactions. However, FFCs, are required to ensure that the "Know Your Customer" guidelines and the Anti-Money Laundering Rules in force have been complied with while allowing the current account transactions.

**Q 11. Are there any restrictions towards remittances to Mauritius and Pakistan for permissible current account transactions?**

Ans. No, there are no restrictions towards remittances for current account transactions to Mauritius and Pakistan.

Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as "non-cooperative countries and territories", from time to time; and remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks are not permissible.

**Q 12. What are the requirements to be complied with by the remitter?**

Ans. The individual will have to designate a branch of an AD through which all the capital account remittances under the Scheme will be made. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance.

For remittances pertaining to permissible capital account transactions, if the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. He has to furnish Form A-2 regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

**Q 13. Can remittances be made only in US Dollars?**

Ans. The remittances can be made in any freely convertible foreign currency.

**Q 14. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

Ans. Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

**Q 15. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?**

Ans. No ratings or guidelines have been prescribed under LRS of USD 2,50,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make and such investments shall be in accordance with Overseas Investment Rules and Regulations, 2022 and the directions made thereunder.

**Q 16. Whether credit facilities (fund or non-fund based) in Indian Rupees or foreign currency can be extended by AD banks to resident individuals?**

Ans. LRS does not envisage extension of fund and non-fund based facilities by the AD banks to their resident individual customers to facilitate remittances for capital account transactions under LRS.

However, AD banks may extend fund and non-fund based facilities to resident individuals to facilitate current account remittances under the Scheme.

**Q 17. Can bankers open foreign currency accounts in India for residents under LRS?**

Ans. No.

**Q 18. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**

Ans. No.

**Q 19. What are the documents required for withdrawal/remittance of foreign exchange for purposes mentioned in para 1 of Schedule III to FEM (CAT) Amendment Rules, 2015?**

Ans. Permanent Account Number (PAN) is mandatory for all transactions under LRS.

**Q 20. Whether documents viz 15 CA, 15 CB have to be taken in all outward remittance cases including remittances for maintenance etc.?**

Ans. In terms of A. P. (DIR Series) circular No. 151 dated June 30, 2014, Reserve Bank of India will not issue any instructions under the FEMA, regarding the procedure to be followed in respect of deduction of tax at source while allowing remittances to the non-residents. It shall be mandatory on the part of ADs to comply with the requirement of the tax laws, as applicable.

**Q 21. Will the expenses incurred by an LLP to sponsor the education expense of its partners who are pursuing higher studies for the benefit of the LLP will be outside the LRS limit of such individuals (partners)?**

Ans. LLP is a body corporate and has a legal entity separate from its partners. Therefore, if the LLP incurs/sponsors the education expense of its partners who are pursuing higher studies for the benefit of the LLP, then the same shall be outside the LRS limit of the individual partners and would instead be deemed as residual current account transaction undertaken by the LLP without any limits.

**Q 22. Clarification on remittance by sole proprietor under LRS.**

Ans. In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account then the

eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

**Q 23. Whether prior approval is required to open, maintain and hold foreign currency account with a bank outside India for making remittances under the LRS?**

Ans: No.

**(Source: Reserve Bank of India - FAQs (rbi.org.in))**





## Non-Banking Financial Institutions (NBFC)



### VIII. NON-BANKING FINANCIAL COMPANY (NBFC)

#### Core Investment Company

##### Definition:

**Core Investment Company** is an NBFC carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet:-

- It holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;
- Its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies and units of Infrastructure Investment Trusts (InvITs) only as sponsor constitute not less than 60% of its net assets;

- It does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

- It does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, bonds or debentures issued by group companies, granting of loans to group companies or issuing guarantees on behalf of group companies.

#### **Adjusted net worth (ANW) means –**

- a. the aggregate, as appearing in the last audited balance sheet as at the end of the financial year, of Owned Funds.
- b. as increased by:-

- i. 50% of the unrealized appreciation in the book value of quoted investments as at the date of the last audited balance sheet as at the end of the financial year (such appreciation being calculated, as the excess of the aggregate market value of such investments over the book value of such investments); and
  - ii. the increase, if any, in the equity share capital since the date of the last audited balance sheet.
- c. as reduced by:-
- i. the amount representing any direct or indirect capital contribution made by one CIC in another CIC, to the extent such amount exceeds ten per cent of Owned Funds of the investing CIC;
  - ii. the amount of diminution in the aggregate book value of quoted investments (such diminution being calculated as the excess of the book value of such investments over the aggregate market value of such investments), and;
  - iii. the reduction, if any, in the equity share capital since the date of the last audited balance sheet.

### **Registration:**

- Every CIC shall apply to the Bank for grant of Certificate of Registration, irrespective of any advice in the past, issued by the Bank, to the contrary.

- Every CIC shall apply to the Bank for grant of Certificate of Registration within a period of three months from the date of becoming a CIC.

- CICs (a) with an asset size of less than ₹100 crore, irrespective of whether accessing public funds or not and (b) with an asset size of ₹100 crore and above and not accessing public funds are not required to register with the Bank under Section 45IA of the RBI Act, 1934 and will be termed as 'Unregistered CICs'.

- However, CICs may be required to issue guarantees or take on other contingent liabilities on behalf of their group entities. Before doing so, all CICs must ensure that they can meet the obligations thereunder, as and when they arise. In particular, Unregistered CICs must be in a position to do so without recourse to public funds in the event the liability devolves, else they shall approach the Bank for registration before accessing public funds.

- For accessing public funds, unregistered CICs with asset size above ₹100 crore would be required to obtain Certificate of Registration (CoR) from the Bank.

### **Capital Requirements:**

**Adjusted Net Worth** of a CIC shall at no point of time be less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year.

### **Leverage Ratio:**

The outside liabilities of a CIC shall at no point of time exceed 2.5 times its Adjusted Net Worth as on the date of the last audited balance sheet as at the end of the financial year.

### **Asset classification:**

Every CIC shall, after taking into account the degree of well-defined credit weaknesses and extent of dependence on collateral security for realisation, classify its lease/hire purchase assets, loans and advances and any other forms of credit into the following classes, namely:

- **Standard assets**
- **Sub-standard assets**
- **Doubtful assets and**
- **Loss assets**

### **Accounting year:**

**Every CIC shall prepare its balance sheet and profit and loss account as on March 31 every year. Whenever a CIC intends to extend the date of its balance sheet as per provisions of the Companies Act, it shall take prior approval of the Bank before approaching the Registrar of Companies for this purpose.**

### **Transactions in Government securities:**

**Every CIC shall undertake transactions in Government securities through its CSDL account or its demat account.**

**Note:** No CIC shall undertake any transaction in government security in physical form through any broker.

### **Loans against CICs own shares prohibited**

**No CIC shall lend against its own shares.**

### **CICs not to be partners in partnership firms:**

No CIC shall contribute to the capital of a partnership firm or become a partner of such firm and CICs which had already contributed to the capital of a partnership firm or was a partner of a partnership firm shall seek early retirement from the partnership firm.

**Note:**

**I. Partnership firms mentioned shall also include Limited Liability Partnerships (LLPs).**

**II. Further, the aforesaid prohibition shall also be applicable with respect to Association of persons.**





# Insolvency and Bankruptcy Code, 2016



## IX. CASE LAW

### IN THE SUPREME COURT OF INDIA INHERENT JURISDICTION

**ORDER DATED OCTOBER 31, 2023 IN THE MATTER OF REVIEW  
PETITION FILED FOR ORDER DATED 06.09.2022 PASSED BY THE  
HON'BLE SUPREME COURT IN  
CIVIL APPEAL NO. 1661 OF 2020 (APPELLANT-STATE TAX OFFICER  
AGAINST THE RESPONDENT-RAINBOW PAPERS LIMITED)  
AND  
CIVIL APPEAL NO. 2568 OF 2020 (APPELLANT - STATE TAX  
OFFICER AGAINST THE RESPONDENTS- MR. CHANDRA PRAKASH  
JAIN AND M/S. MEKASTER ENGINEERING LTD.)**

#### **BACKGROUND OF THE CASE:**

1. Civil Appeal No. 1661 of 2020: The Hon'ble NCLT vide order dated 27.02.2019 and Hon'ble NCLAT vide order dated 19.12.2019 rejected the application/dismissed the appeal filed by the Appellant in which it was held that the appellant cannot

claim first charge over the property of the Corporate Debtor, as Section 48 of the Gujarat Value Added Tax 2003 (GVAT Act) cannot prevail over Section 53 of the Insolvency and Bankruptcy Code 2016 (IBC). Hence the appeal was filed before the Hon'ble Supreme Court.

2. **Civil Appeal No. 2568 of 2020: The Hon'ble NCLAT vide order dated 23.01.2020** dismissed the appeal filed by the appellant relying on the abovementioned judgement of Hon'ble NCLAT dated 19.12.2019. Hence the appeal was filed before the Hon'ble Supreme Court.

3. The Hon'ble Supreme Court vide order dated 06.09.2022 allowed the abovementioned appeals and held as under:

*"56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(l)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*

*57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.*

*58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law in*

*rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.*

*59. The appeals are allowed. The impugned orders are set aside. The Resolution plan approved by the CoC is also set aside. The Resolution Professional may consider a fresh Resolution Plan in the light of the observations made above. However, this judgment and order will not, prevent the Resolution Applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant.*

4. Five Review Petitions have been filed by the Review Petitioners being aggrieved by the said common judgment and order dated 06.09.2022 passed by this Court. The review petitioners are not party to the proceedings in Civil Appeal No. 1661 of 2020, however, is seeking review being aggrieved by the impugned judgment dated 06.09.2022.

#### **Submission by Review Petitioners:**

"49. Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the judgment. **Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation.** Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims

of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any

#### **Scope of Review:**

1. In a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record.

2. However, it may be noted that neither Order XLVII CPC nor Order XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. **Even a third party to the proceedings, if he considers himself to be an "aggrieved person," may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.**

#### **3. Reference was drawn to various judgement and gist of same is given below:**

- *A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
- *A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*
- *An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."*
- *A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."*
- *Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*
- *An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

- *Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.*

4. A co-ordinate Bench cannot comment upon the discretion exercised or judgment rendered by another co-ordinate Bench of the same strength. If a Bench does not accept as correct the decision on a question of law of another Bench of equal strength, the only proper course to adopt would be to refer the matter to the larger Bench, for authoritative decision, otherwise the law would be thrown into the state of uncertainty by reason of conflicting decisions.

5. The submissions made by the learned Counsels for the Review Petitioners that the court in the impugned decision had failed to consider the waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the impugned judgment, the Court had considered not only the Waterfall mechanism under Section 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets.

**In view of the above stated position, we are of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and ambit of Review. The learned Counsels for the Review Petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court in various decision for reviewing the impugned judgment. Since we are not inclined to entertain these Review Petitions, we do not propose to deal with the other submissions made by the learned Counsels for the parties on merits.**



## **X. CASE LAW**

### **ORDER OF HON'BLE NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD**

**DATED 13TH OCTOBER, 2023**

**IA. NO.692/2022 IN COMPANY PETITION NO. (IB) – 376/07/HD-B/2018**

**In the matter of**

**Mr. Sri Vamsi Kambhammettu**

**.... Applicant**

**Vs.**

**Mr. Mohd Jamal Athemadnia**

**.... Respondent**

#### **Facts of the Case:**

1. In 2013, a lease deed was executed between the Mr. Mohd Jamal Athemadnia (Respondent) and Sagar Infra Rail International Limited (Corporate Debtor) in respect of the property owned by the Corporate Debtor from where the Respondent was running its business activities. The currency of the said Lease Deed had expired on 1st January, 2020 and was never renewed or extended.

2. The Corporate Debtor was admitted into CIRP and subsequently the Hon'ble NCLT ordered liquidation of the Corporate Debtor and the abovementioned property became a part of the liquidation estate.

3. The Liquidator for Sagar Infra Rail International Limited (Applicant) had requested the Respondent to vacate the scheduled property and to clear the outstanding dues amounting to INR 1,15,000/-. How

ever, the Respondent had requested for renewal of lease and to continue in possession on pretext of paying rent. The Applicant has considered the same however the same could not be done.

4. In furtherance of his duties as a liquidator, the Applicant has issued a sale notice dated 30th June 2021, where the Respondent had also submitted his bid for the scheduled property. However, the said property was sold to Mr. Rajesham Anthergoan, for a total consideration of Rs 49,59,000 in terms of sale certificate dated 17th September 2022.

5. The Applicant had asked the Respondent to vacate the property via letter dated 26th March 2022. Instead of vacating the scheduled property and clearing arrears, the Respondent had sent a reply on 25th April 2022 questioning the locus of Applicant and had refused to pay rent. Thereafter, the

Applicant sent another notice on 26th April 2022 as a reminder for vacating and for paying arrears, to which the Respondent sent one line email asking the Applicant to refund the deposit money for vacation of the scheduled property. The Applicant sent final notice dated 04th May 2022 to pay the outstanding rent and vacate the property and had also reminded the Respondent that lease deed dated 31st December 2013 does not make any stipulation as to refundable deposit and hence no refund is payable by Corporate Debtor.

6. Thereafter the Liquidator had filed an application under Section 60(5) of IBC, 2016 before the Hon'ble NCLT, seeking a direction to the Respondent to pay arrears of rent and vacate the Property.

Considering the above facts and circumstances of the case, it was held that:

- The Hon'ble NCLT possesses correct jurisdiction in considering the application for vacation of premises of the Corporate Debtor.

- No tangible evidence in the form of documentation or otherwise has been presented by the Respondent to substantiate the 'understanding' which he had alleged to have with the Corporate Debtor to continue the lease from time to time and depositing a sum of Rs 8 lakhs with the Corporate Debtor based on this understanding.

- The present case has not arisen out of any contractual dispute. The only contract that the Respondent had with the Corporate Debtor was the Lease Agreement which expired on 1st January 2020. Thereafter since 04th March 2021 he is in unauthorised occupation of the premises owned by the Corporate Debtor –in liquidation.

- Thus, the Respondent was directed to pay the arrears of rent and to vacate the scheduled property.





## GENERAL



### XI. CORPORATE COMPLIANCE CALENDAR

| S. No. | Due Date                                                 | Statute                       | Particulars of Form(s)/Return to be filed | Compliance                                                                                                                                                                                                                                                   |
|--------|----------------------------------------------------------|-------------------------------|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | 01st October to 31st December, 2023                      | 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> |

|    |                                                  |                               |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----|--------------------------------------------------|-------------------------------|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                  |                               |    | <ol style="list-style-type: none"> <li>1. Proposal for buyback of securities;</li> <li>2. Proposal for voluntary delisting;</li> <li>3. Fund raising by way of FPO, rights issue, ADR/GDR/FCCB, QIP, debt issue, preferential issue etc. and for determination of issue price;</li> <li>4. Declaration/recommendation of dividend, issue of convertible securities;</li> <li>5. Proposal for declaration of bonus securities. (if already communicated to Board).</li> </ol> |
| 3. | At least 5 days before the date of Board Meeting | SEBI (LODR) Regulations, 2015 | NA | <p>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></p>                                                                                                                                                                                      |

|    |                                                   |                               |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|---------------------------------------------------|-------------------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | Within 30 minutes of closure of the Board Meeting | SEBI (LODR) Regulations, 2015 | NA | <p>Listed entity to disclose to the concerned Stock Exchange, within 30 minutes of the closure of the meeting, held to consider the following:</p> <ol style="list-style-type: none"> <li>1. Dividends/cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;</li> <li>2. Any cancellation of dividend with reasons thereof;</li> <li>3. Decision on buyback of securities;</li> <li>4. Decision with respect to fund raising proposed to be undertaken;</li> <li>5. Increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;</li> <li>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;</li> <li>7. Alterations of capital, including calls;</li> <li>8. Financial results;</li> <li>9. Decision on voluntary delisting</li> </ol> |
|----|---------------------------------------------------|-------------------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|    |                                                        |                               |                                                                      |                                                                                                                                                                                                                                 |
|----|--------------------------------------------------------|-------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | 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.                             |
| 6. | Within 15 days from publication of results             | SEBI (LODR) Regulations, 2015 | Statement of Related Party Transaction                               | As per Regulation 23 (9), the listed entity shall submit to the stock exchange the half yearly statement of Related Party Transactions to the stock exchange within 15 days from publication of results.                        |
| 7. | Within 60 days from the date of Annual General Meeting | Companies Act, 2013           | Form MGT-7/ MGT-7A                                                   | Filing of Form MGT-7/ 7A i.e. Annual Return with the ROC.                                                                                                                                                                       |
| 8. | Within 60 days from end of half year                   | Companies Act, 2013           | Form PAS-6                                                           | Every unlisted company shall file Reconciliation of Share Capital Audit Report, a half-yearly form with the ROC within 60 days from the conclusion of the half-year.                                                            |
| 9. | On or before 31st December, 2023.                      | FEMA, 1999                    | Form ODI Part II                                                     | An Indian Party, Resident Individual which has made an ODI has to submit an Annual Performance Report (APR) in Form ODI Part II to the AD bank in respect of each Joint Venture, Wholly Owned Subsidiaries (WOS) outside India. |

## XII.CORPORATE NEWS

### **Merger of Fincare SFB with AU Small Finance Bank**

- AU Small Finance Bank (AU SFB) has announced the merger of Fincare Small Finance Bank (Fincare SFB) with AU SFB effective from February 1, 2024 subject to approval from the shareholders of both Fincare SFB and AU SFB, regulatory endorsements from the Reserve Bank of India (RBI) and the Competition Commission of India (CCI), and a capital infusion of Rs. 700 crores by the promoters of Fincare SFB.

- As per the terms, the shareholders of Fincare SFB will receive 579 shares in AU SFB for every 2,000 shares they hold in Fincare SFB.

- All employees of Fincare SFB will be included in the AU SFB after the merger.

- The Managing Director & CEO of Fincare SFB will become the Deputy CEO of AU SFB after the merger.

### **Amalgamation of Navanirman Co-op Urban Bank with Rajadhani Co-op Urban Bank approved by RBI**

- The Reserve Bank of India has sanctioned the Scheme of Amalgamation of The Navanirman Co-operative Urban Bank Ltd with Rajadhani Co-op. Urban Bank Ltd.

- The merger will be effective from August 3, 2023, and Navanirman's branch will operate as part of Rajadhani Co-op Urban Bank.



## GET IN TOUCH

Do write us back your Feedback/Queries/Comments, if any at [corphelpdesk@llca.net](mailto:corphelpdesk@llca.net)

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