WHITESPAN
Advisory

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

FEBRUARY 2025

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INDEX

S.No.	Section	Page No.
1	MAA Foundation Activities	3
2	Message from the Chief Editor	4
3	Editorial Board	5
4	Ministry of Corporate Affairs (MCA)	6-7
5	Securities Exchange Board of India (SEBI)	8-21
6	Reserve Bank of India(RBI)	22-31
7	Central Board of Direct Taxes (CBDT)	32-33
8	Central Board of Indirect Taxes and Custom (CBIC)	34-35
9	Miscellaneous laws	36-39
10	Article on Approval of Resolution Plan at higher hair-cut	40-46
11	Article on Best Practices for Establishing an Internal Committee under the POSH Act, 2013	48-53
12	Article on Understanding 'Any Other Person' in Law	54-61
13	Case Laws	62-68
14	Compliance Calendar for the month of February 2025	69-71

MAA FOUNDATION ACTIVITIES






MAA Foundation organizes regular skill development workshops and training programs to enhance women's professional and vocational skills. During the month of January, 2025, MAA Foundation organized various POSH awareness sessions and also imparted vocational skill trainings to young girls under the "SUI DHAGA PROJECT".

MESSAGE FROM THE CHIEF EDITOR

""Quality means doing it right when no one is looking." – Henry Ford

It gives us immense satisfaction to share the 93rd Edition of "WINS – E-Newsletter" for February 2025, covering legal updates released during the month of January 2025, articles shared by respected professionals, Case Laws and compliance calendar for the month of February 2025.

In this issue, we have covered the following:
1. Corporate Updates from SEBI, RBI, CBIC, CBDT and other miscellaneous Laws
2. Articles on Approval of Resolution Plan at higher hair-cut, Best Practices for Establishing an Internal Committee under the POSH Act, 2013 and Understanding 'Any Other Person' in Law
3. Case Laws
4. Compliance checklist for the month of February 2025.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor's Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at **vinayshukla@whitespan.in or +91 9810 624 262**

With warm regards,

TEAM WINS (Whitespan Information and News Services)
February 2025

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

1. **Mr. Vinay Shukla,** a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
2. **Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
3. **Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
4. **Mr. Pushkar Garg,** a member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
5. **Mr. Anuj Pathak,** CS Trainee and a graduate in Commerce from Lucknow University.
6. **Ms. Geetanjali Arya**, CS Trainee pursuing LLB from Choudhary Charan Singh University, Meerut and a graduate in commerce from Maharishi Dayanand University, Rohtak
7. **Ms. Shweta Chaturvedi**, a member of The Institute of Company Secretaries of India (ICSI) and a post-graduate in commerce from CSJMU, Kanpur.

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Ministry of Corporate Affairs (MCA)

1. Modified guidelines of Funding Research and Studies, Workshops and Conferences etc. under the Plan Scheme “Corporate Data Management (CDM)”

Date of Circular: January 29, 2025

Effective date: January 29, 2025

Link:

https://www.mca.gov.in/bin/dms/getdocument?mds=IIHmRlD5eq97SFwplvhBRA%253D%253D&type=open

Ministry of Corporate Affairs has issued the modified guidelines of Funding Research and Studies, Workshops and Conferences etc. under the Plan Scheme “Corporate Data Management (CDM)”.

For further details, please refer the above-mentioned link.

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Securities Exchange Board of India (SEBI)

1. Measure for ease of doing business - Settlement of Account of Clients who have not traded in the last 30 days

Date of Circular: January 06, 2025
Effective date: January 06, 2025

Link: https://www.sebi.gov.in/legal/circulars/jan-2025/measure-for-ease-of-doing-business-settlement-of-account-of-clients-who-have-not-traded-in-the-last-30-days_90552.html

SEBI vide its circular dated January 06, 2025 has revised the settlement process for client funds in order to improve operational efficiency and ease of business while safeguarding investor interests. Under the previous guidelines (Clause 5.4 of the June 2021 Circular and Clause 47.4 of the Master Circular from August 2024), stock brokers were required to settle the funds of clients who hadn't traded in the last 30 days within three working days. However, the Brokers' Industry Standards Forum (ISF) highlighted inefficiencies in this approach, especially since client funds are upstreamed to clearing corporations. To address this, SEBI has now decided that such client funds will be settled on the upcoming monthly settlement cycle dates, as per the exchanges' annual calendar. If the client resumes trading after the 30-day period but before the settlement date, the account will be settled according to the client's preferred cycle (quarterly or monthly).

2. Measures for Ease of Doing Business for Credit Rating Agencies (CRAs) – Timelines

Date of Circular: January 07, 2025
Effective date: January 07, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/measures-for-ease-of-doing-business-for-credit-rating-agencies-cras-timelines_90618.html

SEBI vide its circular dated January 07, 2025 has modified the timelines to be followed by the CRA mentioned in the master circular SEBI/HO/DDHS/DDHS-POD3/P/CIR/2024/47 dated May 16, 2024. A recommendation from the Working Group of CRAs for Ease of Doing Business suggests changing the timeline specification from "days" to "working days." This change aims to address challenges faced by CRAs, who rely on external entities like bankers and debenture trustees for confirming debt servicing delays.

Sr. No.	Clause	Existing timeline	Revised timeline
1.	Clause 9.2.2: Press Release on Rating Action	Within 7 days of the event	Within 7 working days
2.	Clause 9.3.3: Rating Review after Delay in Payment	Within 2 days of receiving statement	Within 2 working days
3.	Clause 11.3: Migration to INC (No-default Statement)	Within 7 days of 3 months of non-submission of NDS	Within 5 working days
4.	Clause 28.2.1: Debt Servicing Confirmation	Within 1 day post due date, and follow-up after 2 days	Within 1 working day and 2 working days

3. Guidelines for Investment Advisers

Date of Circular: January 08, 2025
Effective date: January 08, 2025

Link: https://www.sebi.gov.in/legal/circulars/jan-2025/guidelines-for-investment-advisers_90632.html

SEBI vide its circular dated January 08, 2025 has introduced key changes aimed at improving transparency and professionalism in the investment advisory industry. Key updates include the segregation of advisory and research services, requirements for part-time IAs to disclose other business activities, and the appointment of independent compliance officers for non-individual IAs. IAs providing advice on non-SEBI products must disclose this to clients, while those using AI tools must ensure data security and disclose their use. The fee structure has been revised, allowing greater flexibility in fee mode changes, with a new cap of ₹1,51,000 per annum for fixed fees. Individual IAs with over 300 clients or ₹3 crore in fees must transition to non-individual registration. IAs must formalize client agreements, conduct annual compliance audits, and maintain a functional website. These amendments are designed to enhance investor protection and ensure compliance.

For further details, please refer the above-mentioned link.

4. Guidelines for Research Analysts

Date of Circular: January 08, 2025
Effective date: January 08, 2025

Link: https://www.sebi.gov.in/legal/circulars/jan-2025/guidelines-for-research-analysts_90634.html

SEBI vide its circular dated January 08, 2025 provides updated guidelines for Research Analysts to ensure compliance with the regulatory framework and improve market integrity.
Key points include:
1.Registration and Compliance: Research Analysts (RAs) must be registered with SEBI and adhere to the code of conduct outlined in the regulations. They are required to comply with SEBI's Research Analyst Regulations, 2014.
2.Disclosures: RAs are mandated to disclose any potential conflicts of interest when publishing or distributing research reports. This includes ownership interests, material connections, or compensation that might affect the objectivity of their research.
3.Research Report Standards: Research reports should be based on thorough analysis and should be clear, fair, and balanced. RAs must ensure that the reports are not misleading and that they provide appropriate disclaimers and disclosures about the research process.
4.Independence: The guidelines emphasize the independence of research analysts from influence by clients or other market participants. They should provide unbiased recommendations based on objective analysis.
5.Training and Qualifications: The circular encourages RAs to undergo regular training to enhance their qualifications and knowledge base, keeping up with market developments and regulatory changes.
6.Monitoring and Auditing: SEBI mandates that RAs' activities be monitored to ensure compliance with the regulations, with a focus on preventing market manipulation or fraudulent practices.
These guidelines aim to promote transparency, accountability, and ethical standards among research analysts, enhancing investor trust and market integrity.

5. Procedure for seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty

Date of Circular: January 10, 2025
Effective date: January 10, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/procedure-for-seeking-waiver-or-reduction-of-interest-in-respect-of-recovery-proceedings-initiated-for-failure-to-pay-penalty-_90689.html

SEBI vide its circular dated January 10, 2025 has provided the procedure for application seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty. During the recovery of dues under the SEBI Act, SCRA, and Depositories Act, the provisions of the Income-tax Act, 1961 (Sections 220 to 227, 228A, 229, 232, and the Second and Third Schedules) are applied, with necessary modifications, as if these provisions were part of the SEBI, SCRA, and Depositories Acts. Section 220(2) of the Income-tax Act, 1961 allows SEBI's Recovery Officer to recover the outstanding dues along with the interest specified under this section.
SEBI's Board has delegated the authority to waive or reduce interest on penalties to two panels based on the interest amount:

- Panel of **Executive Directors** for cases where the interest to be waived or reduced is **less than Rs. 2 crores**.
- Panel of **Whole-time Members** for cases where the interest **exceeds Rs. 2 crores**.

The procedure for applying for a waiver or reduction of interest on dues is as follows:

1. **Application Submission**: Submit a complete application to the Recovery Officer, including documents proving hardship, uncontrollable default, and cooperation in recovery processes.

2. **Eligibility**: The application can only be made after the notice of demand is served and the principal amount is fully paid.

3. **Review**: The Recovery Officer forwards the application to the Competent Authority for consideration. A decision (acceptance or rejection) must be made within 12 months.

4. **Hearing**: The applicant must be given an opportunity to be heard before any rejection.

5. **Incomplete Applications**: Incomplete applications will be returned

6. Circular on Revise and Revamp Nomination Facilities in the Indian Securities Market

Date of Circular: January 10, 2025
Effective date: March 01, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/circular-on-revise-and-revamp-nomination-facilities-in-the-indian-securities-market_90698.html

SEBI vide its circular dated January 10, 2025 has provided guidelines on various aspects of nominations. In February 2024, SEBI published a consultation paper to revise the nomination norms for demat accounts and mutual fund (MF) folios in India. The primary objective is to address the issue of unclaimed assets in the securities market and ensure that investors' assets are properly accounted for. SEBI sought public feedback on various aspects of the nomination process to make the system more efficient and secure. The revision of these norms follows approval from the SEBI Board for amending the relevant regulations to address the issue and improve investor protection.

The circular specifies that the updated norms for nominations will apply to both demat accounts and mutual fund (MF) folios. It is divided into two sections:
•**Section A:** Contains the requirements and guidelines to be followed by the entities covered under the circular (referred to as regulated entities).
•**Section B:** Details additional compliance aspects that regulated entities must implement to align with the revised nomination processes.

For further details, please refer the above-mentioned link.

7. Disclosure of Risk adjusted Return - Information Ratio (IR) for Mutual Fund Schemes

Date of Circular: January 17, 2025
Effective date: Within 3 months of issue of circular

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/disclosure-of-risk-adjusted-return-information-ratio-ir-for-mutual-fund-schemes-_90928.html

SEBI vide its circular dated January 17, 2025 mandates the disclosure of the Information Ratio (IR) for equity-oriented mutual fund schemes to provide a more comprehensive measure of a scheme's performance, considering both returns and risk. The IR will be disclosed daily on AMCs' websites in a downloadable, machine-readable format and must follow a standardized calculation method using portfolio returns, benchmark returns, and volatility (standard deviation). To ensure consistency and clarity, AMCs must include educational content explaining the significance of IR, its calculation formula, and interpretation with examples. The disclosure format will also include a hyperlink to AMFI's website for further detailed explanations. AMCs and AMFI will collaborate to raise investor awareness about risk-adjusted returns and their importance in evaluating mutual fund performance. This initiative aims to enhance transparency and empower investors with better tools for making informed decisions.

For further details, please refer the above-mentioned link.

8. Timeline for Review of ESG Rating pursuant to occurrence of 'Material Events'

Date of Circular: January 17, 2025
Effective date: January 17, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/timeline-for-review-of-esg-rating-pursuant-to-occurrence-of-material-events-_90930.html

SEBI vide its circular dated January 10, 2025 has decided to relax the timeline for reviewing ESG ratings following the publication of BRSR after the concerns raised by the ERPs (ESG Rating Providers) regarding the operational difficulties they face when reviewing ESG ratings for a large number of listed companies after the publication of the Business Responsibility and Sustainability Report (BRSR) within the required 10-day timeline. As a result, Para 10.1.3. of the Master Circular has been amended to allow ERPs up to 45 days, instead of the original 10 days, to complete the review of ESG ratings after the BRSR publication. This extension aims to ease the operational burden on ERPs while ensuring that ESG ratings remain accurate and timely, thus promoting better business efficiency. The revised timeline provides ERPs with more time to properly evaluate BRSR data and make necessary adjustments to ratings.

9. Development of Web-based portal: iSPOT(Integrated SEBI Portal for Technical glitches) for reporting of technical glitches

Date of Circular: January 28, 2025
Effective date: February 03, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/development-of-web-based-portal-ispot-integrated-sebi-portal-for-technical-glitches-for-reporting-of-technical-glitches_91215.html

SEBI vide its circular dated January 28, 2025 has introduced a new web-based portal called iSPOT (Integrated SEBI Portal for Technical Glitches) to streamline the reporting of technical glitches by Market Infrastructure Institutions (MIIs) like Stock Exchanges, Clearing Corporations, and Depositories.

Previously, MIIs reported glitches and submitted Root Cause Analysis (RCA) reports via email. Now, they must submit these reports through iSPOT, improving data quality, traceability, and compliance. The portal also generates automated reminders for MIIs to submit RCA reports within defined timelines.This change modifies specific clauses in SEBI's Master Circulars, requiring RCA reports to be submitted via iSPOT instead of email, facilitating better management of technical glitches across the financial markets.

10. Format of Due Diligence Certificate to be given by the DTs

Date of Circular: January 28, 2025
Effective date: January 28, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/format-of-due-diligence-certificate-to-be-given-by-the-dts_91219.html

SEBI through a notification on July 10, 2024, amended the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 to include a specific format for the Due Diligence Certificate that Debenture Trustees (DTs) must submit for secured and unsecured debt securities. Chapter II of the Master Circular for DTs already specifies the format for secured debt securities, aligning with the NCS Regulations. However, the format for unsecured debt securities was previously not specified. SEBI vide its notification dated January 28, 2025 specified new requirements for unsecured debts as follows:

- At the time of filing the draft offer document with the stock exchanges, the Issuer must submit a Due Diligence Certificate from the Debenture Trustee as per the format in **Annex-A**.
- At the time of filing the listing application, the Issuer must submit a Due Diligence Certificate from the Debenture Trustee as per the format in **Annex-B**.

This amendment standardizes the process for both types of debt securities and ensures that the Due Diligence Certificates for unsecured debt securities follow a clear, structured format similar to that of secured debt securities.

11. Details/clarifications on provisions related to association of persons regulated by the Board, MIIs, and their agents with persons engaged in prohibited activities

Date of Circular: January 29, 2025

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/details-clarifications-on-provisions-related-to-association-of-persons-regulated-by-the-board-miis-and-their-agents-with-persons-engaged-in-prohibited-activities_91356.html

SEBI has published amendments to the Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024, and the Securities and Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2024 on August 29, 2024. These amendments introduce key provisions that regulate associations between SEBI-regulated entities, such as stock exchanges, clearing corporations, depositories, and their agents, with other individuals or entities offering financial advice or making claims related to securities. Specifically, these regulations prohibit SEBI-regulated persons or MIIs from having direct or indirect associations with any party that provides advice or recommendations related to securities unless the party is registered with or permitted by SEBI to do so. Similarly, they prohibit associations with individuals or entities making claims about returns or performance related to securities unless authorized by SEBI. The responsibility lies with SEBI-regulated entities to ensure that their agents or associated persons do not engage in such prohibited activities. However, the regulations clarify that the term "another person" does not include those solely engaged in investor education, provided they do not offer financial advice or make performance claims. To assist in compliance, SEBI has provided further clarifications through a Frequently Asked Questions (FAQ) section, guiding regulated entities and their agents on how to comply with these new provisions.

12. Framework for Monitoring and Supervision of System Audit of Stock Brokers (SBs) through Technology based Measures

Date of Circular: January 31, 2025

Effective period: For audit period 2025-26

Link:https://www.sebi.gov.in/legal/circulars/jan-2025/framework-for-monitoring-and-supervision-of-system-audit-of-stock-brokers-sbs-through-technology-based-measures_91424.html

SEBI establishes a framework to strengthen system audits for Stock Brokers (SBs) and Trading Members (TMs). Stock Exchanges must create a web portal to monitor audits, ensuring auditors physically visit SBs by capturing geolocation and securing access through OTP-based authentication. Before audits, SBs must submit details like auditor information and audit plans. During audits, auditors must log into the portal, providing detailed information on their visit and findings. A standardized audit report must be submitted post-audit.

Stock Exchanges will empanel auditors based on qualifications and experience, with an emphasis on independence. After three consecutive years of audits, auditors must take a two-year cooling-off period before reappointment. Auditors are required to check technical glitches, software testing, disaster recovery, and cloud service compliance.

Stock Exchanges will validate audit reports, conduct surprise visits, and impose financial penalties for non-compliance. They must submit biannual reports to SEBI on audit findings and actions taken. The aim is to improve audit transparency, accountability, and security in the securities market by leveraging technology.

For further details, please refer the above mentioned link

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RESERVE BANK OF INDIA (RBI)

1. Master Direction – Reserve Bank of India (Credit Information Reporting) Directions, 2025

Date of Circular: January 06, 2025
Effective Date: January 06, 2025

Link:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12764&Mode=

RBI vide its notification dated January 06, 2025 has issued several instructions and directives to its regulated entities (REs) over time concerning the reporting of credit information. To consolidate these instructions, the RBI has released the Master Direction – Reserve Bank of India (Credit Information Reporting) Directions, 2025, which brings together all the existing guidelines related to credit information reporting. These Directions are issued in the exercise of powers conferred under Section 11 of the Credit Information Companies (Regulation) Act, 2005, aiming to streamline and ensure effective credit information reporting practices across the financial system.

2. Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025

Date of Notification: January 07, 2025
Effective Date: January 07, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12765&Mode=0

The Reserve Bank of India (RBI) has issued a set of regulations under the Foreign Exchange Management Act (FEMA), 1999, to regulate non-resident investment in debt instruments in India. These include the Foreign Exchange Management (Permissible Capital Accounts Transactions) Regulations, 2000, the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, and the Foreign Exchange Management (Debt Instruments) Regulations, 2019, each amended over time. In addition to these regulations, the RBI has issued directions through A.P. (DIR Series) Circulars to provide further guidance on non-resident investments in debt instruments. To streamline and consolidate these various directions, the RBI has released a Master Direction, which brings together all relevant provisions, limits, and procedural requirements related to foreign investments in India's debt markets, ensuring clarity, ease of business, and compliance for non-resident investors.

3. Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025

Date of Notification: January 14, 2025
Effective Date: January 14, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12765&Mode=0

The Reserve Bank of India (RBI) has issued an amendment to the Foreign Exchange Management (Deposit) Regulations, 2016 (FEMA 5(R)/2016-RB). These amendments aim to streamline and update the framework governing foreign currency deposits, including the conditions and guidelines for non-resident entities and individuals holding such deposits in India. The regulations cover aspects such as the types of foreign currency deposits allowed, their repatriation, and the rules around interest rates and the tenure of deposits. These updates ensure that the regulations remain aligned with international financial standards and facilitate ease of business for non-resident investors.

The changes are as follows:

Sr. No.	Amendment	Details
1.	Sub-regulation (4) of Regulation 5	The phrase "authorized dealer in India" is expanded to include "or its branch outside India" to allow authorized dealers to operate internationally for the relevant transactions
2.	New Regulation 9 (Transfer of Funds between Repayable Rupee Accounts)	Permits the transfer of funds between repatriable Rupee accounts for all bona fide transactions, facilitating smoother operations and transactions within the existing framework.

Sr. No.	Amendment	Details
3.	Schedule 4 - Opening of SNRR Account (Special Non-Resident Rupee Account)	Enables persons resident outside India, with business interests in India, to open an SNRR account with an authorized dealer in India or its branch outside India for permissible transactions.
4.	Schedule 4 - SNRR Account for Units in IFSC	Allows units in an International Financial Services Centre (IFSC) to open an SNRR account with an authorized dealer in India for business-related transactions outside the IFSC.
5.	Paragraph 2 of Schedule 4	The term “Indian bank” is replaced with “A bank”, making the provision applicable to any bank, broadening its scope beyond just Indian banks.
6.	Schedule 4 - Tenure of SNRR Account	Sets the tenure of the SNRR account to coincide with the duration of the contract, period of operation, or business related to the account holder, creating consistency.
7.	Paragraphs 9, 11, and 12 of Schedule 4	Adds “in India” after "SNRR account" to clarify that the account must be opened and maintained in India.
8.	Paragraph 13 of Schedule 4	Adds “having the SNRR account in India” after the "account holder" to specify that the account holder’s SNRR account must be located in India for compliance.

4. Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025

Date of Notification: January 14, 2025
Effective Date: January 14, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12767&Mode=0

The Reserve Bank of India (RBI) has amended the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, under its powers from the Foreign Exchange Management Act, 1999.

It says that in the principal regulations, in regulation 5, after sub-regulation (C) the following sub-regulation (CA) shall be inserted:

"CA. A person resident in India, being an exporter, may open, hold and maintain a Foreign Currency Account with a bank outside India, for realisation of full export value and advance remittance received by the exporter towards export of goods or services. Funds in this account may be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds after adjusting for forward commitments, provided that the realisation and repatriation requirements as specified in Regulation 9 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 are also met."

5. Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025

Date of Notification: January 14, 2025
Effective Date: January 14, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12768&Mode=0

In exercise of the powers granted by Section 47 of the Foreign Exchange Management Act, 1999 (FEMA), the Reserve Bank of India (RBI) has introduced amendments to the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019. The regulations, originally notified under Notification No. FEMA.395/2019-RB on October 17, 2019, govern the procedures and mechanisms for the payment modes and reporting requirements related to non-debt instruments, which include foreign direct investment (FDI), portfolio investments, and other equity-related instruments.
The amendments aim to improve the operational framework for foreign exchange transactions involving non-debt instruments, focusing on enhancing transparency, facilitating ease of doing business, and ensuring proper regulatory compliance. The updated provisions cover key aspects such as the reporting of transactions, modes of payments for investments, and other related activities. These amendments are designed to streamline processes, ensuring smooth foreign exchange operations while maintaining robust oversight on foreign investments and capital flows into India.

6. Coverage of customers under the nomination facility

Date of Notification: January 17, 2025
Effective Date: January 17, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12769&Mode=0

The Reserve Bank of India (RBI) has observed that many deposit accounts lack nominations, which can lead to challenges for survivors or family members of deceased depositors. To address this issue and prevent hardships, RBI has reiterated the importance of ensuring that all deposit accounts, safe custody articles, and safety lockers—both for existing and new customers—have a valid nomination. The Customer Service Committee (CSC) or the Board of Directors of the concerned entities must regularly review the status of nomination coverage. Starting from March 31, 2025, progress will be tracked and reported quarterly on the DAKSH portal.

Additionally, banks are encouraged to train their frontline staff to facilitate the nomination process, handle claims from deceased account holders, and manage the interactions with nominees or legal heirs effectively. Banks should also revise their account opening forms, if necessary, to allow customers to either opt for or waive the nomination facility. Furthermore, to improve awareness, banks should use various media channels to educate customers on the importance of nominations and launch periodic drives to achieve full coverage of eligible customer accounts.

7. Guidelines on Settlement of Dues of borrowers by ARCs

Date of Notification: January 20, 2025
Effective Date: January 20, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12771&Mode=0

The Reserve Bank of India (RBI) has reviewed the existing guidelines for the settlement of dues payable by borrowers of Asset Reconstruction Companies (ARCs), as laid out in Paragraph 15 of the Master Direction – RBI (Asset Reconstruction Companies) Directions, 2024 dated April 24, 2024. Based on this review, the guidelines have been revised, and the amended version of Paragraph 15 is included in the annex to the circular.

This revision is issued in exercise of the powers granted under Sections 9 and 12 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), which empowers the RBI to regulate and issue directions for ARCs operating in India. These changes are intended to enhance the operational framework for ARCs in managing settlement processes, ensuring transparency and better recovery mechanisms for financial assets.

8. Private Placement of Non-Convertible Debentures (NCDs) with maturity period of more than one year by HFCs – Review of guidelines

Date of Notification: January 29, 2025
Effective Date: January 29, 2025

Link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12772&Mode=0

The Reserve Bank of India (RBI) has updated its regulations concerning the private placement of Non-Convertible Debentures (NCDs) by Housing Finance Companies (HFCs). The guidelines for NCDs with a maturity of over one year, as outlined in paragraph 58 of the Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023, will now be applicable to HFCs. As a result, the existing guidelines under Chapter XI of the Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 have been repealed. This update ensures that HFCs follow the same regulatory framework as other NBFCs for the private placement of NCDs. The new guidelines will apply to all fresh private placements of NCDs with a maturity of more than one year, effective immediately from the date of the circular. The Master Direction for HFCs will also be amended to reflect these changes.

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Central Board of Direct Taxes (CBDT)

There are no updates from CBDT for the month of January 2025

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CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS

(CBIC)

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There are no updates from CBIC for the month of January 2025

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Miscellaneous Laws

National Stock Exchange of India

1. Implementation of recommendations of the Expert Committee for facilitating ease of doing business for listed entities- Disclosure of Integrated Filing- Governance

Date of Circular: January 13, 2025
Effective date: January 13, 2025

Link:https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE%20Circular-%20Implementation%20of%20XBRL%20for%20disclosure%20of%20Integrated%20Filing-%20Governance.pdf

NSE vide its circular dated January 13, 2025 has made it mandatory for the listed entities to submit Integrated Filing Governance in XBRL format via with effect from January 14, 2025.

Key updates are:

- **No PDF Requirement**: PDF submissions for Integrated Filing- Governance in the Corporate Announcement are no longer needed after January 14, 2025.
- **Continued XBRL Submissions**: Corporate Governance and Investor Grievance Reports must still be submitted in XBRL, alongside the new Integrated Filing- Governance, until further notice.
- **Resubmission in XBRL**: Entities that previously submitted Integrated Filing- Governance in PDF must resubmit it in XBRL.

Insolvency and Bankruptcy Board of India

1. Extension of time for filing Forms to monitor liquidation and voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

Date of Circular: January 09, 2025
Effective date: January 09, 2025

Link:https://ibbi.gov.in/uploads/legalframwork/0558d78c825f16e1a0d6d5acf419d711.pdf

IBBI vide its circular dated January 09, 2025 has extended the timeline for filing forms relating to the liquidation and voluntary liquidation process till March 31, 2025. In response to representations received from liquidators and Insolvency Professional Agencies regarding technical difficulties in submitting liquidation and voluntary liquidation forms, it has been decided to extend the deadline for submission.

IBBI has also directed that IPs must ensure the information submitted is accurate, truthful, and consistent with the supporting documents attached to ensure the integrity and reliability of the filings.

2. Mandatory Use of eBKray Auction Platform for Liquidation Processes

Date of Circular: January 10, 2025
Effective date: January 10, 2025

Link:https://ibbi.gov.in/uploads/legalframwork/43ec517d68b6edd3015b3edc9a11367b.pdf

IBBI vide its circular no. IBBI/LIQ/78/2024 dated October 29, 2024 has issued directions on the use of the eBKray auction platform. Further to increase transparency, efficiency, and accountability in the liquidation process, ensuring that assets are sold in a streamlined and transparent manner through a centralized digital platform, IBBI has further issued some guidelines for Insolvency Professionals (IPs). Starting April 1, 2025, all IPs must use eBKray exclusively for asset sales in liquidation cases, and all unsold assets must be listed by March 31, 2025.

For further details, please refer the above-mentioned link.

WHITESPAN
Advisory

Article 1

Approval of Resolution Plan at higher hair-cut

1. Approval of the Resolution Plan by the Committee of Creditors

The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority for its approval. The committee of creditors shall approve the resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors under section 30(6) of the Code. The resolution professional shall submit the resolution plan approved by the committee of creditors before the Adjudicating Authority for its approval.

2. Limit of NCLT for Judicial Review of Resolution Plan approved by CoC

The Resolution Plan approved by the Committee of Creditors shall be approved by the Adjudicating Authority under section 31(1) of the Code. The power of making judicial review of Resolution Plan approved by CoC is to the extent that the resolution plan as approved by the Committee of Creditors has met the requirement referred to in Section 30(2) of the Code and any of the provisions of the law for the time being in force. *In Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors., Civil Appeal No.4242 of 2019 with Civil Appeal No.4967-4968 of 2019 (Civil Appellate Jurisdiction), Supreme Court of India Date of Decision 22nd January, 2020.* The Hon'ble Supreme Court clarified that Judicial Review of the Adjudicating Authority is to the extent that the resolution plan as approved by the Committee of Creditors has met the requirement referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e). The Hon'ble Court further clarified that while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors. The limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets; and that the interests of all shareholders including operational creditors has been taken care of. If the Adjudicating finds that applicable parameters have not been applied, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters.

The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan other things being equal. *In Pacific World Shipping vs. Dadi Impex Pvt. Ltd & Ors., Company Appeal (AT)(Ins.) No.728 of 2019, NCLAT Date of Decision: 28th February, 2020.* The Resolution Plan contains 2% provision for the Operational Creditors and 100% for the Financial Creditors. The Adjudicating Authority approved the Resolution Plan and Appellate Authority affirmed the Resolution Plan as to it fulfils the conditions laid down in section 30(2)(b). The Adjudicating Authority and Appellate Authority has no power to review the commercial wisdom of the CoC.

In the matter of Kalinga Allied Industries Pvt. Ltd Vs. Hindustan Coils Ltd & Ors., Company Appeal (AT) No.518 of 2020, NCLAT Date of Judgement:11th January, 2021. The Resolution Plan was approved by CoC, thereafter Resolution Professional submitted the resolution plan before Adjudicating Authority under Section 30(6) of the Code for its approval. Simultaneously, another resolution plan was submitted before the Adjudicating Authority which is 12% more than the offer of the successful resolution applicant. Adjudicating Authority held that the offer is more than offered by the successful resolution applicant, the object of "I&B" Code encourages the maximization of value of assets of the corporate debtor, which is also advantageous to all the stakeholder. Therefore, directed to place the resolution plan before CoC for its consideration. Appellate Authority reversed the order holding that Resolution Plan is pending before the Adjudicating Authority at that time it cannot entertain an application of a person who has not participated in CIRP. If a resolution Plan is considered beyond the time then it will make a never-ending process. Reliance is placed in the case of Maharashtra Seamless Ltd Vs. Padmanabham Venkatesh & Ors, Civil Appeal No.4242 of 2019, wherein the Supreme Court held that once a Resolution Plan is approved by CoC, the statutory mandate on the Adjudicating Authority is just to test the Resolution Plan with reference to the provisions of section 30(2) of the Code. In Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd & Anr., Civil Appeal Nos. 2943-2944 of 2020 with Civil Appeal Nos.3138-3139/2020, 2949-2950/2020, 847-848/2021, Supreme Court of India Date of Decision 10 March, 2021.

The commercial wisdom of CoC has limited judicial review. In Vikas Prakash Gupta, Resolution Professional of the Corporate Debtor in the matter of Punjab National Bank vs. NRC Limited, MA 2531/2019 in CP(IB) 1886/MB/2018, NCLT Mumbai Date of Decision 13.03.2020. The Judicial Review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include the provisions of Section 30(2)(e), as the provisions of Section 26 of the Code also include provisions of law for the time being in force.

In Shrawan Kumar Agarwal Consortium & Others vs. Rituraj Steel Private Limited & Ors reported in (2020) 160 SCL 210 wherein it was held that a direction for rebidding, despite approval of a Resolution Plan by the CoC was not valid in law and that any direction for maximization of value of the Corporate Debtor also amounts to an interference in the business decision of the CoC. In the matter of Shaji Purushothaman vs. S. Rajendran, Company Appeal (AT)(Insolvency) No.551 of 2020, NCLAT Date of Decision 27th August, 2020. If there is no exceptional circumstances justifying review of decisions of Committee of Creditors in regard to rejection of the Settlement Plan of the Promoter and the approved Resolution Plan being a better one, there is no intervention of the Adjudicating/Appellate Authority. In Karad Urban Cooperative Bank Ltd vs. Swapnil Bhingardevay & Ors., Civil Appeal NO.2955 of 2020 with Civil Appeal No. 2902 of 2020 (Civil Appellate Jurisdiction) Supreme Court of India Date of Decision 4th September 2020. The order of the Appellate Authority was challenged, on the ground that the Resolution Plan suffers from issues of viability and feasibility. The Hon'ble Supreme Court held that the limited judicial review is available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors within the meaning of section 30(2) of the Code.

In the case of IIFCL Mutual Fund vs. Committee of Creditors of GVR Infra & Ors., Company Appeal (AT)(Insolvency) No. 938 of 2020, NCLAT Date of Decision 2.11.2020. The appellant voted in favour of the Resolution Plan, the appeal is as regard to distribution mechanism. There is inequitable distribution amongst 4 out of secured Financial Creditors. The Appellate Authority held that there is compliance of section 30(2) of the Code.

Therefore, the Adjudicating Authority/Appellate Author has no power to review the commercial wisdom of the committee of creditors. In Factor Alloys Limited Promoter Group) vs. Bhuvan Madan, Co Appeal (AT)(Insolvency) No. 340 of 2020, NCLAT New Delhi Date of Decision 25th November, 2020. The Resolution Plan approved by the Adjudicating Authority was challenged on the ground that the Resolution Plan encompasses with assets of third parties (including the Appellant herein) and not just of the Corporate Debtor which is contrary to law, thus violative I&B Code, 2016; the Resolution Plan does not factor the value of shares of subsidiary and principle borrower; thus defeating the very objects of the Code, i.e. maximization of the value of assets; approved Resolution Plan extinguishes the bonafide claims; the Resolution Plan also deals with the shareholding of Appellants in a third party company which is not under the rigors of the Code; Resolution Plan also provides for the transfer of shares held by existing promoters and the relatives controlled entities and Affiliates; unequal treatment of same category of Financial Creditors on the basis that the dissented/ abstained from voting; Resolution Plan does not protect the interest of all the stakeholders. But the Appellate Authority observed that the Resolution Plan is in conformity with the provisions of section 30(2) of the Code, therefore, upheld the order of the Adjudicating Authority. In the matter of Committee of Creditors of EMCO Limited vs. Mrs. Mary Mody, Co. Appeal (AT) (Insolvency) No. 307 of 2020, NCLAT New Delhi Date of Decision: 2 March, 2021. The Appellate Authority observed that Resolution Professional can raise interim finance subject to approval of the Committee of Creditors by a vote of 66% under section 28 of the Code and reversed the order that Adjudicating Authority cannot direct the CoC to raise any interim fund. Adjudicating Authority has no power to review the decision of CoC. Reliance is placed in the case of K. Sashidhar v/s Indian Overseas Bank (2019) 12 SCC 150.

In Pratap Technocrats (P) Ltd & Ors. vs. Monitoring Committee of Reliance Infratel Limited & Anr., Civil Appeal No. 676 of 2021, Supreme Court of India Date of Decision 10 August, 2021. The resolution plan has been approved by a requisite majority of the CoC in conformity with Section 30(4) of the Code.

Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence, once the plan is approved by a 100 percent voting share of the CoC. The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan also approved by the CoC. As such, once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority and the Appellate Authority are in conformity with law. In Mr. Jayesh N. Sanghrajka, Erstwhile R.P.of Ariisto Developers Pvt. Ltd Vs. The Monitoring Agency nominated by the Committee of Creditors of Aristo Developers Pvt. Ltd, Company Appeal (AT)(Insolvency) No.392 of 2021, NCLAT Date of Decision 20th September, 2021. Adjudicating Authority disagreed with the decision of the CoC which has approved 'success fee' to the Resolution Professional. Reliance is placed on the NCLT case in Devrajajan Raman, Resolution Professional Poonam Drum & Containers Pvt. Ltd vs. Bank of India Ltd [Company Appeal (AT)(Insolvency) No.646 of 2020] that the fees of the Resolution Professional is not the commercial wisdom of the CoC". In Naveen Kumar Jain vs. Committee of Creditors of K.D.K. Enterprises Pvt. Ltd & Ors, Company Appeal (AT)(Insolvency) No.882 of 2020, NCLAT New Delhi Date of order 3.11.2020. It is well settled that commercial wisdom of the Committee of Creditors which covers matters including the replacement of the Resolution Professional does not fall within the limited scope of judicial review and is not justiciable. In the matter of DBS Bank Limited Singapore vs. Ruchi Soya Industries Limited And Another, Civil Appeal No.9133 of 2019 with Civil Appeal No.787 of 2020, Supreme Court of India Date of Judgement: January 03, 2024. All financial creditors need not be similarly situated. Secured financial creditors may have distinct sets of securities. Reliance is placed in the cases of Committee of Creditors Essar Steel Limited v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531, Swiss Ribbons Private Limited and Ors. (2019) 4 SCC 17, and Vallal RCK v. Siva Industries Holdings Limited and Others (2022) 9 SCC 803 wherein the commercial wisdom of the CoC must be respected. In State Bank of India and Ors vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr., Civil Appeal Nos 3736-3737 of 2023 with Civil Appeal Nos. 4131-4134 of 2023 & Civil Appeal Nos 6427-6428 of 2023, Supreme Court of India Date of Judgement: January 18, 2024. The Hon'ble Supreme Court modified the order passed by NCLAT regarding submission of resolution plan. Approving the resolution plan is the commercial wisdom of CoC.

However, the Resolution Plan is approved at higher hair-cut, the Adjudicating Authority has authority only to verify the compliance of sub-section (2) of the Code. In Mr. Abhijit Guhathakurta, Applicant/ Resolution Professional & Anr. In the matter of Videocon Industries Ltd & Others, IA 196 of 2021 in CP(IB)02/MB/C-II/2018 Others, NCLT Mumbai, Court No. II Date of Decision: 8.06.2021. The Resolution Plan was approved by CoC within the meaning of section 30(4) of the Code. Out of total claim amount of Rupees 71,433.75 crores, claim admitted are for Rs. 64,838.63 crores and the plan is approved for an amount of only rupees 2962.02 crores which is only 4.15% of the total outstanding claim amount and the total hair cut to all the creditors is 95.85%. Therefore, the Successful Resolution Applicant is paying almost nothing and 99.28% hair cut is provided for Operational Creditors (Hair cut or Tonsure, Total Shave). The Hon'ble Tribunal observed that voluminous number of Operational Creditors are also MSME and if they are paid only .72% of their admitted claim amount, in the near future many of these Operational Creditors may have to face Insolvency Proceedings which may be inevitable, thereof the Adjudicating Authority suggested, requests both CoC and the successful Resolution Applicant to increase the pay-out amount to these Operational Creditors especially MSMEs as this is the first Group Consolidation Resolution Plan of 13 companies having large number of MSMEs. However, in view of the commercial wisdom of CoC and as per various judgments of the Hon'ble Supreme Court followed by judicial precedents, discipline, the Adjudicating Authority approved the resolution plan of the Successful Resolution Applicant, with a suggest, request to both CoC and the Resolution Applicant to increase the pay-out amount to these Operational Creditors especially MSMEs. The Hon'ble Tribunal noted that Resolution Plan has been approved by the CoC with more than requisite majority i.e., 95.09% voting. Hence, the Adjudicating Authority is having only supervisory role (note Appellate Forum) to see that Resolution Plan is Law compliant and meet eligibility criteria or and filed in conformity of the I&B Code. Reliance is placed in the Hon'ble Apex Court Landmark decision *in K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided ion 5.2.2019); Supreme Court in* CoC of Essar Steel (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019); Supreme Court in J.P.Kensington Boulevard Apartments Welfare Association & Or. Vs. NBCC (India) Ltd & Ors. (Civil Appeal No.3395 of 2020 decided on 24.03.2021); in Ghanashyam Mishra and Sons Private Limited (Civl Appeal No.8129 of 2019 decided on 13.04.2021).

3. Conclusion

In view of the above, it is required to regulate the power of the CoC to control the hair cut.

In case of further query, clarification, you may direct contact to the Author. The Author has written various books, namely

(1) SERIOUS FRAUD UNDR THE COMPANIES ACT & THE LLP ACT -

https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr_1_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1

(2) LAW ON INSOLVENCY AND BANKRUPTCY -

https://www.amazon.in/dp/9356596808?ref=myi_title_dp

(3) ADJUDICATION OF COMPANIES ACT, MATTERS UNDER NCLT (Third Edition-2023)

https://www.amazon.in/dp/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM

Author:

RAJENDER KUMAR (ICLS),
CMA, CS, LLB
Dy. Official Liquidator,
o/o Deputy Official Liquidator, Bombay, Ministry of Corporate Affairs,
(M) 8920359188
Rajender.kumar20865@gmail.com

WHITESPAN Advisory

Article 2

Best Practices for Establishing an Internal Committee under the POSH Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (hereinafter referred to as the "POSH Act") mandates that every organization with more than 10 employees must set up an Internal Committee (IC) to address complaints of sexual harassment in the workplace. But establishing an IC is not just a legal obligation; it plays a vital role in creating a safe, inclusive, and respectful environment at work.

Setting up an IC might seem like a daunting process, but with the right guidance and preparation, it can become a straightforward task. This guide outlines the best practices to follow when constituting an IC to ensure that your organization is fully compliant and equipped to handle complaints in a fair, effective, and sensitive manner.

Step 1: Choosing the Right Internal and External Members

The composition of your IC is critical to its success. The POSH Act requires certain qualifications and diversity in selecting both **internal** and **external members**.

1. Presiding Officer (Sec. 4(2)(a)):

1.1 The Presiding Officer should be a **senior-level woman employee** from within the organization. If no such senior employee is available, a senior woman employee from another unit or branch may be appointed.

1.2 It is pertinent to refer to **Shital Prasad Sharma v. The State of Rajasthan** (2018 Lab IC 1859) case at this juncture, wherein the issue was whether "seniority" should be determined based on the level of the employee involved in the inquiry, which would require appointing the Presiding Officer on a case-by-case basis. The court ruled that the seniority of the Presiding Officer should not be linked to the designation of the employee involved in the complaint. While seniority is a factor in appointing the Presiding Officer, it should not be re-evaluated with each sexual harassment complaint. Doing so would undermine the three-year tenure of the Presiding Officer

2. Internal Members (Sec. 4(2)(b)):

2.1 Two or more internal members should be appointed. These members should have a background in **social work, legal expertise, or a commitment to women's rights**. They should be empathetic to the cause and able to engage with the aggrieved parties respectfully.

3. External Member (Sec. 4(2)(c)):

3.1 The inclusion of an external member is mandatory and essential for neutrality. This member should have expertise in **legal, social work, or gender rights**. The **Madras High Court** in **K. Hema Latha v. The State of Tamil Nadu** emphasized the need for external members, ensuring the process remains unbiased. The absence of external member may lead to an order of re-constituting of IC.

4. Gender Balance: At least **half of the members of the committee must be women** to ensure gender sensitivity. The committee should also reflect diversity across gender, experience, and perspective.

Before finalizing your appointments, it's critical to conduct **interviews** and a **bias analysis** on potential members to ensure impartiality and commitment.

Step 2: Appointment Letters and IC Constitution Order

Once the members are selected, ensure that they receive **formal Appointment Letters**. The **IC Constitution Order**, which formally establishes the committee, should also be issued and displayed in a conspicuous place in the office premises.

Step 3: Orientation and Capacity Building

Training and sensitizing the IC members is key to ensuring that the committee can effectively handle complaints and investigations. The orientation should focus on the roles, duties, and legal obligations of the IC members. Capacity-building workshops should be conducted that cover the process of investigating sexual harassment complaints, maintaining records, writing reports, and conducting hearings. IC members should be sensitized to the emotional and psychological aspects of handling sexual harassment cases. This ensures they interact with the complainant with empathy and respect.

Step 4: Create an Internal Committee Handbook

An **IC Handbook** is an essential tool for IC committee. It serves as a reference for procedures, guidelines, and best practices that members can refer to during investigations. Depending on the size and nature of your organization, you can customize this handbook to suit your needs.

The handbook should also include a comprehensive **list of dos and don'ts**, guidelines for maintaining confidentiality, and instructions on handling sensitive cases.

Step 5: Ongoing Monitoring and Reporting

The POSH Act requires the IC to submit an **Annual Report**, detailing the number of complaints received and the steps taken in response.

1. **Term of Members**: The tenure of the IC members is three years.
2. **Quorum for Meetings**: A minimum of **three members** is required for a valid meeting, with at least one woman member present.
3. **Quarterly Meetings**: Even if no complaints have been filed, the IC should conduct quarterly meetings to review and reinforce policies and procedures. This ensures that the committee remains active and prepared.

Step 6: Foster a Safe, Respectful Work Environment

Finally, remember that the true function of the Internal Committee is not just to handle complaints, but to **prevent** sexual harassment through education and fostering an environment where inappropriate behavior is not tolerated.

- **Promote Awareness**: Regularly engage employees in **workshops and seminars** to raise awareness about sexual harassment and the role of the IC.
- **Zero Tolerance Policy**: Ensure that everyone understands your organization's **zero tolerance policy** towards sexual harassment, but do so while emphasizing fairness and due process in investigations.

Common Pitfalls to Avoid When Constituting the IC

1. **Avoid Selecting People based on Personal Relationships**: It's essential to maintain neutrality. Selecting committee members based on personal relationships or authority dynamics can compromise the integrity of the investigation.
2. **Homogeneity in Opinions**: A lack of diversity in backgrounds, experiences, and perspectives can limit the effectiveness of the IC. Ensure that your committee is a balanced mix of professionals with different views.
3. **Perpetuating Gender-Based Stereotypes**: Ensure that the IC members are **gender-neutral** and free from any biases or stereotypes. This helps in conducting impartial and fair investigations.
4. **Overzealous 'Zero Tolerance' Approach**: A **zero-tolerance policy** may sound firm, but it can interfere with the fairness of an investigation. Both the complainant and respondent must be given a fair chance to present their case.

Conclusion

Constituting an Internal Committee under the POSH Act, 2013 is a critical step towards ensuring a safe and respectful workplace. By selecting the right members, providing them with proper training, and fostering an environment of transparency and fairness, you can not only comply with legal obligations but also create a workplace where all employees feel secure and supported.

Taking the time to understand the nuances of the POSH Act and following these best practices will help set up an effective IC that protects the employees and contributes to a culture of respect and accountability within the organization.

We understand that navigating the law and guidelines can be challenging, especially if you're not an expert in the field. That's why having an experienced External Member on your Internal Committee is essential to ensure compliance with the law. Stay tuned for our upcoming edition, where we'll provide insights on how to select the right expert external member for your organization. Once you've appointed them, sit down with them to get guidance on the selection process. Remember, creating a safe and supportive workplace isn't just a legal requirement—it's an ethical commitment to building a positive, thriving work environment.

At MAA Foundation, our team of experts supports you with this crucial step of setting up your Internal Committee under the PoSH Act, 2013. Our experts guide you with the legal mandates and guidelines present in the PoSH Act and also the best industry practices that one needs to follow while setting up the Committee.

To start with the PoSH compliance implementation in your workplace, please don't hesitate to contact us at pooja@whitespan.in.

Please note: This article is for informational purposes only and should not be considered a substitute for formal or legal advice. If you have experienced sexual harassment, we encourage you to seek professional support or contact the appropriate authorities.

Author:
Pooja Vohra
LLM; BA LLB
Certified POSH Trainer | IC External Member

WHITESPAN Advisory

Article 3

Understanding 'Any Other Person' in Law

Introduction

The term 'any other person' in the context of the Companies Act, 2013, plays a significant role in defining the scope of access to company documents. This term is broadly interpreted to include individuals or entities that are not explicitly mentioned in the direct provisions of the Act. Its significance lies in its capacity to extend the rights of access beyond mere shareholders or directors, thereby embracing a wider audience interested in corporate governance and transparency.

Judicial interpretations have further clarified the application of 'any other person.' Courts have recognized that the intent behind this phrase is to foster accountability and make corporate information accessible to a broader public. For instance, in various rulings, the judiciary has emphasized that stakeholders, including creditors, employees, and even members of the public, may fall under this umbrella, depending on the context of their request. This approach underscores the importance of transparency in corporate affairs and supports the notion that informed stakeholders contribute to better corporate governance.

The implications of this interpretation are profound. By allowing 'any other person' to access company documents, the Act promotes an environment where transparency and accountability are prioritized. This access is vital for fostering trust between the company and its stakeholders, particularly in matters such as financial disclosures, corporate policies, and decision-making processes. Moreover, it provides a mechanism for oversight, enabling scrutiny that can deter malfeasance and encourage ethical practices.

In summary, the inclusion of 'any other person' within the Companies Act, 2013, alongside judicial interpretations, illustrates a commitment to transparency and accessibility. This term serves as a crucial element in the regulatory framework, impacting how companies interact with their stakeholders and uphold principles of good governance.

Case Laws and Judicial Interpretation

In examining the term 'any other person,' significant case laws have emerged that provide contrasting judicial interpretations, particularly in the cases of *Anilkumar Poddar v. Futura Commercials Pvt. Ltd.* and *HB Stockholdings Limited v. Jaiprakash Industries Ltd.* These cases illustrate the varying judicial perspectives on the scope of this term within the framework of corporate governance.

In *Anilkumar Poddar v. Futura Commercials Pvt. Ltd.*, the court interpreted 'any other person' broadly, emphasizing the need for inclusive access to corporate documents. The judgment reinforced the idea that stakeholders, including those who might not have a direct financial interest in the company, should be entitled to seek information for the sake of transparency and accountability. This interpretation aligns with the spirit of the Companies Act, 2013, promoting a culture of openness in corporate governance. The court highlighted that the term should encompass a wide range of individuals who have a legitimate interest in the company's affairs, thus fostering an environment where informed scrutiny can occur.

Conversely, in *HB Stockholdings Limited v. Jaiprakash Industries Ltd.*, the court adopted a more restrictive interpretation of 'any other person.' The ruling indicated that access to company documents should be limited to those who possess a direct stake or interest in the company. This perspective raises questions about the extent to which the principle of transparency can be upheld if access is confined to a narrower group. The court's stance implies a cautious approach to the dissemination of corporate information, potentially limiting the ability of broader stakeholders to engage with the company’s practices and governance.

These divergent judicial interpretations highlight the ongoing debate about the scope of 'any other person' within corporate law. They underscore the tension between fostering transparency and safeguarding corporate confidentiality, illustrating the complexities involved in balancing these critical aspects of corporate governance.

Interpretation Using the Rule of Ejusdem Generis

The rule of ejusdem generis is a principle of legal interpretation that is employed to clarify ambiguous language within statutes. It asserts that when general words follow a list of specific items, the general words are interpreted to include only things of the same kind as those listed. This principle is particularly useful in legal contexts where clarity is paramount, as it helps to prevent overly broad interpretations that may lead to unintended consequences.

A notable application of the ejusdem generis rule can be seen in the case of *Ishwar Singh Bagga v. State of Rajasthan*, where the Supreme Court addressed the interpretation of the term "other person." In this case, the Court concluded that the term should be read in conjunction with the preceding specific terms, thereby limiting its scope to parties of a similar nature. This ruling emphasized that the legislative intent was not to extend the definition to include every conceivable individual but rather to confine it to those closely aligned with the specific groups mentioned earlier in the statute.

Similarly, in *The Mysore Electricity Board v. Bangalore Woollen*, the court further solidified this interpretation by employing the ejusdem generis doctrine to determine the scope of certain regulatory powers. The court held that the powers conferred under the statute were intended for entities with similar characteristics to those explicitly enumerated, thereby reinforcing the necessity of contextual interpretation in legal matters.

Applying the rule of ejusdem generis to the Companies Act, particularly regarding the term 'any other person,' suggests that this phrase should be interpreted in light of the specific categories of individuals explicitly referenced within the Act. This interpretation implies that 'any other person' may refer to those individuals or entities that share common characteristics with shareholders, directors, or other explicitly defined stakeholders. Therefore, while the term aims to broaden access to corporate information, its interpretation should remain tethered to the legislative intent and the nature of the specified parties involved.

Relevant Provisions of the Companies Act, 2013

The Companies Act, 2013 outlines several provisions where the term 'any other person' is specifically mentioned, allowing for a broader interpretation in the context of corporate governance. Notably, Sections 13(5), 147(3), 213(b)(i), and 224(5) serve as key references, each highlighting different implications of access to company information.

Section 13(5)

Under Section 13(5), when a company alters its Memorandum of Association, it requires approval not just from shareholders but also allows 'any other person' to express their views. This inclusion underscores the importance of stakeholder engagement beyond traditional boundaries, facilitating a more inclusive decision-making process. It empowers individuals who may have a vested interest in the company's operations, even if they do not hold shares.

Section 147(3)

Section 147(3) deals with the penalties for non-compliance with the provisions of the Act. It extends liability not only to directors and officers but also to 'any other person' who may have been involved in the contravention. This provision broadens accountability, ensuring that individuals who contribute to or are complicit in unlawful activities within a company can be held responsible, thereby reinforcing corporate governance and ethical practices.

Section 213(b)(i)

In the context of investigations, Section 213(b)(i) empowers authorities to inquire into matters related to the affairs of a company if there are grounds to believe that 'any other person' is involved in fraudulent activities. This provision emphasizes the role of whistleblowers and external parties in uncovering corporate misconduct, highlighting the Act's commitment to transparency and accountability.

Section 224(5)

Finally, Section 224(5) pertains to the appointment of auditors and mandates that the auditor's report must be made available to 'any other person' as defined by the Act. This ensures that stakeholders not directly involved in the company still have access to essential financial information, promoting transparency and fostering trust among various stakeholders.

In summary, these sections collectively illustrate how 'any other person' is utilized within the Companies Act, 2013, emphasizing inclusivity, accountability, and transparency in corporate governance. Each provision plays a crucial role in defining the scope of access and responsibility, reinforcing the Act's overarching goal of promoting ethical corporate behavior.

Possible Contradictions and Interpretations

The phrase 'any other person' within the Companies Act, 2013, presents a complex landscape of interpretation that can lead to potential contradictions, particularly when contrasting narrow and broad interpretations. Sections 81(2) and 294(4) serve as prime examples to illustrate how context can significantly influence the understanding of this term.

Section 81(2) stipulates that a company must offer shares or other securities to existing shareholders before extending such offers to 'any other person.' This provision is typically interpreted narrowly, focusing on protecting the rights of shareholders by prioritizing their interests. Here, 'any other person' is often viewed as those outside the immediate circle of shareholders but still related to the company in a defined way, such as employees or potential investors. This interpretation aims to maintain the integrity of shareholder equity and prevent dilution of their interests, suggesting a restrictive approach to who qualifies as 'any other person.'

In contrast, Section 294(4) presents a broader interpretation. This section allows for the appointment of directors from 'any other person' as long as it is in the public interest and aligns with the company's objectives. This interpretation invites a wider array of individuals, including those without direct ties to the company, to take on roles that can influence governance and decision-making. Here, 'any other person' signals an inclusive approach intended to foster diverse perspectives in corporate leadership, emphasizing the Act's commitment to broader stakeholder engagement.

The juxtaposition of these sections reveals a tension between protecting shareholder rights and promoting inclusive corporate governance. While the narrow interpretation in Section 81(2) seeks to safeguard existing investments, the broad interpretation in Section 294(4) advocates for a more democratic approach to corporate leadership. This duality raises questions about the legislative intent behind the term 'any other person,' highlighting the need for clarity in its application to ensure that the principles of transparency and accountability are upheld without compromising shareholder rights.

Conclusion

The interpretation of the term 'any other person' within the Companies Act, 2013, reveals a significant commitment to transparency and access in corporate governance. The broad application of this term allows for a diverse range of stakeholders, including creditors, employees, and the general public, to seek access to company documents. This inclusion is vital for fostering an environment of accountability and informed engagement, as it empowers individuals who may not hold direct financial stakes but have a legitimate interest in corporate affairs.

Judicial interpretations have further shaped the discourse around 'any other person,' with courts oscillating between more inclusive and restrictive approaches. Cases such as *Anilkumar Poddar v. Futura Commercials Pvt. Ltd.* advocate for a broader interpretation, reinforcing the notion that transparency extends beyond traditional stakeholders. Conversely, rulings like *HB Stockholdings Limited v. Jaiprakash Industries Ltd.* suggest a more cautious stance, indicating that access to corporate information should be confined to those with direct interests. This divergence highlights the complexities of balancing transparency with corporate confidentiality, emphasizing the need for clarity in legal interpretations.

Future considerations in the interpretation of 'any other person' may involve an ongoing dialogue among legal practitioners, lawmakers, and corporate entities. As corporate governance evolves, there may be a push for legislative amendments or clarifications that further define the scope of access, ensuring that the principles of transparency and accountability are maintained without undermining the rights of shareholders and other stakeholders. Additionally, the evolving landscape of technology and information accessibility may necessitate a re-evaluation of how corporate documents are shared and who qualifies as ‘any other person.’ Ultimately, the future interpretation of this term will play a crucial role in shaping corporate governance and stakeholder relations in the years to come.

Author:
Anushree Khunteta
Associate Company Secretary and LLB
Designation: Senior Corporate Associate

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Case Laws

1. Sanjay Dutt & Ors. v. State of Haryana & Anr. [[2025] 1 S.C.R. 446; 2025 INSC 34]

Background: In Sanjay Dutt Vs. State of Haryana, the Supreme Court addressed the criminal liability of directors of Tata Realty and Infrastructure Limited and Tata Housing Development Co. Ltd. for alleged violations under the Punjab Land Preservation Act, 1900 (PLPA). The case revolved around the illegal uprooting of 256 trees in Gurugram using machinery, an act attributed to the company. The directors were accused based on their managerial roles, despite the absence of specific allegations of personal involvement.

Questions of Law:

1. Can directors of a company be held vicariously liable for its actions in the absence of statutory provisions and specific allegations?
2. What is the evidentiary threshold for attributing personal liability to corporate directors in environmental or corporate offences?
3. Does the PLPA, 1900, provide for vicarious liability of directors or officials in cases of environmental violations?

Judgment and Conclusion: On January 2, 2025, the Supreme Court held that the vicarious liability of directors cannot be presumed in the absence of statutory provisions or specific allegations of personal involvement. This judgment reinforces the principle that criminal liability must be directly tied to individual actions and intent, rather than presumed by association with the company.

2. Mohammed Enterprises (Tanzania) Ltd. v. Committee of Creditors & Anr. [[2025] 1 S.C.R. 177; 2025 INSC 25]

Background: Mohammed Enterprises (Tanzania) Ltd. (METL) along with the resolution professional and a financial creditor challenged before the Supreme Court, order of Karnataka High Court whereby it had quashed the resolution plan approved by the Committee of Creditors in the Corporate Insolvency Resolution Process. The appellant moved the Supreme Court, arguing that the High Court's intervention was unwarranted, especially given the availability of statutory remedies under the IBC.

Questions of Law:

1. Can High Courts exercise jurisdiction under Article 226 to interdict a CIRP governed by the IBC, despite the availability of statutory remedies under the Code?
2. Does a three-year delay in filing a writ petition justify the invocation of extraordinary jurisdiction under Article 226, particularly in cases where statutory remedies have been pursued?
3. To what extent can procedural irregularities, such as inadequate notice for CoC meetings, constitute grounds for judicial intervention in CIRP proceedings?

Judgement and Conclusion: In its judgment passed on January 3, 2025, the Supreme Court emphasized that the IBC is a complete code with adequate checks, balances, and remedial mechanisms. It dismissed attempts to disrupt Corporate Insolvency Resolution Processes (CIRP) through delayed and misplaced judicial interventions, emphasizing the need for adherence to statutory discipline. By allowing the appeal, the Supreme Court reaffirmed the autonomy of the IBC framework and directed the Adjudicating Authority to resume proceedings from the stage disrupted by the High Court's order.

3. Serosoft Solutions Pvt. Ltd. Vs. Dexter Capital Advisors Pvt. Ltd. [2025 INSC 26]

Background: The case arose from a contentious High Court order directing the Arbitral Tribunal to provide additional time for cross-examining a key witness, despite the Tribunal's reasoned decision rejecting such a request. The appellant challenged the High Court's decision before the Supreme Court, arguing that the Tribunal's order was reasoned and did not warrant judicial interference.

Questions of Law:

1. Under what circumstances can High Courts exercise jurisdiction under Articles 226 and 227 to interfere in arbitration proceedings?
2. Does the refusal of an Arbitral Tribunal to grant additional time for cross-examination constitute a violation of the principles of natural justice?
3. What constitutes "perversity" in an arbitral order sufficient to warrant judicial interference?

Judgment and Conclusion: The Supreme Court reiterated that High Courts must exercise restraint while reviewing arbitral proceedings under Articles 226 and 227 of the Constitution. It observed that judicial intervention is permissible only in cases where the arbitral order is demonstrably perverse. The Court criticized the High Court for failing to establish any such perversity in the Tribunal's decision. The Court reaffirmed that intervention by the High Court is warranted only in rare and exceptional circumstances, such as bad faith or denial of natural justice. It found no such circumstances in this case, rendering the High Court's interference unwarranted. By setting aside the High Court's decision, the Court has reinforced the procedural integrity of arbitration and emphasized the need to preserve its efficiency and finality.

4. Vidyawati Construction Company v. Union of India [2025 INSC 101]

Background: The dispute between Vidyawati Construction and the Union of India involved a contract for a building requiring a three-member arbitral tribunal. After initial disagreement over the tribunal's composition, a sole arbitrator was appointed by the Chief Justice of the High Court, which both parties agreed to. On February 14, 2004, the respondent filed its defense, but on April 24, 2004, raised a jurisdictional objection about the tribunal's composition. The arbitrator rejected the objection, and an award was passed in favor of the appellant on February 21, 2008. The respondent challenged the award, and the District Court set it aside on the grounds of improper tribunal composition. The Allahabad High Court upheld this decision, leading to an appeal to the Supreme Court.

Questions of Law:

1. Can a party raise objections to the jurisdiction of an arbitral tribunal after filing its statement of defence, in light of Section 16(2) of the Arbitration Act?
2. Does agreeing to the tribunal's composition and actively participating in arbitration proceedings amount to a waiver of the right to later challenge jurisdiction?
3. Was the High Court justified in setting aside the arbitral award on grounds of tribunal composition when the respondent had initially accepted the sole arbitrator?

Judgment and Conclusion: The Supreme Court delivered a landmark judgment emphasizing the importance of procedural adherence in arbitration proceedings under the Arbitration and Conciliation Act, 1996. The Court clarified that jurisdictional objections against an arbitral tribunal must be raised before or at the time of filing the statement of defence, as mandated by Section 16(2) of the Act. The bench set aside the decisions of the Allahabad High Court and the District Court, which had erroneously entertained belated jurisdictional objections from the respondent. This decision reinforces the binding nature of procedural timelines in arbitration and highlights the significance of the parties' conduct in arbitration proceedings, particularly when they have previously acquiesced to the tribunal's jurisdiction.

5. WhatsApp LLC v. Competition Commission of India (CCI) [Competition App. (AT) No. 1 of 2025]

Background: The dispute arose from WhatsApp's 2021 Privacy Policy update, which required users to agree to data-sharing terms with Meta entities. The CCI imposed a penalty of Rs. 213.14 crore for allegedly abusing WhatsApp's dominant market position and violating Sections 4(2)(c) and 4(2)(e) of the Competition Act. The CCI's order emphasized that the update created entry barriers in online display advertising and undermined user autonomy through a "take-it-or-leave-it" approach. In addition to the monetary fine, the CCI directed WhatsApp to:

- Stop sharing user data with Meta entities for five years.
- Provide an opt-out option for users.
- Ensure transparent disclosures on data-sharing practices.

Challenging this order, WhatsApp argued that the CCI's directives threatened its business model and that privacy-related concerns should fall within the purview of the DPDP Act.

Questions of Law

1. Does the CCI have jurisdiction to regulate privacy-related competition issues under the Competition Act?
2. Can regulatory directives that disrupt the business model of a dominant digital platform be justified under the guise of user protection?
3. Should the five-year ban on data-sharing imposed by the CCI be reconsidered in light of upcoming data protection legislation?

Judgment and Conclusion: The tribunal granted partial relief to WhatsApp, staying the five-year ban imposed by the CCI on the sharing of user data with Meta entities for advertising purposes. The tribunal reaffirmed the CCI's jurisdiction to regulate anti-competitive practices, particularly where such practices undermine user autonomy. It relied on the Supreme Court's decision in ***Meta Platforms Case (2022)***, which clarified that the CCI can investigate privacy-related competition issues when they restrict market access or harm consumer welfare. Further, the tribunal upheld other directives of the CCI, emphasizing the broader implications of regulatory compliance and competition law. While recognizing the primacy of competition law, the tribunal acknowledged the likely enforcement of the Digital Personal Data Protection Act, 2023 (DPDP Act), as a crucial framework for resolving issues related to privacy and data sharing.

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Compliance Checklist

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COMPLIANCE CALENDAR FOR THE MONTH OF FEBRUARY 2025

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

Income Tax Related Compliance	
	The last date to deposit tax deducted or collected is January 2025. For government offices, any TDS/TCS paid without a challan must be credited to the Central Government on the same day.
	Section 194-IA: TDS on property transactions. **Section 194-IB:** TDS on rent payments. **Section 194 M:** TDS on payments to contractors/professionals. **Section 19 4S:** TDS on cryptocurrency and other virtual digital asset transactions (by specified persons).
	The last date to submit Form 24G by government offices for TDS/TCS payments made in January 2025 without a challan. Deadline for issuing Quarterly TDS Certificates (non-salary payments) for the quarter ending 31 December 2024.
GST Related Compliance	
	GSTR 1 for January-25 (Monthly)
	GSTR 3B for January-25 (Monthly)
SEBI	
	Companies must submit their quarterly financial results, along with an auditor's or limited review report
POSH	
	Companies based at Gurugram to file their annual POSH Annual report.

FOR FURTHER INFORMATION OR ASSISTANCE PLEASE CONTACT:

vinayshukla@whitespan.in

HEAD OFFICE
NCR OF DELHI
416, 4th Floor, Tower –A,
SpazEdge Commercial Tower,
Sector-47, Sohna Road Gurgaon 122-018
Telephone – 0124-2204242, 63

Other Presence: Mumbai, Kanpur, Delhi, Kolkata, Bangalore, Chennai, Dubai

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