



WHITESPAN
A d v i s o r y

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

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MAA FOUNDATION Activities



Maa Foundation organized event undertaken under CSR initiatives, such as Distribution of food to the children.

MESSAGE FROM THE CHIEF EDITOR

“When I let go of what I am, I become what I might be.” – Lao Tzu

It gives us immense satisfaction to share the 73rd Edition of “WINS – E-Newsletter” for May 2023, covering legal updates released during the month of April 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of May 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, CBDT and other miscellaneous laws
2. Articles on:
 - i. Article on Arrestation and Bail under the Companies Act, 2013
 - ii. Article on Prevention of Money Laundering
3. Case Laws
4. Compliance checklist for the month of May 2023.

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](tel:+919810624262)

With warm regards,

TEAM WINS (Whitespan Information and News Services)
April 30, 2023

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. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Ms. Saloni Sharma**, a Qualified Company Secretary, a graduate in bachelors of commerce from Rajasthan University, and Pursuing bachelors of law.

Ministry of Corporate Affairs (MCA)

1. Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023

Date of Notification: April 17, 2023

Effective Date: May 01, 2023

Link: <https://e-book.icsi.edu/Default.aspx?page=notification>

MCA vide its circular dated April 17, 2023 amended the Companies (Removal of Names of Companies from the Register of Companies) Rules 2016 by notifying the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023.

Key highlights of the amendment are-

S. NO.	Rule No.	Prior to the amendment	Post Amendment
1	Rule 4(1)	An application for removal of name of the company under section 248 shall be made in Form STK-2 along with the fee of ten thousand rupees:	An application for removal of name of the company under section 248 (2) shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with fee of ten thousand rupees
2	Rule 4(3)(iv)	A copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid up share capital as on the date of application	Omitted
3	Rule 4(3A)	Newly inserted	The Registrar, Centre of Processing Accelerated Corporate Exit established under section 396(1) shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No.STK 2 and all matters related thereto under section 248 having territorial jurisdiction all over India.

Accordingly, required modifications have been made in form STK-2, STK-6 and STK-7.

Securities Exchange Board of India (SEBI)

1. Advertisement code for Investment Advisers (IA) and Research Analysts (RA)

Date of Circular – April 05, 2023

Effective Date – May 01, 2023

Link: <https://www.sebi.gov.in/legal/circulars/apr-2023/advertisement-code-for-investment-advisers-ia-and-research-analysts-ra-69798.html>

SEBI vide its circular dated April 05, 2023 issued an Advertisement Code for investment advisers and research analysts.

Key highlights of the code are:

Forms of communication:

Advertisement shall include all forms of communications, issued by or on behalf of IA/RA, that may influence investment decisions of any investor or prospective investor.

Information/disclosures in the advertisement:

Name of the IA/RA as registered with SEBI, registered office address, SEBI Registration No., logo/brand name/trade name of IA/RA, and CIN of the IA/RA, if applicable. ii. Information which is accurate, true and complete in unambiguous and concise language. Whenever the advertisement is being issued in a language other than English, it will be ensured that the standard warning is accurately translated in the language of the advertisement.

Prohibitions in the advertisement:

The advertisement shall not contain:

- i. Anything which is prohibited for publication under the law.
- ii. Statements which are false, misleading, biased or deceptive, based on assumptions or projections.
- iii. Any misleading or deceptive testimonials.
- iv. Statements which, directly or by implication or by omission, may mislead the investor.

Reference to past performance of the IA/RA.

Other compliances/requirements:

- i. Prior approval for the advertisement/material shall be obtained from SEBI recognized supervisory body (e.g. BSE Administration & Supervision Ltd. (BASL) in case of IAs) before issue.
- ii. In the event of suspension of any IA/RA by SEBI and/or by SEBI recognized supervisory body, the IA/RA so suspended shall not issue any advertisement either singly or jointly with any other IA/RA, during the period of suspension.
- iii. The IA/RA shall not engage in games, leagues, schemes, competitions etc. which may involve distribution of prize monies, medals, gifts, etc.
- iv. These norms shall be applicable to any other investment/research/consultancy agency associated with the IA/RA concerned and issuing advertisement wherein the IA/RA has been named in the advertisement.

2. Usage of brand name/trade name by Investment Advisers (IA) and Research Analysts (RA)

Date of Circular – April 06, 2023

Effective Date – May 01, 2023

Link: <https://www.sebi.gov.in/legal/circulars/apr-2023/usage-of-brand-name-trade-name-by-investment-advisers-ia-and-research-analysts-ra-69839.html>

SEBI vide its circular dated 06th April, 2023 prescribed the use of brand name/trade name by IA and RA. It has been noted that some investment advisors and research analysts market their services using their brand name, trade name, or logo rather than the name that is registered with SEBI in their advertisements, websites, publications, client communications and other documents. The brand name, trade name or logo may or may not be connected to the name of the IA or RA registered with SEBI, which could lead to investor confusion or deceit.

IA and RA are required to ensure the following:

1. The information such as name, logo, registration number and the complete address of IA/RA shall be display on the website/portal.
2. The information of IA/RA, Details of Compliance officer and grievance officer shall be displayed prominently in statements or reports or any other form of correspondence with Client.
3. Disclaimer shall be mentioned on the portal or website, notice boards, display boards, advertisements, publications, agreements, statements, reports and any other mode of communications.
4. SEBI logo shall not be used by IA/RA.

3. Guidelines with respect to excusing or excluding an investor from an investment of AIF

Date of Circular –April 10, 2023

Effective Date – April 10, 2023

Link: <https://www.sebi.gov.in/legal/circulars/apr-2023/guidelines-with-respect-to-excusing-or-excluding-an-investor-from-an-investment-of-aif-69995.html>

SEBI vide its earlier circular dated April 10, 2023 issued guidelines with respect to excusing or excluding an investor from an investment of AIF.

An AIF may excuse its investor from participating in a particular investment in the following circumstances:

1. If the participation of the investor would be in violation of applicable law or regulation; or
2. If the investor, as part of contribution agreement or any other agreement signed with the AIF, had disclosed that it would be in contravention to the internal policy.

Further, an AIF may also exclude an investor from participating in a particular investment opportunity, if the manager is satisfied that the participation would lead the scheme in violation of applicable law or regulation or would result in material adverse effect on the scheme.

4. Additional affirmations by Practicing Company Secretaries (PCS) in Annual Secretarial Compliance Report (ASCR)

Date of Circular – April 10, 2023

Effective Date – Financial Year ended March 31, 2023 and onwards

Link: https://static.nseindia.com//s3fs-public/inline-files/NSE_Circular_10042023_0.pdf
<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230410-41>

NSE and BSE vide its circular dated 10th April, 2023, replaced the Point no. 1 of Circular no. 20230316-14 dated March 16, 2023. Earlier the point no. 1 stated that the PCS is required to affirm that the “the compliances of listed entities are in accordance with the Auditing Standards issued by ICSI, namely CSAS-1 to CSAS-3”, now it is replaced by the statement that the PCS is required to affirm that “The compliances of the listed entity are in accordance with the applicable Secretarial Standards (SS) issued by the Institute of Company Secretaries India (ICSI)”.

Currently listed entities are submitting the ASCR in both PDF and XBRL mode. Since, the XBRL mode of submission is under development hence, provisionally the ASCR to be submitted in PDF format via Announcement over the path NEAPS > Compliance > Announcements > Announcements/ Corporate Actions Later, the listed entities shall also be mandatorily required to submit the ASCR in XBRL mode as well.

5. FAQs on the submission of the quarterly Corporate Governance Report

Date of Circular –April 10, 2023

Effective Date – April 10, 2023

Link: https://static.nseindia.com//s3fs-public/inline-files/NSE_Circular_10042023_2_0.pdf

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230410-45>

NSE and BSE vide its circular dated 10th April, 2023, issued FAQs for submission of Corporate Governance Report on the NSE Electronic Application Processing System (NEAPS) Platform and BSE Platform. This circular is issued in supersession with all the previously issued FAQs to the listed entities with respect to the submission of Corporate Governance Report.

FAQ's cover the aspect of Composition of Board of Directors, Composition of Committees, Meeting of Board of Directors, Meeting of Committees etc.

In case of any concerns regarding the XBRL filing, company(ies) can reach out by dropping an email over nsexbrl@nse.co.in

The circular supersedes all the previously issued FAQs to the listed entities with respect to the submission of Corporate Governance Report.

6. Formulation of price bands for the first day of trading pursuant to Initial Public Offering (IPO), re-listing etc. in normal trading session

Date of Circular – April 11, 2023

Effective Date – After 60 days from the date of issuance of this circular

Link: https://www.sebi.gov.in/legal/circulars/apr-2023/formulation-of-price-bands-for-the-first-day-of-trading-pursuant-to-initial-public-offering-ipo-re-listing-etc-in-normal-trading-session_70019.html

SEBI vide its circular dated 11th April, 2023, issued a notification regarding the formulation of price bands for the first day of trading pursuant to Initial public offering (IPO), re-listing, etc. in the normal trading session.

It has been decided for trading on the first day pursuant to IPO or re-listing –

1. Call auction sessions would continue to be conducted separately on individual exchanges and orders would be matched by respective exchanges after the computation of the equilibrium price.

2. A Common Equilibrium Price (CEP) would be computed by exchanges if difference in the equilibrium price is more than the applicable price band for the scrip.
3. The exchanges shall set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP, as applicable.
4. Only unexecuted pending orders from Call Auction session within the aforesaid price band shall be carried forward to the normal market segment.

Central Board of Direct Taxes (CBDT)

1. Clarification regarding deduction of TDS under section 192 read with sub-section (1A) of section 115BAC of the Income-tax Act, 1961 - reg.

Date of Circular – April 05, 2023

Effective Date – April 05, 2023

Link: <https://incometaxindia.gov.in/communications/circular/circular-no-4-2023.pdf>

CBDT vide its circular dated 05th April, 2023, issued a notification regarding the clarification of TDS under Section 192 read with sub-section (1A) of Section 115BAC of the Income Tax Act, 1961 which is in supersession of the circular issued on 13th April, 2020. This circular shall be applicable for TDS during the financial year 2023-24 and subsequent years.

Under the Finance Act, 2023, sub-section (1A) has been included in Section 115BAC which contains provisions pertaining to the income tax payable in respect of the total income of a person under the Income Tax Act, 1961 to provide for a new tax regime which shall apply to an individual, Hindu undivided family, organization of persons or body of individuals, whether or not incorporated or an artificial legal person, commencing on or after 01st April, 2023.

A person not having income from a business or profession can exercise an option to opt out of this regime under sub-section (6) of Section 115BAC of the Act.

Miscellaneous Laws

1. Modified SIPP Scheme w.e.f. 1st April 2023

Date of Circular – April 10, 2023

Effective Date – April 01, 2023

Link: https://ipindia.gov.in/writereaddata/Portal/News/885_1_approved_SIPP_scheme.pdf

DPIIT vide its circular dated 10th April, 2023 introduced Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP).

The Scheme was started in 2016 on pilot basis and extended upto 31-03-2023. In addition, the scheme was made applicable to all Indian innovators/ creators using the services of the TISCs established in India w.e.f. 06-09-2019. To further encourage the IP facilitators to provide quality services to the eligible applicants, the scheme was revised and facilitation fees notably increased by at least 100% w.e.f. 02-11-2022. The scheme is now being extended further for a period of three years upto 31-03-2026.

The scheme of SIPP aims to promote awareness and adoption of Intellectual Property Rights amongst Startups and utilization of services of the TISCs established in India. The Scheme is inclined to nurture and mentor innovative and emerging technologies among Startups, individual innovators/ creators and educational institutes and assist them in protecting and commercialize their IP in India and outside by providing them access to high-quality IP services and resources.

2. Notification on Foreign Trade Policy

Date of Circular – March 31, 2023

Effective Date – April 01, 2023

Link: <https://content.dgft.gov.in/Website/dgftprod/3c4b85cc-fb71-444d-b917-c831a6772e51/notification%20english.pdf>

The Directorate General of Foreign Trade vide its circular dated March 31, 2023 introduced the Foreign Trade Policy, 2023 which shall come in effect from April 01, 2023.

The key highlights of the Foreign Trade Policy, 2023 are-

- i. Ease of doing business by providing automatic approvals of various permissions under Foreign Trade Policy, reduction in processing time and paperless filings.
- ii. Reduction in user charges for MSMEs under Advance Authorization and EPCG Schemes
- iii. Export promotion initiatives by rationalising recognition of exporters as status holders, internationalisation of rupee currency and providing benefits to the Towns of Export Excellence (TEE) under the TEE scheme.

- i. Boosting India's foreign trade by decentralizing export promotion and making the districts as export hubs. The states and districts of India to be made active participants in export promotion.
- ii. Facilitation of E-commerce exports for providing special outreach to small exporters
- iii. Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added as an additional scheme eligible to claim benefits under CSP (Commons Service Provider) Scheme of Export Promotion capital Goods Scheme (EPCG)
- iv. Special one-time amnesty scheme to address non-compliance in Export Obligations by Advance Authorization and EPCG authorization holders.
- v. Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) policy which emphasizes India's export control in line with its international commitments to control trade in sensitive and dual use items including software and technology shall be consolidated at one place for ease of understanding and compliance by industry.

3. Notification on Restoration of Abandoned Applications/Oppositions to Original Status

Date of Circular – April 21, 2023

Effective Date – April 21, 2023

Link: https://ipindia.gov.in/writereaddata/Portal/News/888_1_Public_Notice_dated_-21-04-2023.pdf

Office of Controller general of Patents, Designs and Trade Marks vide its circular dated April 21, 2023, has restored the original status of abandoned applications and oppositions in view of the order dated April 13, 2023, passed by the Hon'ble High Court of Delhi in the matter of *Intellectual Property Attorneys Association (IPAA) & Anr. v. The Controller General of Patents, Designs and Trademarks & Anr.* wherein the two impugned Public Notices dated February 06, 2023 and March 27, 2023 were withdrawn and all the applications were reverted to their original status.

Article 1

ARRESTATION AND BAIL UNDER THE COMPANIES ACT, 2013

A. Introduction

If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession has reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person under Section 212(8) of the Companies Act and shall, as soon as may be, inform him of the grounds for such arrest. The intention of legislature is to avoid continuance of offence. In *Neeraj Singhal Vs Union of India And Ors.*, CrI M.A. 30267/18 in Writ Petition (CRL) 2453/2018; Delhi High Court Date of order 29.08.2018. For the purpose of arrest, the SFIO is to be satisfied that the Petitioner has been guilty of the offence under Section 447 of Companies Act, 2013.

B. Seeking Bail

A person may seek bail in connection with his/her arrestation. Bail refers to the provisional release of an accused in a criminal matter in which the court is yet to announce a judgment. The expression, 'bail' means a security deposited to appear before the court for release. A bail is granted to an accused after presenting a bail bond to the court. There are commonly four types of bail which a person can apply depending upon the stage of the criminal matter, namely, i.e. (i) Regular Bail; (ii) Statutory Bail (iii) Interim Bail; and (iv) Anticipatory Bail.

1. Regular Bail

Regular Bail. A Regular bail can be granted to a person who has already been arrested and kept in police custody. A person can file bail application for regular bail under Section 437 and 439 of the Cr.P.C.

Seeking regular bail from Special Court

The court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial.

Twin conditions for granting bail

The court has to satisfy the two conditions for granting bail. In Siddhartha Chauhan v. Serious Fraud Investigation Office, CRM-M-38926-2019, Punjab & Haryana High Court at Chandigarh Date of Decision 13.11.2019. As regards imposing twin conditions for granting bail under section 212(6) of the Act, the Hon'ble Court has come to the conclusion that the language of the twin conditions requires impossibility from the court, besides defying the human logic in its operational functionality. However, the court find substance that the offence involved in this case are the economic offences and therefore, the factors and the criteria laid down by the Supreme Court for consideration for granting bail in economic offence to be considered by the Court. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of Y.S. Jagan Mohan Reddy.

Challenging the Constitutional validity of Section 212(6)(ii) & 212(7) Companies Act, 2013

Constitutional validity of Section 212(6)(ii) and 212(7) of Companies Act have been challenged. In Neeraj Singhal Vs Union of India And Ors., Crl M.A. 30267/18 in Writ Petition (CRL) 2453/2018; Delhi High Court Date of order 29.08.2018. Prayer in the main writ petition pertains to the constitutional validity of Section 212(6)(ii) and 212(7) of the Companies Act on the ground of their being violative of Article 14 and 21 of the Constitution of India. Both these provisions pertain to the grant of bail to an accused under the Companies Act where in the context of the offence of fraud under Section 447 of Companies Act, 2013. The offence has been made cognizable and the grant of bail made subject to a very high threshold of arrested person having to prove that he is not guilty of the offence as a precondition to grant of regular bail. According to the petitioner, a similarly worded provision of the PMLA, i.e., Section 45, was struck down by the Supreme Court as unconstitutional in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1. It is therefore, contended that prima facie, the Petitioners challenge to the vires of Section 212(6) and 212(7) of Companies Act, 2013. Hon'ble High granted bail. As against, In the matter of Serious Fraud Investigation Office Vs. Neeraj Singal & Anr., Criminal Appeal No.1114 of 2018 with Criminal Appeal No.1115 of 2018, Supreme Court of India Date of Decision 4th September, 2018. Hon'ble Supreme Court held that the provisions of section 212(6)(ii) and 212(7) of the Companies Act, 2013 are not unconstitutional and upheld the provisions. In the matter of Gaurav Kumar vs. Serious Fraud Investigation, Bail Application No.2154/2019 & CRL.M.(Bail) 1511/2019, Delhi High Court Date of Decision 24.12.2019.

The Hon'ble Court observed that the entire community is aggrieved, if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. As against, an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest..." The Hon'ble Court relied on the Judgement of Supreme Court in "P. Chadambaram Vs. Central Bureau of Investigation" 2019 (14) SCALE 157 that the basic jurisprudence relating to bail remains the same, in as much as the grant of bail is the rule and refusal as the exception.

2. Statutory Bail

If an accused makes an application for being on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. In the matter of Hari Sankaran vs. Serious Fraud Investigation, Criminal Application No.507 of 2021 (LD/VC/OCR/146/2020), High Court of Judicature at Bombay (Criminal Appellate Jurisdiction) Date of Decision: 19th April, 2022. If an accused makes an application for being on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would be entitled to pray for regular bail on merits.

The filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to section 167(2), Cr.P.C. and that taking of cognizance is not material to Section 167.

3. Interim Bail

Interim bail is a bail granted for a short period of time. Interim bail is granted to an accused before the hearing for the grant of regular bail or anticipatory bail. *In Neeraj Singhal Vs Union of India And Ors., Crl M.A. 30267/18 in Writ Petition (CRL) 2453/2018; Delhi High Court Date of order 29.08.2018.* The Hon'ble Court observed that both the PMLA provisions and Section 447 of the Companies Act pertain to economic offences. It is not possible at this stage to conclude that the offence under Section 447 of Companies Act is more heinous than that under Section 45 PMLA. *Secondly*, as far as the high threshold for grant of bail is concerned, barring the slight difference in the language, both provisions do make it equally difficult for a person accused of an offence thereunder to obtain bail. The above observation in Nikesh Tarachand, prima facie supports the challenge by the Petitioner to the constitutional validity of Section 212(6) of the Companies Act. *Thirdly*, even at a practical level, if indeed for a valid arrest if the records have to bear out the opinion of the Director SFIO that the person arrested has been guilty of the offence under Section 447, then it will be virtually impossible for the Special Judge to conclude for the purpose of Section 212(6) that the said person is not guilty of the offence. For all the above reasons, the Court is of the view that the Petitioner has a prima facie case in his favour for the grant of interim relief. The Hon'ble Court directed that the Petitioner shall be released on interim bail during the pendency of the present Writ Petition with conditions inter-alia.

4. Anticipatory Bail

A person who discerns or has apprehension that he may be arrested by the police for a non-bailable offence, he can file an application for anticipatory bail. It is like an advance bail obtained under Section 438 of the Cr.P.C. A bail under Section 438 is a bail before arrest and a person cannot be arrested by the police, if the anticipatory bail has been granted by the court. The question of grant of bail is primarily a matter of judicial discretion of the court and not any right of the accused. As regards provisions of granting bail, there is no difference between anticipatory and regular bail. In *Siddhartha Chauhan v. Serious Fraud Investigation Office*, CRM-M-38926-2019, Punjab & Haryana High Court at Chandigarh Date of Decision 13.11.2019. This petition under Section 438 of the Code of Criminal Procedure for grant of Anticipatory Bail in Criminal Complaint No.3 of 18.5.2019 CIS No. COMA/05/2019 CNR No. HRGR01-007022-2019 titled as SFIO V/s Adarsh Build Estate etc. under Section 120-B, 417, 418, 420 of IPC and Section 447 of the Companies Act, pending before the Special Court., Gurugram. The matter is in pursuance of Ministry of Corporate Affairs order dated 28/06/2018 in pursuance of section 212(1) and section 43(2) & (3) of LLP Act, 2008 in respect of Adarsh Group of companies. The granting bail being a special power, the power under Section 438 of Cr.P.C. has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact, if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered. In the present case, there are direct allegation against the petitioner. All the allegations have been admitted by the petitioner and his co-accused in the statements made on oath.

Hence, this court does not find any ground to exercise its extra-ordinary powers to grant anticipatory bail to the petitioner (page 32). Reliance is placed upon the Supreme Court Judgement in Pankaj Jain, Dilip Singh wherein it has been held that question of grant of bail is primarily a matter of judicial discretion of the court and not any right of the accused. The Hon'ble Court observed that if a person is summoned by the court as an accused, then the question of bail to him is to be decided by the court as per the provisions contained in Chapter XXXIII of Cr.P.C. In the matter of Vinay Shukla vs. Serious Fraud Investigation Office, CRM-M-24870-2020, High Court of Punjab & Haryana at Chandigarh Date of Decision:30.04.2021. The Hon'ble Court is of the view that no doubt, the petitioner is not accused of having committed the Offence of fraud punishable under Section 447 of the Companies Act, 2013 as the investigation did not reveal any role of the petitioner in actual fraudulent loan taking process by the company but the petitioner has prima facie signed and filed financial statements containing false information knowing it to be false and omitting material information as to the material facts knowing it to be material and to have thereby committed offence under Section 448 punishable under Section 447 of the Companies Act, 2013. Therefore, the Court is of the view that the petitioner does not deserve grant of anticipatory bail.

In case of further query, clarification, you may direct contact to the Author.

The books titles, “ADJUDICATION OF COMPANIES ACT MATTERS UNDER NCLT” and “LAW ON INSOLVENCY AND BANKRUPTCY” have published of the Author. The books are available respectively at

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

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

Author:

**RAJENDER KUMAR (ICLS),
CMA, CS, LLB
Dy. Registrar of Companies,
o/o Central Registration Centre,
Ministry of Corporate Affairs,
(M) 8920359188
Rajender.kumar20865@gmail.com**



Article 2

Prevention of money laundering

The Money Laundering Act, 2002 seeks to combat money laundering in India. Various **objectives** of the Act are as follows:

1. To prevent and control money laundering.
2. To confiscate and seize the property derived from, or involved in, money-laundering.
3. To provide punishment for offence of money-laundering.
4. To appoint the Adjudicating Authority and Appellate Tribunal to deal the matter connected with money laundering.
5. To put obligations on banking companies, financial institutions and intermediaries to maintain records.

To deal with any other issue connected with money laundering in India.

Money laundering takes place in three steps that is placement, layering and integration.

1. The first stage of money laundering is known as 'placement', whereby money is placed into the legal, financial systems. This is where the criminal money is 'washed' and disguised by being placed into a legitimate financial system, such as in offshore accounts.
2. The second stage in the money laundering process is referred to as 'layering'. This is a complex web of transactions to move money into the financial system, usually via offshore techniques. Its purpose is to create multiple financial transactions to conceal the original source and ownership of the illegal funds.

3. The third of the stages of money laundering is 'integration'. The 'dirty' money is now absorbed into the economy, for instance via real estate. Once the 'dirty' money has been placed and layered, the funds will be integrated back into the legitimate financial system as 'legal' tender. Integration is done very carefully from legitimate sources to create a plausible explanation for where the money has come from.

The conditions under Section 45 PMLA state that when an accused in a money laundering case applies for bail, the court has to first give an opportunity to the public prosecutor to be heard and if the public prosecutor opposes, the Court can grant bail only when it is satisfied that the accused is not guilty and unlikely to commit a similar offence when he is on bail.

In **Nikesh Tarachand Shah v. Union of India (2018)** The Supreme Court struck down the limitations on bail under Section 45(1) as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of Constitution of India. The Supreme Court declared that all the matters before us, in which the bail has been denied due to presence of the twin conditions will go back to respective courts which denied the bail and all such orders will be set aside, and the similar will be heard on merits.

PMLA mandates to each reporting entity registered with SEBI to follow and comply to the client account opening procedures, maintenance of records and reporting of the transactions to the relevant authorities. The act empowers SEBI to clarify the information required that is to be maintained for the clients and the way of maintaining the information. The reporting entity has also to implement the internal mechanism for detection of transactions and providing necessary information to the concerned regulator.

The reporting entity shall adopt **written procedures** to implement the AML provisions which inter alia includes **four parameters** that is directly linked to Client Due Diligence Process.

Further these procedures enable the banks to form better policies for their clients.

1. Policy for acceptance of clients
2. Procedure for identifying the clients.
3. Risk management
4. Monitoring of transactions

Verification of Identity by Reporting Entity:

Every Reporting Entity shall verify the identity of its clients and the beneficial owner, by:

- a) Authentication under the Aadhaar if the reporting entity is a banking company; or

- b) Use of passport issued.
- c) Use of any other officially valid document or modes of identification

ABG Shipyard Ltd. (ABG SL.), a Gujarat-based company, was accused of defrauding a bank in this case of 22,842 crores, or nearly \$3 billion. This firm stole money from about 28 banks, including the State Bank of India (SBI) and ICICI Bank. The CBI claims that ABG SL borrowed money from banks and put it to use for other things including investing in foreign subsidiaries and transferring assets into the names of associated businesses. They also sent money to several people and entities that were connected to them or the business. However, a forensic audit conducted by SBI with the help of Ernst and Young revealed that there was a significant problem with money laundering.

They also discovered that this scam operated from 2012 to 2017 spanning a five-year period. According to the CBI investigation, ABG Shipyards principally obtained loans from various banks and was able to channel money to the previously specified other uses. Furthermore, the fraud was discovered to have been committed through "diversion of funds, misappropriation, and criminal breach of trust, with an objective to gain unlawfully at the expense of the bank's funds," according to the SBI audit report.

ABG Shipyard and ABG International Private Ltd. were accused of possessing the following sums of money in the FIR that the CBI filed in 2022:

ICICI Bank – 7,089 crores, SBI – 2,925 crores, IDBI Bank – 3,639 crores, Bank of Baroda – 1,614 crores, Punjab National Bank 1,244 crores, Exim Bank 1,327 crores, Indian Overseas Bank 1,244 crores, and Bank of India 719 crores, inter alia.

Trial of the accused in the ABG Shipyard case

While the fraud was discovered in June 2019 as a result of an investigation by the SBI's Fraud Identification Committee, the CBI didn't receive the initial complaint until November 2019. Later, in 2022, a charge sheet was submitted against Rishi Agarwal, five other defendants, and 19 businesses, including three having Singaporean headquarters. The CBI detained Rishi Agarwal, the erstwhile promoter of ABG Shipyard Ltd. In spite of the fact that the charge sheet was not complete, he was promptly given bail.

Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating Financing of Terrorism (CFT)/Obligation of banks and financial institutions under Prevention of Money Laundering Act, (PMLA), 2002

The banks must follow detailed customer identification procedure so as to keep record on the opening of the account and monitor of the suspicious transactions. These (KYC) guidelines have been recommended by the Financial Action Task Force (FATF) on Anti Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT).

The main aim of the guidelines is to prevent the banks and other financial institutions from being used by the money launderers. The KYC system helps the banks to have better understanding of their customers.

The Reserve Bank of India (RBI) has issued several guidelines to prevent and detect money laundering in the Indian banking system. Some of the key guidelines are:

- 1. Know Your Customer (KYC):** RBI mandates that banks must establish the identity of their customers and maintain records of their transactions. This helps to prevent identity theft and fraud.
- 2. Customer Due Diligence (CDD):** Banks must conduct a risk assessment of their customers and establish the source of their funds. This helps to prevent money laundering and terrorist financing.
- 3. Suspicious Transaction Reporting (STR):** Banks must report any suspicious transactions to the Financial Intelligence Unit (FIU) of India. This helps to detect and prevent money laundering and terrorist financing.
- 4. Anti-Money Laundering (AML) Compliance:** Banks must have a comprehensive AML policy in place and ensure that their staff are trained to detect and prevent money laundering.
- 5. Monitoring of Transactions:** Banks must monitor their transactions and report any suspicious patterns of activity to the FIU.
- 6. Customer Education:** Banks must educate their customers on the risks of money laundering and the importance of complying with AML regulations.
- 7. Penalties for Non-Compliance:** Banks that fail to comply with AML regulations are subject to penalties and fines.

These guidelines are designed to prevent the use of the Indian banking system for illegal activities and to protect the integrity of the financial system.

Case Laws

CASE LAWS

1. In **Central Bureau of Investigation vs Aryan Singh**, the Supreme Court has observed that High Court cannot conduct a "mini-trial" while exercising powers under Section 482 of the Code of Criminal Procedure. It further observed that *"At the stage of discharge and/or while exercising the powers under Section 482 C.r.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not"*.
2. In **NTPC Ltd vs. M/s SPML Infra Ltd**, the Supreme Court has ruled that the court while exercising jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 (A&C Act) is not expected to act mechanically, and that the limited scrutiny of the court at the pre-reference stage, through the "eye of the needle", is necessary and compelling.
3. In **Commissioner of Customs, Central Excise & Service Tax v M/S Suzlon Energy**, the Supreme Court has held that the import of "Engineering Design & Drawings" falls under the category of "design services" under section 65(35b) read with Section 65(105) of the Finance Act, 1994, and are subject to levy of service tax. On the sole ground that "Engineering Design & Drawings" prepared and supplied by sister company were shown as 'goods' under the Customs Act and in the bill of entry, such services cannot be excluded from the definition of "design services" under the Finance Act, 1994.
4. In **Pramod Singla vs UOI**, the Supreme Court while setting aside a preventive detention order observed that such laws in India are colonial legacy and have great potential for abuse and misuse.

The Court emphasized that laws conferring arbitrary powers to the state must be critically examined and used only in the rarest of rare cases. It observed that *“Every procedural rigidity, must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit to the case of the detenu. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties.”*

5. In **Qamar Ghani Usmani v. The State of Gujarat**, the Supreme Court held that an accused cannot claim the benefit of default bail, when he did not challenge the first extension of time granted for investigation and the second extension was granted in his presence and when the chargesheet was subsequently filed within the period of extension.

The Hon’ble Court quoted *“Therefore, in the aforesaid peculiar facts and circumstances of the case, when two extensions granted by the Court which are not challenged and at the time when the default bail application was made on 10.05.2022 there was already an extension and even thereafter, also there was a second extension which was in presence of the accused and thereafter, when the chargesheet has been filed within the period of extension, the accused is not entitled to be released on statutory/default bail as prayed.”*

6. In **Land and Building Department Through Secretary & Anr. v. Attro Devi & Ors. Ravi Dhingra v. State Haryana**, the Supreme Court set aside an order passed by the Delhi High Court which held that since the compensation was not paid to the landowners, the acquisition of the land in question was lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Division Bench observed

“It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete.”

7. In **Government of Tamil Nadu And Anr Etc. v. Tamil Nadu Makkal Nala Paniyalargal And Ors Etc.** the Supreme Court reiterated that in the absence of sanctioned posts, the State cannot be compelled to create posts and absorb people who are continuing in service of the State. It noted that Courts cannot direct for creation of posts.
8. In **M/s. Reckitt Benckiser (India) Ltd. Vs. Commissioner Commercial Taxes & Ors.**, the Supreme Court held that Mosquito Mats, Coils and Vaporizers, Mortein Insect Killers, Harpic Toilet Cleaner and Lizol Floor Cleaners, are not be classifiable under Entry 44(5) of the 3rd Schedule to the Kerala VAT Act (KVAT), 2003 as ‘insecticides’.

On the issue of classification of Harpic Toilet Cleaner and Lizol Floor Cleaners, the court, by applying the dominant use test, held that the said products are essentially used as stain removers and deodorants and because they kill germs as well, they cannot be said to be insecticides classifiable under Entry 44(5).

Compliance Checklist

COMPLIANCE CALENDAR FOR MAY 2023

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	29	30	31			

Tax Related Compliance

Due date for deposit of Tax deducted/collected for the month of April 2023

GSTR-1 Return (Monthly)

GSTR-3B Return (Monthly)

GSTR-5

GSTR-6

TCS Return in Form 27EQ

TCS Return for FY 22-23 (January to March)

TDS Return for FY 22-23 (January to March)

FEMA Related Compliance

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

Economic, Industrial & Labour Law Related Compliance

Half yearly filing of Employee State Insurance Returns.

Monthly filing of Electronic-Challan cum Return (ECR) towards PF Contribution

File Monthly Return (Form No.5) for employees leaving / joining during the Previous Month

File monthly return of employees entitled for membership of Insurance Fund (Form No.2 (IF))

File monthly Return for members of Insurance Fund leaving service during the previous month (Form No.3 (IF))

File monthly return of members joining service during the previous month (Form No. F4(PS))

Monthly filing of Challans and Return towards ESI Contribution.

SEBI Related Compliances

Statement on Deviation or Variation of funds

Financial Results along with Limited review report/Auditor's report

Secretarial Compliance Report

Financial Results along with Auditor's Report

Annual Disclosure requirements for large entities

Ministry of Corporate Affairs

FORM-11, An annual statement for submitting details of the business of the LLP and its partners

PAS-6, Reconciliation of Share Capital Audit Report by unlisted public companies

RBI Related Compliances

Monthly return (NBS-6) on exposure to capital market

Annual Return by Non-Deposit taking NBFC having assets size below Rs 100 cr. (NBS-9)

Annual Return by NBFCs (non-deposit taking) with assets size between ₹100 crore to ₹500 crore. (NBS-8)

FOR FURTHER INFORMATION PLEASE CONTACT:

vinayshukla@whitespan.in

NCR OF DELHI

**416, 4th Floor, Tower -A,
SpazEdge Commercial Tower,
Sector-47, Sohna Road Gurgaon 122-018
Telephone – 0124-2204242, 63**

MUMBAI

**506, Arcadia, 195, Nariman
Mumbai – 400 023**

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