



WHITESPAN
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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

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MAA FOUNDATION Activities



Maa Foundation organized various events including the projects undertaken under CSR initiatives, such as Distribution of food to the students.

FROM THE CHIEF EDITOR'S PEN

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

It gives us immense satisfaction to share the 71st Edition of “WINS – e-newsletter” for March 2023, covering legal updates released during the month of February 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of March 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, RBI, CBDT, DGFT and other miscellaneous laws
2. Articles on:
 - i. Article on POSH
 - ii. Article on can an arbitrator award pendente lite interest when parties had agreed to contrary under the terms of agreement?
 - iii. Article on Amendments to IBBI Regulations
3. Case Laws
4. Compliance checklist for the month of March 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)
February 28, 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. Extension of Time for filing of 45 company e-Forms and PAS-03 in MCA 21 Version 3.0 without additional fee-reg.

Date of General Circular: February 07, 2023

Effective Date: February 07, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=CbgxW1sJmKtaGuYxShWEfA%253D%253D&type=open>

MCA vide its General Circular no. 03/ 2023 dated February 07, 2023, in continuation of General Circular 1/2023 dated January 09, 2023, allowed an additional time of 15 days for filing of 45 e- forms as mentioned in the General Circular 1/2023 without additional fees.

Also, Form PAS-03 which was closed for filing in Version-2 on January 20, 2023, and launched in Version-3 on January 23, 2023, and whose due dates for filing fall between January 20, 2023, and February 06, 2023 was also allowed to be filed without payment of additional fees for a period of 15 days.

2. Extension of Time for filing of 45 company e-Forms, PAS-03, and SPICE+ Part A in MCA 21 Version 3.0 without additional fee-reg.

Date of General Circular: February 07, 2023

Effective Date: February 07, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=2wjQ2Yt5XCZLAoGRr2jfOQ%253D%253D&type=open>

MCA vide its General Circular no. 04/ 2023 dated February 21, 2023, in continuation of General Circulars 1/2023 dated January 09, 2023, and 03/2023 dated February 02, 2023, extended the time for filing of 45 e- forms (as mentioned in the General Circular 1/2023) which were due for filing between February 07, 2023, and February 28, 2023, without additional fees till March 31, 2023.

Also, Form PAS-03 which was closed for filing in Version-2 on January 20, 2023, and whose due dates for filing fall between January 20, 2023, and February 28, 2023, can also be filed without payment of additional fees till March 31, 2023.

3. Filing of Forms GNL-2 (filing of prospectus related documents and private placement), MGT-14 (filing of Resolutions relating to prospectus related documents and private placement), PAS-3 (Allotment of Shares), SH-8 (letter of offer for buyback of own shares or other securities), SH-9 (Declaration of Solvency) and SH-11 (Return in respect of buy-back of securities) due to migration from V2 Version to V3 Version in MCA 21 Portal from 22.02.2023 to 31.03.2023-reg.

Date of General Circular: February 22, 2023

Effective Date: February 22, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=L1%252F1zzFGRvjYOFmh0PQHAW%253D%253D&type=open>

MCA vide its General Circular dated February 22, 2023, allowed companies intending to file

- (i) Form GNL-2 (filing of prospectus related documents and private placement),
- (ii) MGT-14 (filing of Resolutions relating to prospectus related documents, private placement),
- (iii) PAS-3 (Allotment of Shares),

- (iv) SH-8 (letter of offer for buyback of own shares or other securities),
- (v) SH-9 (Declaration of Solvency) and
- (vi) SH-11 (Return in respect of buy-back of securities)

Between February 22, 2023, and March 31, 2023, in physical mode duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and take acknowledgement as per the format provided in the said General Circular.

Physical filling of the form will also be required to be accompanied by an undertaking from the company that, the company shall also file the relevant Form in electronic form on MCA-21 Portal along with fee payable as per Companies (Registration Offices and Fees) Rules, 2014.

Securities Exchange Board of India (SEBI)

1. Changes to the Framework to Enable Verification of Upfront Collection of Margins from Clients in Cash and Derivatives segments

Date of Circular: February 01, 2023

Effective date: May 01, 2023 (With effect from 3 months from the date of issuance of this circular)

Link:

https://www.sebi.gov.in/legal/circulars/feb-2023/changes-to-the-framework-to-enable-verification-of-upfront-collection-of-margins-from-clients-in-cash-and-derivatives-segments_67738.html

SEBI vide this circular dated February 01, 2023 announced that end of Day (EOD) margin collection requirement from clients, in derivatives segments, including commodity derivatives, shall be calculated based on the fixed Beginning of Day (BOD) margin parameters.

SEBI further clarified that the above change is only for the purpose of verification of upfront collection of margins from clients. The margin parameters applicable for collection of margin obligation by Clearing Corporations would continue to be updated on intra-day and EOD basis, as per the extant provisions.

Following SEBI Circulars shall stand modified accordingly:

Circular SEBI/HO/MRD2/DCAP/CIR/P/2020/127 dated July 20, 2020

Circular SEBI/HO/CDMRD/CDMRD_DRM/P/CIR/2021/689 dated December 16, 2021

Circular SEBI/HO/MRD2/DCAP/P/CIR/2022/60 dated May 10, 2022

2. Manner of Achieving Minimum Public Shareholding (MPS)

Date of Circular: February 03, 2023

Effective date: February 03, 2023

Link:

https://www.sebi.gov.in/legal/circulars/feb-2023/manner-of-achieving-minimum-public-shareholding_67801.html

SEBI, vide circular No. SEBI/HO/CFD/CMD/CIR/P/43/2018 dated February 22, 2018 had permitted different methods that may be used by listed entities to achieve compliance with the minimum public shareholding (MPS) requirements mandated under Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (“SCRR”) read with regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”).

Vide its circular dated February 03, 2023, SEBI have introduced two additional methods to achieve compliance with the MPS requirements mandated under rules 19(2)(b) and 19A of the SCRR read with regulation 38 of the LODR Regulations: i.e.

1. Increase in public holding pursuant to exercise of options and allotment of shares under an employee stock option (ESOP) scheme, subject to a maximum of 2% of the paid-up equity share capital of the listed entity- The ESOP scheme shall be in compliance with the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 and the promoter(s) / promoter group shall not be allotted any shares

2. Transfer of shares held by promoter(s) / promoter group to an Exchange Traded Fund (ETF) managed by a SEBI registered mutual fund, subject to a maximum of 5% of the paid-up equity share capital of the listed entity- The listed entity shall, at least one trading day prior to such proposed transfer, announce the following details to the stock exchange(s) where its shares are listed: i. the intention of the promoter(s) / promoter group to transfer shares and the purpose of such transfer; ii. the details of promoter(s)/promoter group who propose to transfer their shares in the listed entity; iii. total number of shares and percentage of shareholding proposed to be transferred; and iv. Details of the ETF to which shares are proposed to be transferred by the promoter / promoter group. The listed entity shall also give an undertaking to the recognized stock exchange(s) obtained from the persons belonging to the promoter and promoter group that they shall not subscribe to the units of such ETF to which shares have been transferred by promoter(s) / promoter group entities for the purpose of MPS compliance.

The Stock Exchange shall monitor the methods adopted by listed entities to increase their public holding and comply with MPS requirements in terms of this circular. If Stock exchange observe any non-compliance, shall be reported to SEBI on a quarterly basis.

3. Do's and don'ts relating to green debt securities to avoid occurrences of greenwashing

Date of Circular: February 03, 2023

Effective date: February 03, 2023

Link:

https://www.sebi.gov.in/legal/circulars/feb-2023/dos-and-don-ts-relating-to-green-debt-securities-to-avoid-occurrences-of-greenwashing_67828.html

Regulation 2(1)(q) of the SEBI (Issue and Listing of Non - Convertible Securities) Regulations, 2021 ('NCS Regulations'), defines "green debt security".

With regard to the SEBI (Issue and Listing of Non - Convertible Securities) Regulations, 2021 ('NCS Regulations', 'Greenwashing' is, 'making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation'.

To avoid the occurrence of Greenwashing, an issuer of green debt securities shall ensure the following:

1. While raising funds for transition towards a greener pathway, it shall monitor that the path undertaken is resulting in reduction of the adverse environmental impact and contributing towards sustainable economy, as envisaged in the offer document.

2. It shall not utilize funds raised through green bonds for purposes that would not fall under the definition of 'green debt security' under the NCS Regulations.
3. In case any such instances mentioned in (ii) above come to light regarding the green debt securities already issued, it shall disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities.
4. It shall not use misleading labels, hide trade - offs or cherry pick data from research to highlight green practices while obscuring others that are unfavorable in this behalf.
5. It shall maintain highest standards associated with issue of green debt security while adhering to the rating assigned to it.
6. It shall quantify the negative externalities associated with utilization of the funds raised through green debt security.
7. It shall not make untrue claims giving false impression of certification by a third - party entity.

4. Clarification w.r.t. issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021

Date of Circular: February 08, 2023

Effective date: February 08, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/feb-2023/clarification-w-r-t-issuance-and-listing-of-perpetual-debt-instruments-perpetual-non-cumulative-preference-shares-and-similar-instruments-under-chapter-v-of-the-sebi-issue-and-listing-of-non-conver-67913.html>

SEBI vide its circular dated February 08, 2023, provided clarity on the applicability of the provisions of Chapter V of the NCS Regulations, wherein the security is proposed to be issued for a fixed maturity and which shall not have features viz. option of conversion to equity, write-off, etc.

It was clarified that only securities which have characteristics as stated below, shall necessarily be required to comply with the provisions for issuance and listing as specified under Chapter V of the NCS Regulations and circulars issued thereunder:

- a. The issuer is permitted by RBI to issue such instruments,
- b. The instruments form part of non-equity regulatory capital,
- c. The instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature and
- d. The instruments contain a discretion with the issuer/RBI for events including but not restricted to all or any of the below events:
 - i. Conversion into equity;
 - ii. Write off of interest/principal;
 - iii. Skipping/delaying payment of interest/principal
 - iv. Making an early recall and
 - v. Changing any terms of issue of the instrument.

5. Clarification in respect of the compliance by the first-time issuers of debt securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 with Regulation 23(6)

Date of Circular: February 09, 2023

Effective date: February 09, 2023

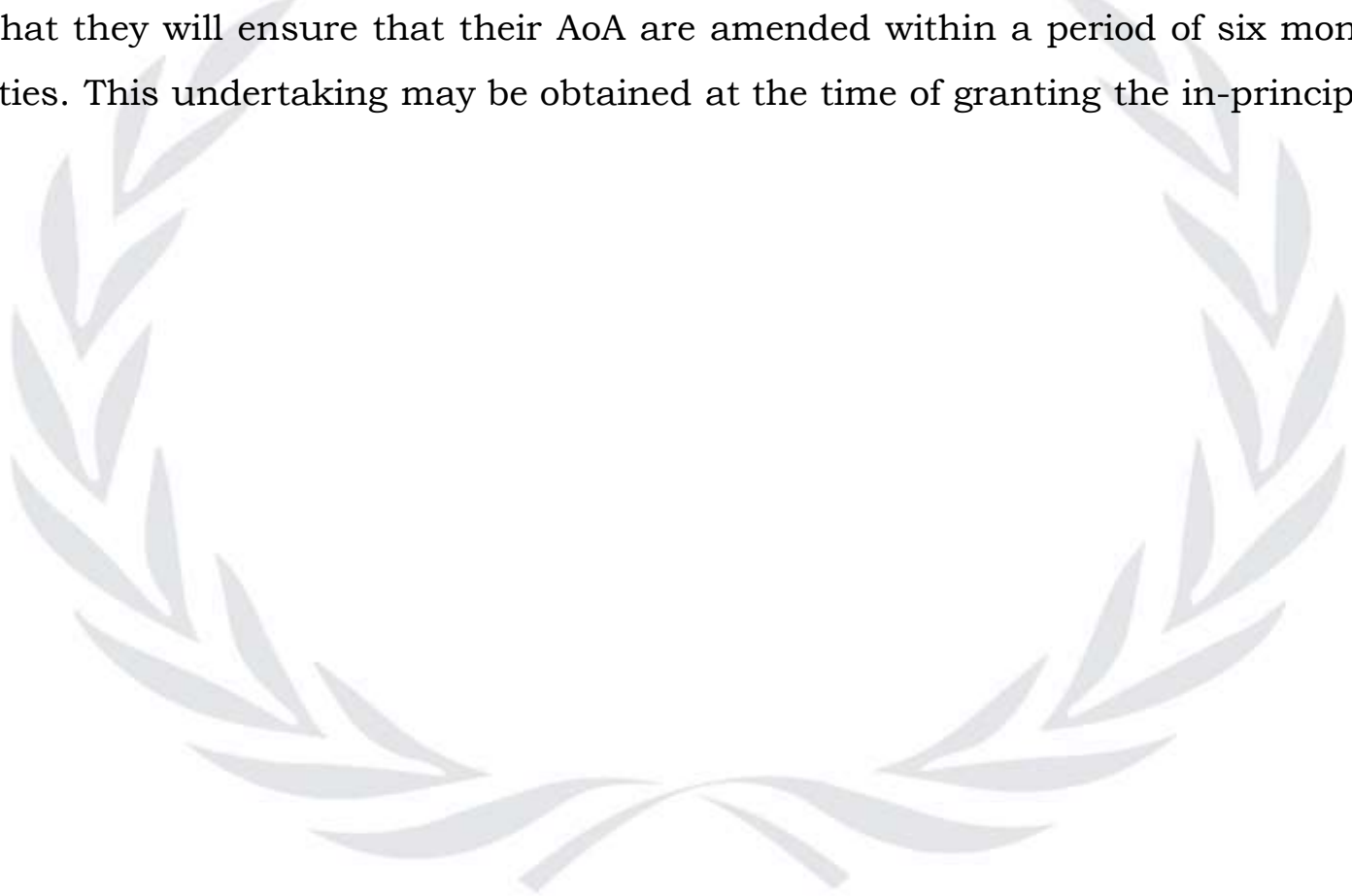
Link:

[SEBI | Clarification in respect of the compliance by the first-time issuers of debt securities under SEBI \(Issue and Listing of Non-Convertible Securities\) Regulations, 2021 with Regulation 23\(6\)](#)

SEBI vide its circular dated February 09, 2023 issued a clarification in respect of the compliance by the first-time issuers of debt securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 with Regulation 23(6).

Pursuant to Regulation 23(6) read along with Regulation 2(1)(r) of Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”) the Articles of Association (“AoA”) of an issuer that is a company to include provisions with respect to the requirement for the board of directors to appoint such person nominated by the debenture trustee in terms of clause(e) of sub-regulation(1) of regulation 15 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993

In view of the difficulties posed to first time issuers, the Stock Exchanges have been advised to take an undertaking from such first-time issuers that they will ensure that their AoA are amended within a period of six months from the date of the listing of the debt securities. This undertaking may be obtained at the time of granting the in-principal approval.



6. Introduction of Issue Summary Document (ISD) and dissemination of issue advertisements

Date of Circular: February 15, 2023

Effective date: Implementation in phases

Link:

[SEBI | Introduction of Issue Summary Document \(ISD\) and dissemination of issue advertisements](#)

SEBI vide its circular dated February 15, 2023 has introduced an Issue Summary Document (ISD). The ISD has been introduced in XBRL (Extensible Business Reporting Language) format for the following:

- i. Public issue of specified securities (initial public offer / further public offer);
 - ii. Further issues {preferential issue, qualified institutions placement (QIP), rights issue, issue of American Depository Receipts (ADR), Global Depository Receipts (GDR) and Foreign Currency Convertible Bonds (FCCBs)};
 - iii. buy-back of equity shares (through tender offer or from the open market); iv. open offer under SEBI SAST Regulations;
 - v. voluntary delisting of equity shares where exit opportunity is required under SEBI Delisting Regulations.
3. ISD shall be filed in two stages: i. In the first stage, ISD will be filed containing pre-issue / offer fields. ii. In the second stage, ISD will be filed containing post-issue / offer fields after allotment/offer is completed / as applicable for respective ISD.

The formats for ISD are provided in the above circular.

ISD shall be filed in two stages:

1. In the first stage, ISD will be filed containing pre issue / offer fields.
2. In the second stage, ISD will be filed containing post issue / offer fields after allotment / offer is completed / as applicable for respective ISD.

Implementation in phases:

In the first phase, the roll - out shall be of ISD for public issues of specified securities, for offer documents filed on or after March 01, 2023.

- I. In the second phase, ISD for further issues shall be implemented from April 03, 2023.
- II. In the third phase, ISD for open offer, buy - back and voluntary delisting shall be implemented from May 02, 2023.

7. The Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2023.

Date of Circular: February 07, 2023

Effective date: March 08, 2023

Link:

https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2023_68110.html

SEBI vide its notification dated February 07, 2023 notified the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2023 by amending the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018.

Key highlights of the same are:

In Regulation 2 (i), following definitions are added:

frequently traded shares shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Secretarial auditor means an auditor as defined in the Secretarial Standards – I issued by the Institute of Company Secretaries of India;

In Regulation 4 (i), the explanation shall be substituted by the following:

“Explanation: In respect of the number of equity shares bought back in any financial year, the maximum limit shall be 25% and be construed with respect to total paid up equity share capital of the company in that financial year.”

In clause (iv) sub clause (c) shall be omitted and the proviso shall be substituted by the following proviso’s, namely:

“Provided that the buy back from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:

- (i) fifteen percent of the paid up capital and free reserves of the company till March 31, 2023;
- (ii) ten percent of the paid up capital and free reserves of the company till March 31, 2024;
- (iii) five percent of the paid up capital and free reserves of the company till March 31, 2025.

Provided further that buy back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.”

In regulation 16,

(a) after clause (i), the following Explanation shall be inserted, namely:

“Explanation: For the purpose of buy-back through stock exchange, a separate window shall be created by the concerned stock exchange and such window shall remain open for the period specified in these regulations.”

(b) in clause (iv), sub-clause (c) shall be substituted by the following namely:

“The company shall, simultaneously with the public announcement made in terms of sub-clause (a), along with the fees specified in Schedule V, file a copy of the public announcement in electronic mode with the Board and the stock exchanges on which its shares or other specified securities are listed.”

(c) after the Explanation appearing after sub-clause (d) of clause (iv), the following clauses (v) and (vi) shall be inserted, namely:

(v) The buy-back through stock exchanges shall be undertaken only in respect of frequently traded shares;

(vi) The buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume as specified by the Board.”

8. Master Circular for Substantial Acquisition of Shares and Takeovers

Date of Circular: February 16, 2023

Effective date: February 16, 2023

Link:

https://www.sebi.gov.in/legal/master-circulars/feb-2023/master-circular-for-substantial-acquisition-of-shares-and-takeovers_68091.html

SEBI, with a view to provide access to the provisions of the applicable circulars pertaining to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. With the issuance of this Master Circular, the directions/instructions contained in the circulars listed out in this Master Circular, to the extent they relate to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “Takeover Regulations”), shall stand rescinded.

9. Master Circular for guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) / Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed thereunder

Date of Circular: February 03, 2023

Effective date: February 03, 2023

Link:

<https://www.sebi.gov.in/legal/master-circulars/feb-2023/guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laundering-act-2002-a-67833.html>

The Prevention of Money Laundering Act, 2002 (“PMLA”) and the Prevention of Money-Laundering Maintenance of Records) Rules, 2005 (Maintenance of Records Rules), as amended from time to time.

The guidelines stipulate the essential principles for combating Money Laundering (ML) and Terrorist Financing (TF) and provides detailed procedures and obligations to be followed and complied with by all the registered intermediaries.

It also applies to the branches of the Stock Exchanges, registered intermediaries, and their subsidiaries situated abroad, especially, in countries which do not apply or insufficiently apply the recommendations made by the Financial Action Task Force (FATF), to the extent local laws and regulations permit. When the local applicable laws and regulations prohibit implementation of these requirements, the same shall be brought to the notice of SEBI.

It has mandates for 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.

Reserve Bank of India (RBI)

1. Issuance of PPIs to Foreign Nationals / Non-Resident Indians (NRIs) visiting India

Date of circular: February 10, 2023

Effective Date: February 10, 2023

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12452&Mode=0>

The Reserve Bank of India (RBI) on February 10, 2023, issued a notification regarding the Issuance of PPIs to Foreign Nationals / Non-Resident Indians (NRIs) visiting India.

As announced in the Statement on Developmental and Regulatory Policies dated February 08, 2023, it has been decided to allow access to Unified Payments Interface (UPI) to foreign nationals and NRIs visiting India. To start with, this facility will be extended to travelers from the G-20 countries at select international airports for their merchant payments (P2M) while they are in the country. Going forward, this will be enabled across all entry points in the country. The Master Directions on Prepaid Payment Instruments (PPIs) dated August 27, 2021 (updated as on November 12, 2021) has been updated by inserting paragraph 10.3 therein.

This circular is issued under Section 10 (2) read with Section 18 of the Payment and Settlement Systems Act, 2007.

Central Board of Direct Taxes (CBDT)

1. CBDT notifies Income Tax Return Forms for the Assessment Year 2023-24 well in advance

Date of press release: February 15, 2023

Link:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1126/PressRelease-CBDT-notifies-Income-Tax-Return-Forms-for-AY-2023-24-15-2-23.pdf>

CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2023-24 vide Notifications No. 04 & 05 of 2023 dated 10.02.2023 and 14.02.2023. These ITR forms will come into effect from 1st April 2023 and have been notified well in advance in order to enable filing of returns from the beginning of the ensuing Assessment Year.

In order to further streamline the ITR filing process, not only have all the ITR forms been notified well in time this year, but no changes have also been made in the manner of filing of ITR Forms as compared to last year. The notified ITR Forms will be available on the Department's website at www.incometaxindia.gov.in

2. Direct Tax Collections for F.Y. 2022-23 up to 10.02.2023

Date of press release: February 11, 2023

Link:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1125/Press-Release-Direct-Tax-Collections-for-FY-2022-23-up-to-10-02-2023-dated-11-02-2023.pdf>

CBDT vide its press release dated February 11, 2023, released details pertaining to Direct Tax Collections for F.Y. 2022-23 up to 10.02.2023.

Direct Tax collections up to February 10, 2023, show that gross collections are at Rs. 15.67 lakh crore which is 24.09% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 12.98 lakh crore which is 18.40% higher than the net collections for the corresponding period of last year. This collection is 91.39% of the total Budget Estimates of Direct Taxes for F.Y. 2022-23 and 78.65% of the Revised Estimates of Direct Taxes for F.Y. 2022-23.

Refunds amounting to Rs. 2.69 lakh crore have been issued during April 01, 2022, to February 10, 2023, which are 61.58% higher than refunds issued during the same period in the preceding year.

3. TAX CALCULATOR – NEW REGIME VIS-À-VIS OLD REGIME

For the ease of stakeholders, CBDT has framed a tax calculator for Individual/ HUF/ AOP/ BOI/ Artificial Juridical Person (AJP) as per section 115BAC proposed by Finance Bill, 2023. Same can be accessed at the link below:

<https://incometaxindia.gov.in/Pages/tools/115bac-tax-calculator-finance-bill-2023.aspx>

Miscellaneous Laws

1. Alignment of RoDTEP Schedule for Chapter 28, 29, 30 & 73 with First Schedule of the Customs Tariff Act, 1975

Date of circular: February 07, 2023

Effective Date: February 15, 2023

Link:

[Notification No. 55 dated 07 02 2023 English.pdf \(dgft.gov.in\)](#)

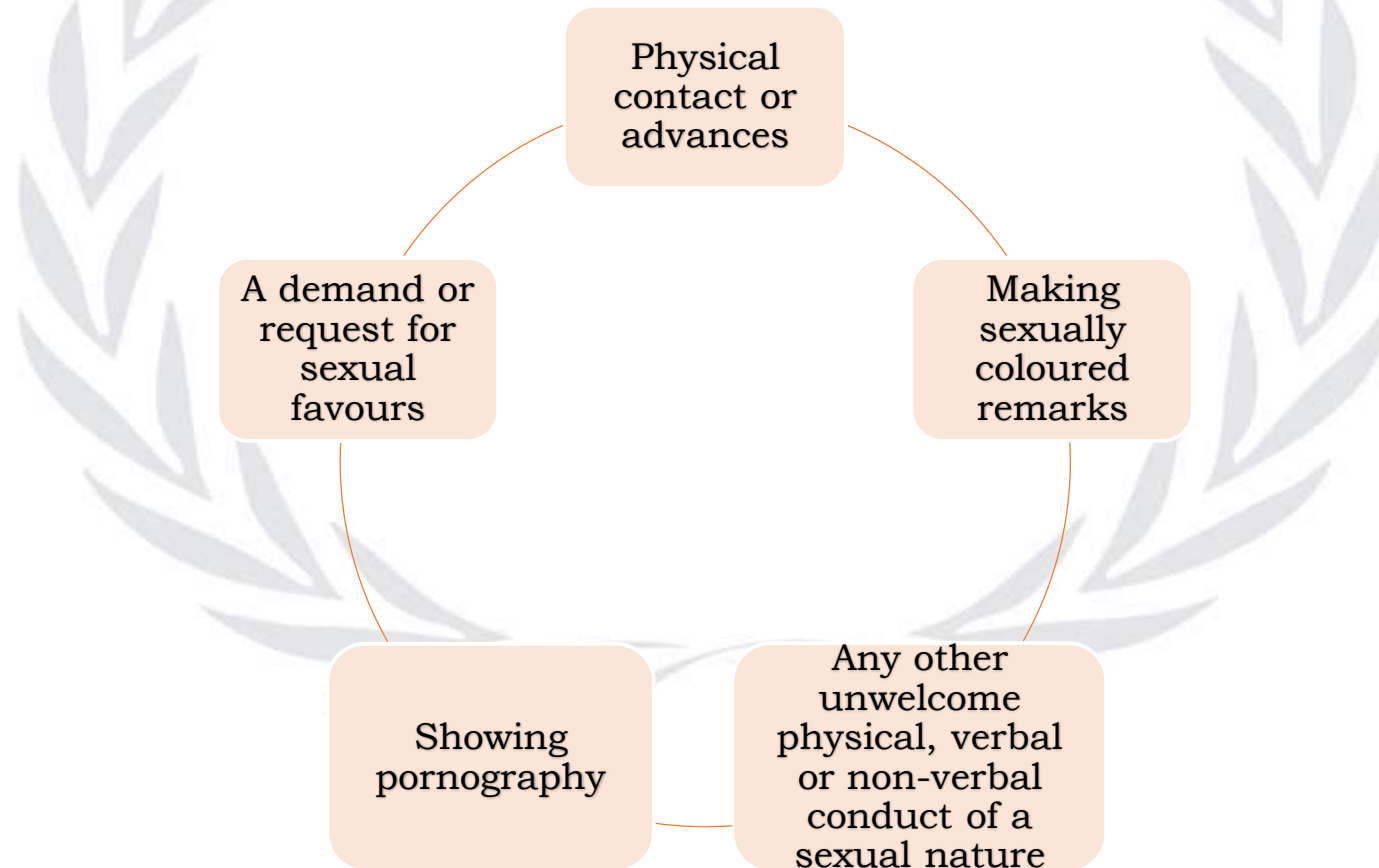
The DGFT vide Notification No. 55/2015-2020 dated February 07, 2023, consequent to inclusion of export items in Chapter 28, 29, 30 & 73 vide Notification No. 47, has notified the alignment of the RoDTEP Schedule under Appendix 4R with First Schedule of the Customs Tariff Act, 1975 (“the Customs Tariff Act”).

The revised Appendix 4R will be applicable for exports made from February 15, 2023, to September 30, 2023.

Article 1

UNDERSTANDING THE MEANING OF SEXUAL HARASSEMENT OF WOMEN AT WORKPLACE

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Sexual Harassment” includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely:



TYPES OF SEXUAL HARASSEMENT

Quid Pro Quo

Literally “This for That”

A direct promise or threat for preferential/ detrimental treatment in employment.

Quid Pro Quo

Literally “This for That”

A direct promise or threat for preferential/ detrimental treatment in employment.

Scenario I

ABC is an intern who works with a NGO serving the cause of women empowerment. XYZ is the head of the said NGO and is a renowned personality amongst the people supporting/ working for the cause of women empowerment. He has also been facilitated with various awards for his contribution towards women empowerment. ABC is offered an opportunity to accompany and assist XYZ for an official trip to a different city to deliver a lecture. During such trip XYZ finds an opportunity to be alone with ABC and makes sexually colored remarks towards her and forces himself on her. When ABC resists to such act and asks him to stop, he threatens her to destroy her career and tells her that if she agrees to his acts he would recommend her to a better position.

Is ABC a victim of sexual harassment?

Yes, ABC is a victim of sexual harassment. In this scenario, XYZ is committing quid pro quo sexual harassment by directly threatening ABC to destroy her career in case she fails to adhere to his demands. Here XYZ is asking for a sexual favor from ABC in return of a successful career i.e., one thing in return for the other.

Scenario II

ABC is a designer working at a fashion studio. Her senior XYZ often tries to touch her on one pretext or the other, e.g. by adjusting her dupatta while she is busy with her work, while passing things to her etc. XYZ's behavior towards ABC is so obvious that her colleague's gossip about it and frequently talk about the special attention she gets from her boss i.e., XYZ. This makes ABC so uncomfortable that she is unable to perform and meet her targets at work.

Is ABC a victim of sexual harassment?

Yes, ABC is a victim of sexual harassment. In this scenario, XYZ is creating a hostile environment for ABC. He is intentionally making ABC feel uncomfortable at her workplace. XYZ is guilty of sexually harassing ABC as because of his acts/ gestures she is unable to perform and meet her work targets. XYZ might not be directly harassing ABC sexually, but his acts are affecting her capacity to work and deliver. He is thus creating a hostile environment for ABC through his acts.

POSH COMPLIANCES-MORAL RESPONSIBILITY OF EVERY EMPLOYER

Sexual Harassment of women is not only a gross violation of her fundamental right to live with equality and dignity but is a crime against humanity.

As we are moving towards becoming a better nation economically, our business houses should not only aim at maximizing their profits but should also make sure that they comply with all applicable laws so as to sustain this development in long run.

One such law is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which came into being on December 09, 2013. The Act was introduced by the Ministry of Law and Justice with an objective to provide a safe working environment for women.

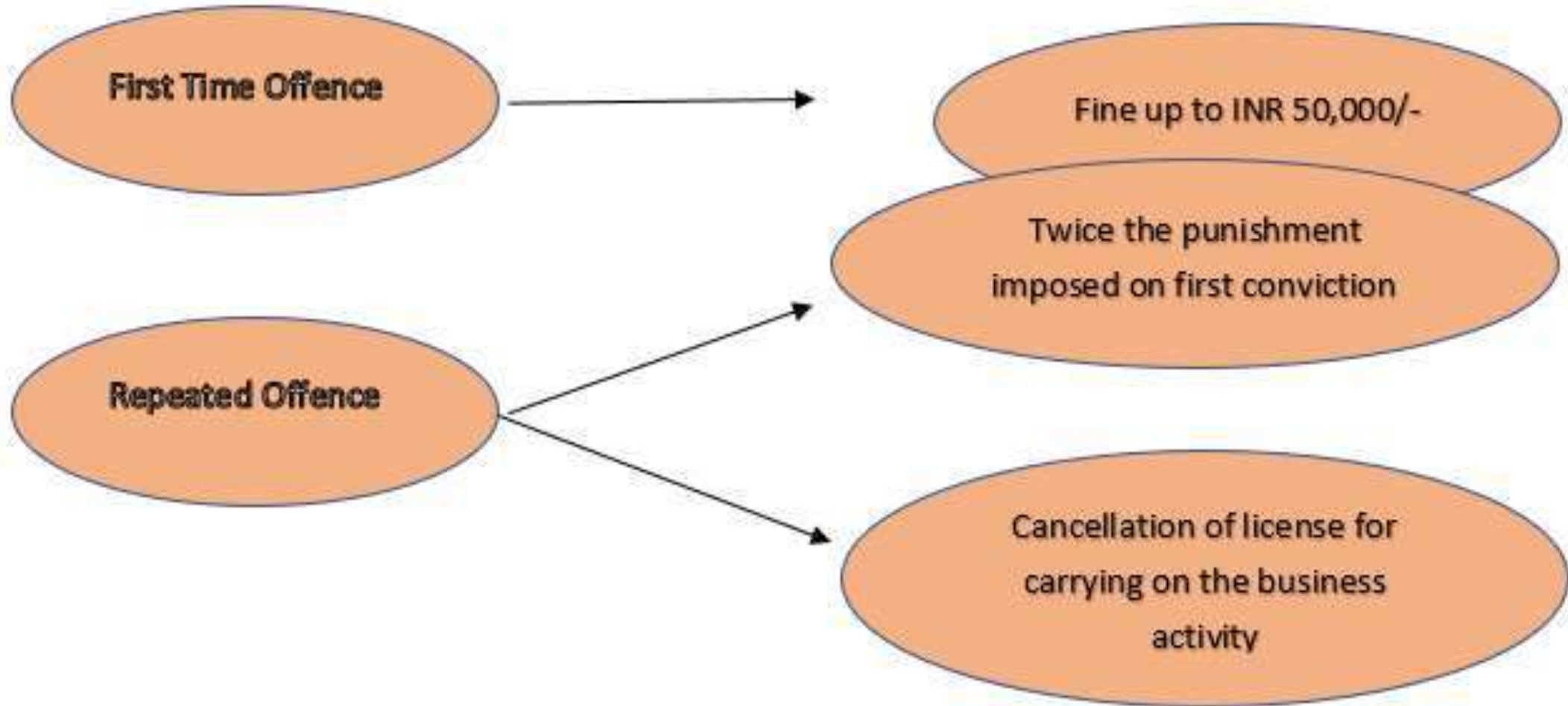
100% Compliance of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not only an obligation of employers (***any person responsible for the management, supervision and control of the workplace and management includes the person or board or committee responsible for formulation and administration of policies for such organization***) but is their moral responsibility to ensure that no provision of this Act is left non-complied.

The Act applies to all entities (company, LLP, OPC, sole proprietorship firms, partnership firms) irrespective of their nature, size, scale of operations or location.

Compliances under POSH

S.No.	One Time Compliances	On Going Compliances
1	To have a policy on prevention, prohibition and redressal of sexual harassment	To file an annual report with the District Officer at the end of each calendar year
2	To set up an Internal Complaints Committee in accordance with Section 4 of the Act	To organize workshops and awareness programmes at regular intervals for sensitizing employees with provisions of the Act
3	To display the policy at office premises the list of ICC members along with their contact details	Legal training of ICC Members
4	-	To facilitate: <ul style="list-style-type: none"> i. ICC in handling POSH related complaints ii. Help the aggrieved women in registering criminal case, if she so desires.

Penalty for Non-Compliance with the Provisions of the Act



Case Study:

Rupesh was the training manager at ABC Limited. While conducting training for one of the departments of his company, he became very good friends with one of his colleague Geeta. Rupesh and Geeta went out for dinner a few times and she agreed willingly. Once when Rupesh asked Geeta out for Dinner, she refused. At this Rupesh insisted that Geeta has to go for dinner with him as in the past she had never refused his offer. Geeta then told Rupesh that from then on their relationship was to be strictly professional. Rupesh kept calling her and sending her emails. Geeta begged Rupesh to stop but he didn't, and she started taking time off from work to avoid him.

Is Geeta a victim of sexual harassment because her relationship with Rupesh was consensual?

Yes, Geeta a victim of sexual harassment as accepting an outing once does not give Rupesh the right to expect Geeta to go out repeatedly with him. Rupesh is guilty of sexually harassing Geeta.

Ratio: Consensual relationships are not harassment if they are welcomed by the person involved. Only unwelcome conduct can be sexual harassment. Conduct is unwelcome if the recipient does not appreciate it, initiate it, or regards it as offensive. However, if such behavior violates other associates' sensibilities, such behavior is considered creating a hostile environment and is inappropriate at the workplace. In cases of ceased consensual relationships, if one of them objects to behavior that was earlier welcome, the other is required to stop such behavior. In the event of continuance of such behavior despite objecting, it would be treated as sexual harassment.

Article 2

CAN AN ARBITRATOR AWARD PENDENTE LITE INTEREST WHEN PARTIES HAD AGREED TO CONTRARY UNDER THE TERMS OF AGREEMENT?

The Hon'ble Supreme Court of India in case **titled Chittaranjan Maity Vs. Union of India** decided on **03.10.2017**, has reaffirmed the position under **Section 31(7)(a)** of the **Arbitration and Conciliation Act, 1996** (hereinafter called as "**1996 Act**") that when parties had agreed under the terms of the agreement that pendente lite interest shall not be payable, the Arbitrator cannot award interest between the date on which the cause of action arose till the date of the award.

Facts of the case:

The Supreme Court granted leave to appeal challenging the legality and correctness of the judgment dated **29.09.2011** passed by the Division Bench of the Calcutta High Court wherein the Division Bench had set aside the judgment and order of the Single Bench dated 27.01.2009.

The matter involved two questions of law as below:

1. Whether the Division Bench was justified in considering the arbitrability of the dispute raised by the Respondent for the first time in the appeal on the basis of a "No Claims Certificate" issued by the Appellant to the Respondent; and
2. Whether the Arbitral Tribunal was justified in awarding interest on the delayed payments in favour of the Appellant in view of specific clause in the agreement prohibiting award of pre-award interest.

In the present case, the Appellant's tender in response to the invitation of the Respondent for execution of balance of earth work for formation of banks for laying railway line, roads, platforms and miscellaneous work in connection with the new goods terminal yard of Southeastern Railway at Sankrail in Howrah District was accepted. An agreement was entered into by and between the Appellant and the Respondent on **22.08.1991**, wherein the General Conditions of the Contract (GCC) were incorporated, and the parties were bound by the terms and conditions thereof. Disputes and differences arose between the parties regarding execution of work and its purported abandonment and accordingly the Appellant demanded reference of the dispute to arbitration. Ultimately, the Appellant filed an application under Section 11(6) of the 1996 Act for appointment of an arbitrator before the Calcutta High Court and pursuant to the Order, the Arbitral Tribunal was constituted which adjudicated the disputes raised by the parties.

The Arbitral Tribunal passed an award on **20.09.2006** in favor of the Appellant. The Respondent moved an application under Section 34 of the 1996 Act for setting aside the award. The Single Bench of the Calcutta High Court dismissed the application which was again challenged by the Respondent before the Division Bench.

In the appeal before the Division Bench it was contended that the Appellant had issued a "No Claims Certificate" to the Respondent for the first time, thereby forfeiting their right for any claim from the Respondent.

In regards to award of *pendente lite* interest it was contended that in view of Clause 16(2) of the GCC, no interest could have been awarded to the Appellant. Clause 16(2) of the GCC read as follows:

"16(2) – No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities deposit in terms of sub-clause (1) of this clause will be repayable (with) interest accrued thereon."

The Division Bench by its judgment set-aside the judgment of the Single Bench by allowing the appeal of the Respondent. Being aggrieved and dissatisfied with the order dated **29.09.2011**, the Appellant preferred Special Leave Petitions before the Hon'ble Supreme Court.

Judgment

The Supreme Court partly allowed the Appeal and decided the issue of arbitrability of the claim in light of the issuance of the "No Claims Certificate" in favor of the Appellant whereas on the issue of award of interest relied upon the specific agreement between the parties prohibiting award of *pendente lite* interest to hold that the Appellant was not entitled to any interest up to the date of the award.

On the issue of "No Claims Certificate" the Supreme Court accepted the position of law laid down in National Insurance and McDermott International Inc. to hold that the Division Bench was not justified while considering the arbitrability of the disputes for the first time, particularly, when the Respondent had not urged the issue relating to "No Claims Certificate" before the Chief Justice of the Calcutta High Court, the Arbitral Tribunal or before the Single Judge.

On the issue of awarding of *pendente lite* interest, the Supreme Court compared the position of law as prevailing under the Arbitration Act, 1940 with the provision contained in Section 31(7)(a) of the 1996 Act. The Supreme Court noted that a specific provision has been created under the 1996 Act whereby if the agreement prohibits award of interest for the pre-award period (i.e., *pendente lite* period), the Arbitrator cannot award interest for the said period. The specific bar contained in Clause 16(2) of the GCC was also considered.

Hon'ble Court observed that in view of specific provision contained in Section 31(7)(a) of the 1996 Act, award of interest has been made subject to any agreement to the contrary between the parties. In the present case, Clause 16(2) of the GCC expressly barring award of interest would therefore prevail over the power of the Arbitrator to award interest. Hence, it was held that the Appellant was not entitled to any *pendente lite* interest.

Conclusion:

The 1996 Act under the provisions contained in **Section 31(7)(a)** of the 1996 Act specifically provides that "*unless otherwise agreed by the parties*", in case of a monetary award, the Arbitral Tribunal may include in the sum for which the Award is made interest, at such rates as its deem reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the Award is made.

Therefore, what is significant to note under the 1996 Act is that, if the Agreement bars payment of interest, the Arbitrator cannot award interest from the date of cause of action till the date of award. Moreover, the difference between pre-reference period and the *pendente lite* interest has disappeared in so far as the award of interest by the Arbitrator is concerned. The said provision recognizes only two periods, i.e., pre-award and post-award period.

Nishant Dwivedi & Raghav Dhiman
Advocates

legal@whitespan.in

raghav@whitespan.in

Article 3

Amendments to IBBI Regulations

Insolvency and Bankruptcy is one of the most vibrant Code, Act in the country. Therefore, steep amendments have been made to the Code, Rules & Regulations. There are various pillars of the Code, i.e., Adjudicating Authority (NCLT), Insolvency Professionals, Insolvency and Bankruptcy Board of India and Information Utility etc. The Insolvency and Bankruptcy Board is not only issuing Guidelines & Facilitations for smooth execution of the Code, but also monitoring the erring professionals, therefore, orders have been passed against various insolvency professionals, valuers. The Board has recently made amendments to regulations exercising its powers conferred by clauses (aa) and (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

(a) Fee to be paid to interim resolution professional and resolution professional.

In terms of section 5(13) of the Code, the fees payable to any person acting as a resolution professional is included in 'insolvency resolution process cost, which needs to be paid in priority. The Code of Conduct for Insolvency Professionals under the IBBI (Insolvency Professionals) Regulations, 2016 require that an Insolvency Professional must provide services for remuneration which is charged in a transparent manner and is reasonable reflection of the work which are disclosed to any approved by the persons fixing his remuneration.

However, the IBBI issued Guidelines, Facilitations regarding claiming/ payment of fess to the Resolution Professional, but the issues have been raised regarding payment of fees. *In the matter of M/s Vedanta Limited Vs. M/s Sequel Alloys and Wires Pvt Ltd.*, No. (IB) 375(ND)/2017, *NCLT New Delhi Bench order dated 30.1.2018*. The proceedings before the Adjudicating Authority was set aside by the Supreme Court exercising its power under Article 142 of the Constitution. The dispute remains in respect of the reimbursement of expenses incurred by the RP and the fees payable to him. The total amount claimed by the RP was disputed by corporate debtor. Therefore, the matter was referred to IBBI to decide a just and equitable fees structure to be paid to the RP and expenses incurred by him. *In Shweta Vishwanath Shirke & Ors. of the Corporate Debtor. Vs. The Committee of Creditors & Anr*, Company Appeal (AT)(Insolvency) No.601 of 2019. NCLAT order 23.8.2019. In pursuance of withdrawal of application u/s 7, fee and resolution cost of the Resolution professional/Liquidator are concerned, the Committee of Creditors will determine the same and will be paid by the applicant on behalf of the committee of creditors. *In Committee of Creditors Vs, Mrs. Sonu Jain, Resolution Professional for Marina Projects Pvt Ltd & Ors., Company Appeal (AT)(Insolvency) No.1115 of 2019*. Appellate Authority held that even with the consent of the Operational Creditor, the Corporate Debtor cannot bear the fee of the Interim Resolution Professional. The Adjudicating Authority had rightly directed the Committee of Creditors to pay the Fees, which can be adjusted from the Insolvency Resolution Process which includes the fee of the Interim Resolution Professional.

In the matter of S3 Electricals Electronics Vs. Brian Lau & Anr., Civil Appeal No.103 of 2018 with Civil Appeal No.835 of 2018, Supreme Court of India order dated 5.08.2019. Cost of interim resolution professional is to deal as per Regulation 33. The applicant shall bear the expenses which shall be reimbursed by the committee of creditors to the extent it ratifies commensurate with sub-regulation (3) of Regulation 33. In case of non-constitution of committee of creditors as the interim resolution process did not reach that stage, therefore, it is clear that whatever the Adjudicating Authority fixes as expenses will be borne -by the creditor who moved the application vis-à-vis the expenses are not be borne by the corporate debtor. **The insolvency and Bankruptcy Boar of India vide Facilitation/005/2020 dated 13th Novembers, 2020.**

The IBBI issued communication so that the IRP/RP could discharge his duties commensurate with the laid down provisions with regard to avoid committing of mistakes regarding assignments without having authorization, fee payable to IP, application for cooperation, public announcement, updating of list of claims, authority of CoC, appointment of professionals, appointment of registered valuers, payment for professional services, disclosure of fee and relationship, fee for authorized representative, representation in judicial proceedings, related party transactions, payment to creditors during CIRP, avoidance transactions, supply of information, confidentiality undertaking, disclosure of information, window for view, circulation of minutes, inclusion of costs in IRPC, compliance with applicable laws, timeline, compliance with orders, maintenance of records, co-operation with the inspecting authority. The IBBI observed that an IP must refer to Code, the Rules/Regulations/Circulars under the Code and relevant case laws and/or may seek professional advice if he intends to take any action or decision, in any mater dealt with in his communication.

In the matter of Mr. Parag Seth, IRP Vs. Mr. Sunil Kumar Agarwal, Company Appeal (AT)(Insolvency) No.1055 of 2020, NCLAT, Principal Bench, New Delhi, Date of Judgement: 13th August 2021. However, there is no limitation prescribed for filing the application for IRP's fees, but such application shall have been filed without delay. When the resolution plan is approved by the Adjudicating Authority and CoC has been dissolved and the RP has also been discharged from his duty. Then claim of fees at belated stage is not allowed.

IBBI issued further Facilitation vide Facilitation/005/2020 dated 13th November 2020 regarding payment of fees.

- A. Fee payable to IP:** The Code of Conduct for IPS under the IP Regulations require that an IP must provide services for remuneration which is charged in a transparent manner and is a reasonable reflection of the work necessarily undertaken. Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulation 2016 requires that the applicant shall fix the expenses to be incurred on or by the IRP. Regulation 34 requires that the Committee of Creditors shall fix the expenses to be incurred on or by the RP, Regulation 39D requires the CoC to fix the fee payable to the liquidator, in the event the CD proceeds for liquidation. It is however, observed that in a few cases, the fee payable to an IP was not fixed beforehand, and the IP drew a fee on his own without approval of such fee from the competent authority, in contravention of the provisions of law.
- B. Disclosure of fee and relationship:** It is the duty of an IP to disclose the fee payable to him as well as the fee payable to professional engaged by him while performing the duties as an IP. It is also his duty to disclose the relationship he has with the professional engaged by him.

This ensures transparency and enables the stakeholders to take informed decisions. Failure to disclose these creates suspicion in the minds of stakeholder about impartiality and objection of the IP possibly, conflict of interests, he may have.

C. Fee for authorized representatives: Engagement of other persons by an AR, payment for services of such other persons, attendance of such persons in the meetings of the Coc, and payment of a different amount than permissible under the Regulations to an AR are in contravention of the law by the IRP/RP as well as of the AR.

D. In matter of Antriksh Vyapar Ltd vs. Kamal Nayan Jain, Comp. Appl. (AT)(Insolvency) No.232 of 2022, NCLAT Principal Bench, New Delhi Date of order:9.03.2022. Adjudicating Authority directed that fees of Resolution Professional consisting of fee for support service be also paid. Appellate Authority upheld the order. In the matter of Sumit Banksal, Insolvency Professional vs. Committee of Creditors of JP Engineers Pvt. Ltd & Ors., Company Appeal (AT)(Ins.) No.160 of 2022, NCLAT order 18.02.2022. CoC has jurisdiction to decide the fees of Resolution Professional. IBBI is fully clothed with the jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instruction till regulation are not framed can regulate the subject. Further, at the direction of Adjudicating Authority, IBBI may give its recommendation. In the matter of IndusInd Bank Ltd. Vs. Mr. Rajendra K. Bhuta, Resolution Professional, Company Appeal (AT)(Insolvency) No.177 of 2022, NCLAT Principal Bench, New Delhi Date of order: 26.04.2022. Resolution Professional is not entitled for fees for the period after staying of CIRP.

In view of lot of issues, **IBBI issued further Notification No. IBBI/2022-23/GN/REG091 dated 13th September 2022** regarding fees.

- i) The word “Schedule” shall be substituted with the word and mark “Schedule-I”, wherever it is appearing.
- ii) In the principal regulations, after regulation 34A, the following regulations shall be inserted, namely:- **“34B. Fee to be paid to interim resolution professional and resolution professional**
- iii) The fee of interim resolution professional or resolution professional, under regulation 33 (Cost of the interim resolution professional) and 34 (Resolution Professional Cost), shall be decided by the applicant or committee in accordance with this regulation.
- iv) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 in accordance with claims. Thus, the Board has specified the minimum fees per month in accordance dealing of claims with the intention of performing quality work and mitigate disputes. This fees is for the period of approval of resolution plan, passing of liquidation order, withdrawal of CIRP or order for closure of CIRP, whichever is earlier. After the expiry of said period, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be. However, the applicant or the committee may fix higher fees recording the reasons thereof.
- v) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance linked incentive structure as it deems necessary.

vi) The performance-linked incentive fee for value maximisation may be paid to the resolution professional at the rate of one per cent of the amount by which the realisable value is higher than the liquidation value, after approval of the resolution plan by Adjudicating Authority.

vii) In cases where resolution plan is submitted to the Adjudicating Authority within the time period given from the insolvency commencement date, performance-linked incentive fee as per may be paid to the resolution professional, after approval of such resolution plan by the Adjudicating Authority on commencement of payment to creditors by the resolution applicant.

2. Opening an e-mail account

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 made amendment [after regulation 4B, regulation “**4C- Process e-mail**”] that the interim resolution professional shall open an email account and use it for all correspondences with stakeholders and in the event of his replacement by a resolution professional or liquidator, as the case may be, shall handover the credentials of the email to him.

3. Communication to the creditor

The interim resolution professional shall collect all claims received from the creditors to assess the financial obligation of the debtor. The claims are to be submitted by the creditor as per laid down provisions. The Interim Resolution Professional/ Resolution Professional is not liable to pay claim, if it is not submitted even if, the claim is mentioned in the books of the corporate debtor.

In the matter of the Assistant Commissioner Central Tax, CGST & CX Vs. Avishek Gupta, Resolution Professional, Company Appeal (AT)(Insolvency) No.869 of 2021, NCLAT Principal Bench, New Delhi:26.11.2021. Claim was rejected by Adjudicating Authority being delayed filed. Appellant submitted that it was duty of the Resolution Professional to see all records and notice the claim. Appellant Authority rejected appeal and affirmed the order of Adjudicating Authority. IBBI made amendment Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022. No. IBBI/2022-23/GN/REG093 dated 16th September 2022 wherein the interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available. The amendment fixes more responsibility of the IRP/RP towards creditors. It happens that the creditor does not know about the corporate debtor going into CIRP and requirement of filing claims. But after this amendment, the creditor would be in the position to file claim, and it would avoid hassles relating to filing of claims.

4. Meeting of the committee

A Resolution Professional may convene a meeting of the committee as and when he considers necessary and at a request of the members of the committee. The IBBI has clarified that meeting may be convened till approval of resolution plan or passing of liquidation order.

5. Preferential and other transactions

Regulation 35A, i.e. preferential, undervalued transactions, transactions defrauding creditors and extortionate credit transactions are relating to creditors. If the corporate debtor had not committed these transactions, the benefit thereof would go to creditors. However, the resolution applicant give bid as per the current assets and liability of the corporate debtor. But to give knowledge of the preferential and other transaction, the amendment has been made that the resolution professional shall forward a copy of the application filed before Adjudicating Authority regarding preferential transactions, to the prospective resolution.

6. Regulation 36 (Submission of Information Memorandum)

(i) The Resolution Professional shall submit Information Memorandum in electronic form to each member of the committee on or before the ninety-fifth day from the insolvency commencement date”.

(ii) The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the details of the corporate debtor regarding assets and liabilities including contingent liabilities”, geographical locations of fixed assets including any other material details, company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities etc

As well details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements”,

It has been observed that after approving the bid in favour of successful Resolution Applicant, he has not made payment and claimed that such information was not provided by the Resolution Professional, therefore, on not honouring the approval of bid, it wastes to of the Adjudicating Authority and mitigate the gravity of the Adjudicating Authority. Therefore, the intention of IBBI is to provide all material information to the prospective Resolution Applicant.

7. Regulation 36A.

In the principal regulations, in regulation 36A, in sub-regulation (1), for the words “not later than seventy fifth day”, the words “not later than sixtieth day” shall be substituted. The intention of Amendment is to reduce the time provided to Resolution Professional and provide more time to prospective Resolution Applicant and other process.

8. In regulation 36B, after sub-regulation (6) the following sub-regulation shall be inserted, namely:-

“(6A) If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor.” The assets should not material for going of the corporate debtor as it is the basic concept of the corporate debtor.

9. “36C. Strategy for marketing of assets of the corporate debtor, after regulation 36B

The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases, with the approval of the committee. The member(s) of committee may also take measures for marketing of the assets of the corporate debtor.

10. Insertion clause (m) after clause (l), in regulation 37, In the principal regulations.

“sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.”

11. Insertion clause, “ 39BA-Assessment of Compromise or Arrangement”, after regulation 39B

During the course of going on liquidation proceedings, due to any of the circumstances, the scheme for revival of the corporate debtor in accordance with the provisions of Section 230 of the Companies Act, 2013 is filed before the adjudicating authority. The resolution Professional shall submit the committee’s recommendation to the Adjudicating Authority while filing application under section 33. The resolution Professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority. The intention of IBBI is to avoid delay and explore opportunities.

In the matter of Arun Kumar Jagatramka vs. Jindal Steel and Power & Anr. [Civil Appeal No.9664 of 2019 and other appeals], Supreme Court of India Date of Decision 15 March 2021. The Supreme Court held that prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the Insolvency and Bankruptcy Code, 2016 must also attach itself to a Scheme of Compromise or Arrangement under Section 230 of the Companies Act, 2013 (Act of 2013), when the company is undergoing liquidation under the auspices of the IBC.

12. Substitution of in regulation 40A

The IBBI has revised Model Time Schedule for completing the corporate insolvency resolution process.

13. Insertion of Clause “40D-Decision for liquidation” after regulation 40C.

The committee while considering the liquidation of the corporate debtor may consider factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. Thus, the committee while considering the liquidation of the corporate debtor may also consider the intangible factors.

14. Substitution of Form G in the Schedule

Form G regarding Expression of Interest has been summarised avoid unnecessary, duplicity of information.

15. Insertion of Regulation “31A- Regulatory Fee”, after regulation 31, In the principal regulations

IBBI has made amendment to (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022 vide Notification F. No. IBBI/2022-23/GN/REG096 dated 20th September 2022.

A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value, for the resolution plan approved after 1st October 2011. A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be paid to the IBBI. The intention of the Board is increasing its resources.

16. Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

IBBI made Amendment vide No. IBBI/2022-23/GN/REG099 dated 28th September 2022 to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 2, in sub-regulation (1), in clause (g), for the words –an individual, the words –an individual or an insolvency professional entity recognised by the Board under regulation 13 shall be substituted. Thus, the Board has included Insolvency Professional Entity with Insolvency Professional. All the provisions applicable to the Insolvency Professional are also applicable to Insolvency Professional Entity

17. IBBI (Liquidation Process) Regulation, 2016

(a) IBBI made amendments to Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022 vide No. IBBI/2022-23/GN/REG094 dated 16th September 2022.

Where the recommendation to explore proposal of compromise or arrangement has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall file the proposal within thirty days of the order of liquidation.”

(b) Fees to liquidator

Regulation 4 of IBBI (Liquidation Process) Regulation, 2016 provides yardstick for fees to liquidator. The IBBI made Amendment that where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.

(c) Claims of creditors

During the course of liquidation proceedings, the creditors shall submit or update their claims. The IBBI has made amendment that if the claims are not submitted or updated by creditors, the claims submitted at the time of corporate insolvency resolution process and collated by IRP/RP shall be taken into consideration by the liquidator.

(d) Process email ID

The liquidator shall operate the process email account under Regulation 12A, handed over to him by the resolution professional in accordance with regulation 4C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in the event of his replacement, the credentials of such email ID shall be handed over to the new liquidator.

(e) Progress Report

The Liquidator shall submit the Progress Reports, in the format stipulated by the Board, to the Adjudicating Authority in the stipulated time provided in Regulation 15.

(f) Verification of claims

The liquidator shall verify the claim submitted by him during the liquidation proceedings. If the claims are not submitted to him, the liquidator shall verify also the claims submitted before IRP/RP during corporate insolvency resolution process.

(g) Stakeholders' consultation committee

The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders. The stakeholders' consultation committee shall advise him on various matters, viz. remuneration of appointed professionals, liquidator's fees, valuation of assets, sale of assets etc.

(h) Sale of corporate debtor as a going concern

If the corporate debtor is unable to sale the corporate debtor as a going concern within ninety days. The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32, as a going concern, exclusively only at the first auction.

(i) "32B- Conduct of meetings of the consultation committee

The provisions of regulations 18 to 26 of Chapter VI and Chapter VII of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall apply *mutatis mutandis* to meetings of the consultation committee under liquidation proceedings."

(j) Assets Memorandum

The liquidator shall prepare liquidation estate memorandum within seventy-five days from the liquidation commencement date. The liquidator shall share the asset memorandum with the Board and members of the consultation Committee.

(k) “45A. Preservation of records

The liquidator shall preserve copies of all such records which give a complete account of the liquidation process. The liquidator shall preserve copies of records relating to liquidation proceedings. Electronic copy of all records (physical and electronic) for a minimum period of eight years; and a physical copy of records for a minimum period of three years; from the date of dissolution of the corporate debtor or closure of the liquidation process or the conclusion of any proceeding relating to the liquidation process, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later. The intention of Board is to preserve complete records relating to liquidation proceedings.

(l) Model timeline for liquidation proceedings

The IBBI has revised Model Timeline for liquidation proceedings.

(m) Mode of sale

The liquidator shall issue a public notice of an auction for sale under within forty-five days from the liquidation commencement date unless the consultation committee advises to extend the timeline. The Board has made amendment regarding mode of sale.

(n) Written consent to act as a liquidator

The Board has made amendment relating written consent to act as liquidator.

18. Insolvency and Bankruptcy Board of India (Information Utilities) Regulation, 2016

IBBI has made amendment in Insolvency and Bankruptcy Board of India (Information Utilities) Regulation, 2016 vide Notification No. F. No. IBBI/2022-23/GN/REG/098 dated 20th September 2022. The Board has made amendments in Regulations 4 and 6. **19. IBBI (Voluntary Liquidation) Regulation, 2016**

IBBI has made amendment to Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) vide Notification No. IBBI/2022-23/GN/REG095 dated 16th September 2022.

(a) 41. Preservation of records

The liquidator shall preserve copies of all such records which are required to give a complete account of the voluntary liquidation process. The liquidator shall preserve electronic copy of all records (physical and electronic) for a minimum period of eight years; and a physical copy of records for a minimum period of three years from the date of dissolution of the corporate person, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later.

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/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM

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

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article

Authors:

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



Case Laws

CASE LAWS

1. In **BV Seshaiiah vs State of Telangana** the Supreme Court set aside an order of the Telangana High Court which confirmed the conviction in a cheque dishonor case overriding the agreement between the parties to compound the offence. held that when parties to a litigation proceeding have entered into an agreement to compound a compoundable offence, High Courts cannot override such compounding and impose their will on the parties.
2. In **Godrej Sara Lee Ltd. vs Excise and Taxation Officer Cum Assessing Authority**, the Supreme Court observed that it is not proper to dismiss a writ petition on the ground of alternative remedy without examining whether an exceptional case has been made out for such entertainment. It further observed that "Where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available",
3. In **Baini Prasad (D) vs Durga Devi**, the Supreme Court observed that an encroacher cannot be termed as a 'transferee' to seek benefit of Section 51 of the Transfer of Property Act. It further observed that "Where the owner of the land filed suit for recovery of possession of his land from the encroacher and once, he establishes his title, merely because some structures are erected by the opposite party ignoring the objection, that too without any bona fide belief, denying the relief of recovery of possession would be tantamount to allowing a trespasser/encroacher to purchase another man's property against that man's will"

4. In **National Insurance Company Ltd. vs the Chief Electoral Officer & Ors**, Insurance Law - Accidental death- Death due to sun stroke during election duty. The Supreme Court observed that such death will not come under the scope of the clause "death only resulting solely and directly from accident caused by external violent and any other visible means"- proximate causal relationship between the accident and the body injury is a necessity- plain reading of the clauses is the guiding principle to interpret insurance contracts.

5. In **ITC Limited vs Aashna Roy**, the Supreme Court has set aside an order of the National Consumer Disputes Redressal Commission (NCDRC) awarding compensation of Rs. 2 crores awarded to a lady model for a bad haircut and poor hair treatment she underwent at a 5-star Hotel in Delhi. The Court further observed that "The NCDRC discussed regarding the importance of hair in a woman's life and also that it could be an asset for building a career in modelling and advertising industry but then quantification of compensation has to be based upon material evidence and not on the mere asking".

6. In **Debashis Sinha and others vs M/s RNR Enterprise**, the Supreme Court has observed that that flat-owners, who are often forced by the circumstances to take possession of apartments even if the amenities promised by the builder are not provided, do not forfeit their right to claim such services from the builder. The Court criticized the National Consumer Disputes Redressal Commission for refusing the claim of compensation raised by the aggrieved flat-owners on the ground that they had taken possession. It has further stated that "We have failed to comprehend as to what the NCDRC meant when it observed that the appellants "ought to have known what they were purchasing".

7. In **Ramesh Chandra Sharma And Ors. vs. State of Uttar Pradesh And Ors**, the Supreme Court, on Monday, struck down the classification made by the Greater NOIDA Authority between Pushtaini and Gair-Pushtaini Landholders for the purpose of granting compensation upon acquisition. While striking down the classification, it held -
- a) The Land Acquisition Act does not envisage any differential compensation on the basis of such classification;
 - b) The mischief rendered by the classification can be severed and the remaining part of the executive actions that seek to grant compensation for the purpose of rehabilitation would remain valid in law.

Compliance Checklist



COMPLIANCE CALENDAR FOR MARCH 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

GSTR-1 Return (Monthly)

GSTR-3B Return (Monthly)

GSTR-5

GSTR-6

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

FEMA Related Compliance

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

RBI Related Compliances

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

Monthly statement of short-term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

Monthly payment of PF (Non-Corporate)

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

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

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))

Ministry of Corporate Affairs

Filing of CSR 2

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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