



WHITESPAN
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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

FROM THE CHIEF EDITOR'S PEN

Life is less than 10 percent, what happens to us, and more than 90 percent of how we react to it. – Charles Swindoll

It gives us immense satisfaction to share the 49th Edition of “WINS – e-newsletter” for May 2021, covering legal updates released during the month of April 2021, articles shared by respected professionals and compliance calendar for the month of May 2021.

In this issue, we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
 - i. Position of homebuyers under the Insolvency and Bankruptcy Code, 2016
 - ii. Ten important amendments in the Companies Act, 2013
 - iii. Can a women be an accomplice or an accused in a case of sexual harassment under POSH?

3. Compliance checklist for the month of May **2021**.

Trust, WINS not only help you to keep yourself updated, but also save 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.

Last but not least, in this testing time of global pandemic, keeping oneself safe, secure and motivated, is a real success and, I am more than sure, you will achieve these by following simple discipline of staying at home, performing yogic exercise as recommended, and will stay happy.

We pray to the Almighty to keep all our readers, patrons, team members and their families happy, healthy, and safe. A ameen!

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, 2021

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.
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INDEX		
S. No	Section	Page No.
1	Ministry of Corporate Affairs (MCA)	5-9
2	Securities Exchange Board of India (SEBI)	10-16
3	Reserve Bank of India (RBI)	17-18
4	Central Board of Excise and Customs (CBEC)	19-22
5	Central Board of Direct Taxes (CBDT)	23-24
6	Miscellaneous Laws	25-29
7	Article on Position of Homebuyers under the Insolvency and Bankruptcy Code, 2016	30-36
8	Article on Ten (10) Amendments – Companies Act, 2013 Effective from 01st April 2021	37-44
9	Article on Whether a Women can be an Accomplice or an Accused in cases of Sexual Harassment at Workplace?	45- 48
10	Compliance Checklist for the month of May 2021	49-52

Ministry of Corporate Affairs (MCA)

1. The Companies (Accounts) Second Amendment Rules, 2021

Date of Notification- April 01, 2021

Effective Date – April 01, 2021

Link : http://www.mca.gov.in/Ministry/pdf/AccountsSecondAmendmentRules_13042021.pdf

MCA vide its notification dated April 01, 2021 notified the Companies (Accounts) Second Amendment Rules, 2021 amending rule 3 of the Companies (Accounts) Rules, 2014.

Rule 3 provides for manner of books of account to be kept in electronic mode. As per the amendment for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

2. The Companies (Audit and Auditors) Second Amendment Rules, 2021

Date of Notification- April 01, 2021

Effective Date – April 01, 2021

Link : <http://ebook.mca.gov.in/Default.aspx?page=notification>

MCA vide its notification dated April 01, 2021 notified the Companies (Audit and Auditors) Second Amendment Rules, 2021 amending rule 11(g) of the Companies (Audit and Auditors) Rules, 2014.

Rule 11(g) provides for Other Matters to be Included in Auditors Report.

The auditor's report shall also include their views and comments on the matter, whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

3. The Clarification on Spending of CSR Funds for Setting Up Make Shift Hospitals and Temporary COVID Care Facilities

Date of Circular- April 22, 2021

Effective date: April 22, 2021

Link : http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo5_22042021.pdf

MCA vide its circular dated April 22, 2021 in continuation to its general master circular no. 10/ 2020 dated March 10, 2020 clarified that spending of CSR Funds for setting up make shift hospitals and temporary COVID care facilities is an eligible CSR activity under item no. (i) and (xii) of schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and disaster management respectively.

The Companies may undertake the aforesaid activities in consultation with state governments subject to fulfillment of companies (CSR) Rules, 2014 and circulars related to CSR issued by the MCA from time to time.

4. The Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021

Date of Notification- April 09, 2021

Effective Date – Date of publication in the official gazette

Link: http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules_12042021.pdf

MCA vide its notification dated April 09, 2021 notified the Insolvency and Bankruptcy (pre-packaged insolvency resolution process) Rules, 2021. A corporate applicant, can now make an application for initiating pre-packaged insolvency resolution process under sub-section (1) of section 54C of the Code in Form 1, accompanied with affidavit, documents or records as referred in Annexures therein, in electronic form, along with a fee of rupees fifteen thousand. In case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority. The corporate applicant shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority and shall also, inform the Adjudicating Authority about the filing of any winding up petition against the corporate debtor after becoming aware of such filing.

Securities Exchange Board of India (SEBI)

1. Relaxations Relating to Procedural Matters –Issues and Listing

Date of Circular- April 22, 2021

Effective Date - April 22, 2021

Link: https://www.sebi.gov.in/legal/circulars/apr-2021/relaxations-relating-to-procedural-matters-issues-and-listing_49900.html

SEBI vide its circular dated April 22, 2021 in continuation to its circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020 has provided following relaxations relating to procedural matters –Issues and Listing.

To ease and facilitate investors, the relaxation mentioned in point (iv) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, is further extended and shall be applicable for Rights Issues opening up to September 30, 2021, provided that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020.

In respect to mechanism and compliance requirements at point (iv) and (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:

- a. Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).
- b. Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.

2. SEBI Cautions Investors Against Impersonation

Date of Press Release - April 12, 2021

Effective Date - April 12, 2021

Link:<https://www.sebi.gov.in/media/press-releases/apr-2021/sebi-cautions-investors-against-impersonation-49823.html>

SEBI vide its press release dated April 12, 2021 advised the investors to be beware of emails / any other communication impersonating employees of SEBI and refrain from responding to such emails / communication. The only official and genuine website of SEBI, where an investor can file his/her complaint is <https://scores.gov.in> and members of public are advised to be careful and not get misled by fake websites with similar addresses, fake logos / similar looking domains and email ids, etc. and Inform the local police or cybercrime authority about such frauds immediately.

3. Relaxation from Compliance with Certain Provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the CoVID-19 Pandemic

Date of Circular: April 29, 2021

Effective Date : April 29, 2021

Link: <https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic-50000.html>

SEBI vide its circular dated April 29, 2021 granted following relaxations from compliance with certain provisions of the

S.N o.	Regulation	Requirement	Due Date	Extended deadline for the quarter / half year / year ending March 31, 2021
1	Regulation 24A read with circular No. CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Annual Secretarial Compliance report	Sixty days from end of the financial year	May 30, 2021	June 30, 2021
2	Regulation 33 (3) - Quarterly financial results / Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
3	Regulation 32 (1) read with SEBI circular No. CIR/CFD/CMD1/162/2019 dated December 24, 2019 on Statement of deviation or variation in use of fund	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021

Listed entities are permitted to use digital signature certifications for authentication/ certification of filings/submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until December 31, 2021.

4. Relaxation from compliance under the SEBI (LODR) Regulations, 2015

Date of Circular: April 29, 2021

Effective Date : April 29, 2021

Link: <https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-disclosure-requirements-regulations-2015-other-applicable-circulars-due-to-the-covid-19-pandemic-50001.html>

SEBI vide its circular dated April 29, 2021 granted following relaxations from compliance with certain provisions of the LODR Regulations:

S.No	Regulation	Requirement	Due Date	Extended deadline for the quarter / half year / year ending March 31, 2021
1	For entities that have listed their debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-convertible Redeemable Preference Shares Regulations, 2013, and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008			
2	Regulation 52 (1) - Half-yearly financial results Regulation 52 (2) - Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
3	Regulation 52 (7) read with SEBI circular no. SEBI/HO/DDHS/08/2020 dated January 17, 2020 on Statement of deviation or variation in use of funds	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021
4	For entities that have listed their bonds under the SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015			
5	Requirements as per circular no. SEBI/HO/DDHS/CIR/P/134/2019 dated November 13, 2019 Annual audited financial results	Sixty days from end of the financial year	May 30, 2021	June 30, 2021

S.No.	Regulation	Requirement	Due Date	Extended deadline for the quarter / half year / year ending March 31, 2021
6	For entities that have listed Commercial Paper			
7	Requirements as per SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 Half Yearly financial results Annual audited financial results	Forty-five days from end of the Half Year / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021

5. Addendum to SEBI Circular on “Relaxation in adherence to prescribed timelines issued by SEBI due to Covid 19” dated April 13, 2021

Date of Circular- April 29, 2021

Effective Date - April 29, 2021

Link: https://www.sebi.gov.in/legal/circulars/apr-2021/addendum-to-sebi-circular-on-relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19-dated-april-13-2020_50006.html

SEBI vide its circular dated April 29, 2021 in continuation to its circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59 dated April 13, 2020 wherein “Relaxations in adherence to prescribed timelines” for carrying out various shareholder requests and for other regulatory filings were granted to RTAs in view of the Covid-19 pandemic has given relaxation to intermediaries / market participants w.r.t. compliance with the prescribed timelines till July 31, 2021 in view of the Covid-19 situation.

Additionally, regarding the half-yearly Internal Audit Report (IAR) to be submitted by RTAs within 45 days from the closure of the half year as mandated by NSDL Circular No. NSDL/CIR/II/19/2016 dated November 7, 2016 and CDSL Circular No. CDSL/AUDIT/RTA/1205 dated July 12, 2016; it has now been decided that the timeline of May 15, 2021 for submission of IAR by RTAs for half year ended March 31, 2021 has been extended to July 31, 2021 in view of the Covid-19 situation.

Reserve Bank of India (RBI)

1. External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilized ECB proceeds in term deposits

Date of Notification- April 07, 2021

Effective Date –April 07, 2021

Link: https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12070

RBI vide its notification dated April 07, 2021 with a view to provide relief to the ECB borrowers affected by the Covid-19 pandemic, have relaxed the stipulation regarding parking of ECB proceeds in term deposits with AD Category-I banks in India for a maximum period of 12 months cumulatively by the ECB Borrowers.

As a one time relaxation, unutilized ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to March 01, 2022.

All other provisions of the ECB policy remain unchanged. AD Category-I banks should bring the contents of this circular to the notice of their constituents/ customers.

Central Board of Excise and Customs (CBEC)

1. Basic customs duty & health cess to be waived off on oxygen & oxygen related equipment and Covid related vaccines to be exempted from basic customs duty

Date of Press Release- April 24, 2021

Link: <https://pib.gov.in/PressReleasePage.aspx?PRID=1713751>

Ministry of Finance vide its press release dated April 24, 2021 granted full exemption from Basic Customs Duty and health cess on import of the following items related to Oxygen and Oxygen related equipment for a period of three months with immediate effect:

1. Medical grade Oxygen
2. Oxygen concentrator along with flow meter, regulator, connectors and tubing
3. Vacuum Pressure Swing Absorption (VPSA) and Pressure Swing Absorption (PSA) oxygen plants, Cryogenic Oxygen Air Separation Units (ASUs) producing liquid/ gaseous oxygen
4. Oxygen Cannister
5. Oxygen Filling Systems
6. Oxygen Storage tanks, Oxygen cylinders including cryogenic cylinders and tanks
7. Oxygen Generators
8. ISO Containers for Shipping Oxygen
9. Cryogenic Road transport tanks for Oxygen

10. Parts of the above to be used for the manufacture of equipment for production, transportation, distribution or storage of Oxygen
 11. Any other device from which Oxygen can be generated
 12. Ventilators (capable of functioning as high-flow devices) with nasal canula; Compressors including all accessories and tubing; humidifiers and Viral filters
 13. High flow nasal canula device with all attachments
 14. Helmets for use with non-invasive ventilation
 15. Non-invasive ventilation oronasal masks for ICU ventilators
 16. Non-invasive ventilation nasal masks for ICU ventilators
- Apart from the above, it was also decided that Basic Customs Duty on import of Covid vaccines be also exempted with immediate effect for a period of 3 months.

2. Dedicated Helpdesk by CBIC for Handholding Trade, Industry and Individuals to expedite Customs Clearance of Imports related to COVID including Oxygen and oxygen related equipments etc

Date of Press Release- April 26, 2021

Link: <https://pib.gov.in/PressReleasePage.aspx?PRID=1714090>

Ministry of Finance vide its press release dated April 26, 2021 with a view to handhold the trade relating to clearances, has created an online form under this URL (<https://t.co/IAOQenWwO2>) to seek details in a structured format and redress the grievances, at the earliest. For general queries, the users may send an email through icegatehelpdesk@icegate.gov.in or call up toll free number 1800-3010-1000. The requests being received at Helpdesk will be closely monitored for early resolution. Further, to resolve the grievances at the local level, zonal level nodal officers have also been nominated and this list can be found in the following URL (<https://www.cbic.gov.in/resources//htdocscbec/CBIC%20Nodal%20Officers%20for%20Covid%2019%20Revised.pdf>).

Central Board of Direct Taxes (CBDT)

1. Notification of Income Tax Return Forms (ITR Forms) for the Assessment Year 2021-22 (FY 2020-21)

Link: https://www.incometaxindiaefiling.gov.in/ITR_Notified_Forms/index.html?lang=eng

CBDT has notified the Income Tax Return Forms (ITR Forms) for the Assessment Year 2021-22 (FY 2020-21). There is no change in the manner of filing ITR Forms as compared to last year except for the changes required on account of amendments in the Income-tax Act, 1961.

Particulars	Year/Month	Original Due date	Extended Due date
Income Tax Return- Non -Audited assessee	FY 2020-20 (AY 2021-22)	31.07.2021	NA
Income Tax Return- Audited assessee	FY 2020-21 (AY 2021-22)	31.10.2021	NA

However, keeping in view previous trends, and empirical studies, we expect that the Due dates for filing ITR will be extended, to which we will keep you posted.

Miscellaneous Laws

1. The Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021

Date of Notification- April 09, 2021

Effective Date – Date of publication in the Official Gazette

Link: <https://ibbi.gov.in/uploads/legalframework/e9b1c4b3489e51213db701b27222b474.pdf>

IBBI vide its notification dated April 09, 2021 notified the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021. The regulations provides for the eligibility to act as resolution professional, eligibility of registered valuers and other professionals, identification and selection of authorised representatives, public announcement and claims of stakeholders, information memorandum, meetings of the creditors and committee of creditors etc.

2. The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021

Date of Notification – April 13, 2021

Effective Date – Date of publication in the official gazette

Link: <https://www.ibbi.gov.in/uploads/legalframework/874c1870a61be056ec690a5ecb928ef0.pdf>

IBBI vide its notification dated April 13, 2021 notified the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 amending the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

Key highlights of the amendment are:

Regulation 27 – A user, who has submitted information in Form C of the Schedule to an information utility, shall submit the information updated as on the last day of every month, in the first week of following month. Provided that information of default shall be updated within seven days of occurrence of default.

Regulation 36A - Publication of statistical information - (1) An information utility shall publish statistics relating to debt related information in its possession, quarterly. (2) The statistics in sub-regulation (1) shall provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

In the principal regulations, in the Schedule, for Form C, the following Form is substituted.

3. DGFT Trade Facilitation App” for Providing instant access to Exporters/Importers any-time any-where

Date of Press Release - April 12, 2021

DGFT on April 12, 2021 launched ‘Trade Facilitation’ Mobile App during the online video conference, for promoting ease of doing business and providing quick access to information to importers/exporters.

The new Mobile App of DGFT provides the following features for ease of the exporters and importers –

- Real-time Trade Policy Updates and Event Notifications
- Your Trade Dashboard Anytime Anywhere
- Access all services offered by DGFT in App
- Explore Item-wise Export-Import Policy and Statistics
- 24x7 Virtual Assistance for Trade Related Queries
- Track your IEC Portfolio – IEC, Applications, Authorizations
- Real-time Alerts on status of applications
- Raise and track help requests in real-time
- Share Trade Notices, Public Notices easily

The App will be available on Android and iOS platforms. The App can also be downloaded from the DGFT Website (<https://dgft.gov.in>). It has been developed by the Tata Consultancy Services (TCS), as per the directions of the Directorate General of Foreign Trade (DGFT).

4. NCLT- Urgent Matters Through Video Conferencing

Date of order - April 19, 2021

Link: <https://nclt.gov.in/content/help>

NCLT vide its order dated April 19, 2021 in view of surge in COVID 19 cases throughout the country has decided to take up only urgent matters through video conferencing wef 20.04.2021 at all NCLT Benches till further orders. The Benches shall sit as per rule 9 of the NCLT Rules, 2016.

Supreme Court Restores Order Extending Limitation; Period From 14.03.2021 Excluded From Computing Limitation Period Until Further Orders

Article 1

POSITION OF HOMEBUYERS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

If a default occurs in case of a Financial Debt, the Financial Creditors are entitled to avail all the privileges in accordance with the provision of the Insolvency and Bankruptcy Code, 2016 (“IBC”). An Application in case of default of Financial Debt (given u/s 5(8) of IBC) may be filed under Section 7 of the IBC. Financial Debt has been defined u/s 5(8) of the code as a debt (with or without interest) which is disbursed against the consideration for the time value of money. The term ‘Time Value of money’ has been defined in the Black’s Law Dictionary (9th Edition) as “the price associated with the length of time that an investor must wait until an investment matures or the related income is earned.” The Code further defines ‘Financial Creditors’ u/s 5(7) as “any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”

Position of Homebuyers at the inception

After the Insolvency and Bankruptcy Code, 2016 came into effect, the homebuyers were neither classified under ‘financial creditors’ nor ‘operational creditors’, therefore, there were restrictions on the ability of the homebuyers to initiate insolvency proceedings under IBC against the defaulting real estate company. Moreover, the Homebuyers did not fall under the category of ‘secured creditors’ and hence, they would get their money back only if it is left after paying the secured and the operational creditors post liquidation. Therefore, IBC, as it was enacted originally, did not contain adequate recognition of the interests of the homebuyers in real estate projects.

The homebuyers have claimed deficiency in services on the part of the real estate developers on various instances such as Jaypee Infratech and Amrapali Group, before the National Consumer Disputes Redressal Commission (“NCDRC”). However, as soon as the Corporate Insolvency Resolution Process (“CIRP”) was initiated, either by the developers themselves or by any other financial or operational creditor, and the application for initiation of insolvency proceedings was accepted by the NCLT, the moratorium period was declared and the homebuyers suits/ complaints were abated. This meant that the developer companies could proceed with the resolution plan under IBC while the homebuyers were left with irreparable loss.

The treatment of homebuyers under the IBC was brought to light in the case of IDBI Bank v. Jaypee Infratech (Decided on 09.08.2017). IDBI Bank had filed an application u/s 7 of the Code to start the insolvency proceedings against Jaypee Infratech Ltd. The CIRP process was started on 9th August, 2017 by NCLT Allahabad and a Moratorium was issued which meant that the institution of suits and the continuation of pending proceedings, including execution proceedings was prohibited. Subsequently, Jaypee called for submission of claims by their creditors as follows: Operational Creditors filed Form B, Financial Creditors filed Form C and Form E had to be filed by workmen and Employees and other creditors had to file Form F but there was no form for Home Buyers. Thus, this situation put the Homebuyers in an embarrassing situation. Therefore, on 16th August, 2017, the IBBI introduced Regulation 9(a) to introduce claims of other creditors and issued a press release that Home Buyers could fill Form F as other creditors as they could not be treated at par with financial and operational creditors. Therefore, the Bank loan was expressly included in the category of Financial Creditors, however, there was no provision for safeguard of amount of the Homebuyers.

Filing of Writ Petition

Immediately after the Insolvency proceedings were initiated against Jaypee Infratech Ltd., a PIL was filed before the Hon'ble Supreme Court seeking relief for the homebuyers in the case of *Chitra Sharma & Ors. Vs. Union of India & Ors.* (Decided on 09.08.2018). The Court initially granted a stay on the NCLT order and subsequently, while lifting the stay, held that the Resolution Plan should contain requisite provisions to safeguard the interests of the homebuyers and directed that the rights of the homebuyers will be represented in the Committee of Creditors ("CoC") and by using its powers under Article 142, ordered a re-commencement of the CIRP process. The Court also directed Jai Prakash Associates Ltd. (Parent Company of Jaypee Infratech Ltd.) to deposit Rs. 2,000 Crore with the Court. However, throughout the period of this case, it was disputed whether homebuyers were part of financial creditors or operational creditors.

To bring an end to the confusion about the position of homebuyers under the IBC, as per Insolvency Law Committee Report dated 26.03.2018, IBC (Amendment) Act, 2018, w.e.f. 6.6.2018, home buyers were brought in purview of Financial Creditors. The Homebuyers were included under the category of Financial Creditors, as the government added an Explanation to Section 5, by way of an Ordinance. The Ordinance got the legislature's approval in the same year. It was later constitutionally challenged in Pioneer Urban Land and Infrastructure Ltd. v. Union of India wherein its legality was upheld by the Judiciary.

Challenging the Constitutional validity of Amendment treating Homebuyers as Financial Creditors.

Real Estate Developers filed various Writ Petitions against inclusion of homebuyers in the category of Financial Creditors. *In Pioneer Urban Land Infrastructure Limited & Anr. Vs. Union of India & Ors, Writ Petition (Civil) No.43 of 2019, Supreme Court of India (Decided on 9th August, 2019)*, the petition was filed to challenge the constitutional validity of the amendment, made under Section 5, 21 and 25 of I&B Code, 2016 in regards to the Insolvency Committee Report, which suggested “Home buyers” of the Real Estate projects to be considered as Financial Creditor and should be allowed to be represented in the Committee of Creditors by Authorized Representative. The Court, relying on *the case of Nikhil Mehta & Sons (HUF) & Sons (NCLAT), Chitra Sharma vs. UOI and Bikram Chatterjee vs. Union of India case(Supreme Court)*, held –

- (i) That allottees/homebuyers are to be regarded as financial creditors as per Section 5(8)(f) of the Code, i.e. having the commercial effect of borrowing, as the amount raised from home buyers contribute significantly to the financing of project;
- (ii) It cleared the dust from retrospective applicability of the Amendment Act by holding that home buyers were included in the main provision, i.e. Section 5(8)(f) of the IBC with effect from the inception of the IBC. It has further clarified that the explanation was added later in the year 2018 only to clear up any doubts that had arisen in its implementation;

- (iii) The Amendment Act to the Code does not infringe Article 14, 19(1)(g) read with Article 19(6) or 300-A of the Constitution of India;
- (iv) Concurrent remedies, additional remedies from Consumer Protection Act, 1986 & RERA will be available; and
- (v) Once prima facie case is established, the burden is on the realtors. However, the real estate developer can point out to the NCLT if the CIRP has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency by the home buyer.

Amendment to the Insolvency and Bankruptcy Code with regard to Homebuyers

The 2018 IBC amendment added to the long-standing conflict between the homebuyers and the real estate companies as it opened a floodgate of real estate insolvency cases. The possibility of applications being initiated by speculative homebuyers also increased, thereby jeopardizing projects which were otherwise sound. Thus, by way of 2020 IBC amendment the legislature sought to restore a balance between the interests of homebuyers and developers. The Insolvency & Bankruptcy Code. (Amendment) Act, 2020 dated 13.3.2020, w.e.f. 28.12.2019. The Amendment put a threshold that

- (i) application shall be filed jointly by **not less than 100** of such creditors in the same class or not **less than 10%** of the total number of such creditors, in the same class, whichever is less; [Sec7]
- (ii) the allottees shall be under the same real estate project;
- (iii) If the application which is previously filed is not admitted by NCLT before Amendment, the application shall be modified within 30 days, otherwise, application shall be deemed to be withdrawn.

Challenging the Amendment by Homebuyers

In the writ petitions filed, the homebuyers had said that it is practically impossible to bring together 100 or 10% of the homebuyers in the absence of availability of the details of the homebuyers in the public domain. Homebuyers have also opposed the differentiated treatment compared to other financial creditors. Home buyers are considered financial creditors but this minimum threshold limit applies only to homebuyers and debenture holders but no other financial creditors. In *Manish Kumar vs. UOI & Other, Writ Petition, Civil Petition No 26/2020, Supreme Court of India (Decided on 19.01.2021)*, the Court held that there should be at least 100 allottees to support the application or 10 percent of the total allottees whichever is less and they should belong to the same project, however, the court clarified that the 10% limit will not apply to the total units that are there under the project but will apply to the number of units allotted.

Although the inclusion of homebuyers in the category of financial creditors is a big step, a balance has to be maintained between the rights of the homebuyers and the developers and it has to be seen that the grievances of one or a few homebuyers does not result in unreasonable delay/impediments in the development of a particular project, given that the homebuyers have other remedies under various acts like Consumer Protection Act and RERA.

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

A book title, “Adjudication of Companies Act matters under NCLT” has published of the Author. The book is available at https://www.amazon.in/dp/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM

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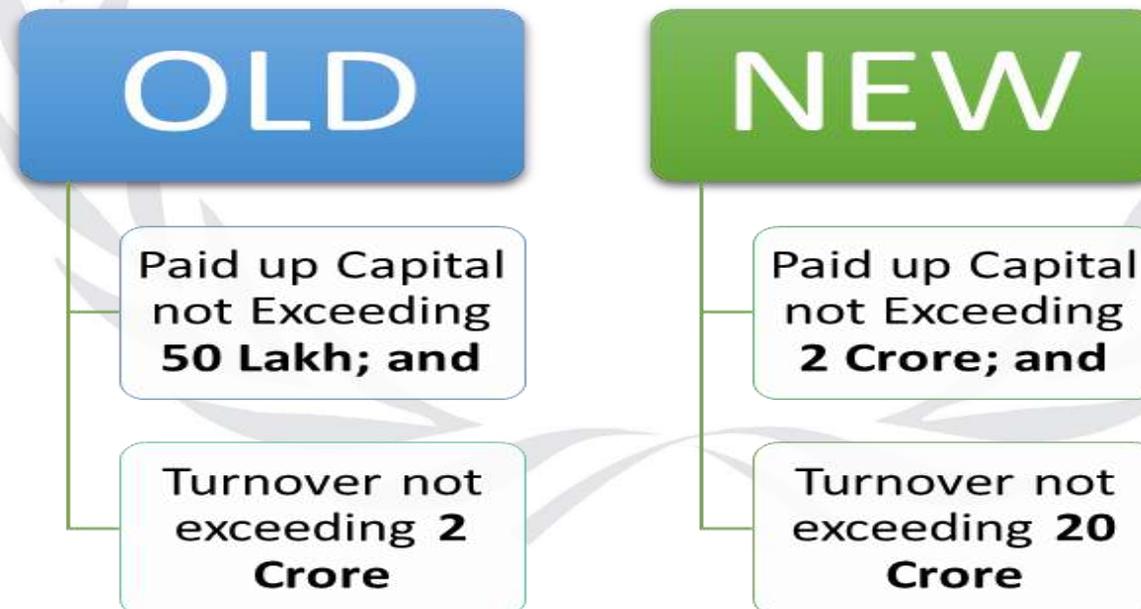


Article 2

Ten Amendments in the Companies Act, 2013 w.e.f. 1st April 2021

Amendment No.1 - CHANGE IN DEFINITION OF SMALL COMPANY:

The Companies (Specification of Definitions Details) Amendment Rules, 2021 changed the definition of Small Company with effect from 1st April 2021. thus, “**Small Company**” means a company, other than a public company having the paid-up capital not exceeding Rs. 2 Crore or the turnover (as per last statement of profit & loss) not exceeding Rs. 20 Crore. If any of the given limits crossed at any point of time, then such a Company shall be out of the preview of a Small Company.



AMENDMENT 2 - CONCEPT OF ONE PERSON COMPANY:

The Companies (Incorporation) Second Amendment Rules, 2021 passed on 1st February 2021, through these rules MCA has made amendment in many provisions of One Person Company like:

1. NRI can incorporate One Person Company in India.
2. It is not mandatory to convert One Person Company in other type of company irrespective of Turnover.
3. OPC can convert in other type of Company any time after incorporation without any transition period.
4. Process of OPC in other type of Company has been completed amended.

This Rules came into effect from 1st April 2021

Amendment 3:

AMENDMENT IN DEFINITION OF LISTED COMPANY:

The Companies (Specification of Definitions Details) Second Amendment, Rules 2021 passed on 19th February 2021. This Rules came into effect from 1st April 2021.

Definition of Listed Company has been changed by this amendment: Following companies shall not be considered as Listed Company-

- a. Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
 - (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

- ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - iii. both categories of (i) and (u) above.
- b. Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- c. Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.”.

Amendment 4: APPLICABILITY OF NEW CARO:

Ministry of Corporate Affairs has notified the Companies (Auditor's Report) Order, 2020 (CARO, 2020) which shall be applicable for the eligible companies for the financial year commencing on or after 1st April, 2021.

There are in total 21 clauses in CARO 2021 in comparison to 16 clauses in CARO 2016. As 1 old clause deleted, 1 clause is merged with other and 7 new clauses are inserted. Therefore, while preparing the auditor report for the f.y. 2021-22, Auditors have to use the new CARO.

Amendment 5: FINANCIAL STATEMENT (SCHEDULE III) WITH NEW CLAUSES:

The Ministry of Corporate Affairs vide Notification dated 24 March 2021 has amended Schedule III to the Companies Act, 2013, which shall be effective from the 1st day of April 2021 for f.y. 2021-22.

Ministry by this amendment has added many new disclosures in Notes to accounts of Balance Sheet and P&L like:

- i. Rounding off of figures, ii. Shareholding of Promoters, iii. Trade payable ageing Schedule,
- iv. Trade receivables ageing schedule, v. Title deeds of Immovable Property not held in name of the Company, vi. Disclosure on revaluation of Assets, vii. Disclosure on Loans/ Advance to Directors/ KMP/ Related parties, viii. Details of Benami Property held, ix. Details of Borrowing, x. Willful Defaulter, xi. Relationship with Struck off Companies, xii. Registration of charges or satisfaction with Registrar of Companies, xiii. Compliance with number of layers of companies, xiv. Disclosure of Ratios, xv. Undisclosed Income (Reconciliation of Income Tax and Companies Act), and xvi. CSR Disclosure

Amendment 6: AMENDMENT IN DISCLOSURES OF DIRECTORS REPORT:

The Ministry of Corporate Affairs vide Notification dated 24 March 2021 has amended Companies (Account) Amendment Rules, 2021, which shall be effective from the 1st day of April 2021 for f.y. 2021-22. First Amendment in Rule 3 i.e. Manner of Books of Account to be Kept in Electronic Mode by inserting a proviso under sub-rule (1) namely:

“Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of a. Recording audit trail of each and every transaction, b. Creating an edit log of each change made in books of account along with, c. The date when such changes were made, and d. Ensuring that the audit trail cannot be disabled.

Audit Trail means, an audit trail is defined as a **step-by-step sequential record** which provides evidence of the documented history of financial transactions to its source. An auditor can trace every step of, the financial data of a particular transaction right from the general ledger to its source document with the help of the audit trail.

Provision of Audit Trail, Rules shall come into effect from 01st April, 2022.

Second Amendment in Rule 8 i.e. Matters to be Included in Board’s Report. In rule 8, sub rule 5 after clause x, two new clauses added.

New Clauses: (applicable w.e.f. 01.04.2021)

(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xii) the details of difference between the amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

Disclosure on above mentioned two clauses are required to give in Directors Report of Companies along with other disclosures.

Amendment 7: AMENDMENT IN DISCLOSURES OF AUDITORS REPORT:

The Ministry of Corporate Affairs vide Notification dated 24 March 2021 has amended Companies (Audit and Auditors) Amendment Rules, 2021, which shall be effective from the 1st day of April 2021 for f.y. 2021-22 except clause (g).

Amendment in Rule 11 i.e. Other Matters to be Included in Auditors Report. In Rule 11.

- Existing clause (d) shall be omitted, and New Clause (e), (f) & (g) inserted.

New Clause:

(e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

Note: Auditor have to check the details in notes to account and take a representation from director about such clause and check all the transaction of Company in respect of loan and advance received by company & their respective documents.

- (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement. **(applicable w.e.f. 01.04.2021)**
- (f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013. **(applicable w.e.f. 01.04.2021)**
- (g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered

Amendment 8: ANNUAL RETURN OF ONE PERSON COMPANY AND SMALL COMAPNY:

The Companies (Management and Administration) Amendment Rules, 2021 passed on 05 March 2021. This Rules came into effect immediately on publication of same in official gazette and applicable for f.y. 2020-21. Amendment in Rule 11 i.e. “Annual Return”: in rule 11 sub rule 1 has been substituted

New Rule:

Every company shall file its annual return in **Form No.MGT-7** except

- One Person Company (OPC) and
- Small Company.

*One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A.***

Amendment 9: INTRODUCTION OF E-FORM CSR-1 :

Ministry of Corporate Affairs has launched CSR-1 form on their website w.e.f. 1st April 2021. E-form CSR-1 is required to be filed pursuant to Section 135 of the Companies Act, 2013 and Rule 4 (1) and (2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 by followings:

- ✓ Registered Public Trust
- ✓ Registered Society
- ✓ Section 8 Company

UNIQUE CSR REGISTRATION NO:

Every entity who is covered under these rules, who intends to undertake any CSR activity, shall register itself with the CG by filing the e-form **CSR-1** with the ROC w.e.f. 01 April 2021. On filing of CSR -1, one 'Unique CSR Registration Number' shall be generated by the system automatically.

Amendment 10: NEW ANNEXURE OF CSR WITH DIRECTORS REPORT:

MCA has introduced "Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021. These rules came into effect on 22 January 2021, as the same has been published in the official gazette on the same date. Therefore, these amended rules are applicable on the financial year 2020-21 (subject to specific date of some rules).

Directors Report:

The Company shall annex with its Board Report an annual report on CSR in format of Annexure-I (for f.y. 2020-21) or in Annexure II (w.e.f. fy 2021-22).

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Article 3

Whether a Women can be an Accomplice or an Accused in Cases of Sexual Harassment at Workplace?

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the “Act”), is a legislation enacted by the Constitution of India to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The Act was specifically enacted for the protection of the women and thus, states that the women are the aggrieved party and defines an “aggrieved woman” under Section 2(a) as follows:-

“(i) In relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) In relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house”

The intent of the legislature in the enactment of the Act was to protect the women from sexual harassment at workplace and believes the woman to be the aggrieved party. In view of the intent of the legislature, the question arises that “can a woman be considered as an accomplice or accused in any act of sexual harassment at workplace?”.

In layman’s language an accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished and accomplice means a witness to a crime who, either as principal or accessory, was connected with the crime by unlawful act or omission on his or her part, transpiring either before, at time of, or after commission of the offense, and whether or not he or she was present and participated in the crime. The word ‘accomplice’ has not been defined under the Indian Evidence Act, 1872 thus, it

is assumed and used in its ordinary sense that an accomplice is one of the associates or partners in the commission of a crime or who in some way or the other is connected with the commission of crime or who admits that he has a conscious hand in the commission of crime and an accomplice is equally responsible and punishable as the accused.

As we have already discussed that accomplice means to aid in an act and if, a woman aids the act of sexual harassment then she will be treated as an accomplice to the act of sexual harassment at workplace. For example, X, an employee in a company comments on Y which has implicit sexual undertones and is supported by Z (a female employee) and Y is evidently uncomfortable due to the comment passed by X and is unable to immediately react to the same. Here, Z is an accomplice to the act of sexual harassment as instead of raising voice against the act of sexual harassment, Z supported the same thus, is the perpetrator in the act of sexual harassment.

It is a controversial issue in sexual harassment policy and jurisprudence, which is only beginning to emerge in many jurisdictions, which is to recognize the perpetrator and the accomplice of sexual harassment at workplace against an individual of the same sex. Although many legislations do not tend to specifically mention same-sex harassment, measures which refer to victims in neutral terms, such as harassment of “a person” by “another person”, could be interpreted to encompass it.

The judiciary while deciding the cases with respect to same sex harassment find the application and interpretation of law complex and tend to look for circumstantial evidence where one sex disproportionately encounters detrimental treatment, etc. However, recently, the Calcutta High Court has provided clarity and settled the law in the case of *Dr. Malabika Bhattacharjee v. Internal Complaints Committee*, where the Court held that the same-gender complaints

are maintainable under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Court observed that Section 2(m) of the 2013 Act shows that the term “respondent” brings within its fold “a person”, thereby including persons of all genders. The Court further observed that “*Sexual harassment as contemplated in the 2013 Act has to pertain to the dignity of a person, which related to her/his gender and sexuality, which does not mean that any person of the same-gender cannot hurt the modesty or dignity as envisaged by the 2013 Act*”.

Therefore, it can be safely concluded that the women can be an accomplice in the sexual harassment at workplace cases and can also be the accused in such cases if they fall under the ambit of employer or employee of the company.

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

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Author



Compliance Checklist

Compliance Calendar for MAY 2021

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					

Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of April 2021. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for issue of certificate for tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of March, 2021
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2021 has been paid without the production of a challan
- Quarterly statement of TCS deposited for the quarter ending March 31, 2021
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of April, 2021
- Quarterly statement of TDS deposited for the quarter ending March 31, 2021

FEMA Related Compliances

- 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 Return on Important Financial Parameters
- 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 (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 return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the month of March

GST Related Compliance

- GSTR 1(Monthly) for April 2021
- GSTR 3B (Monthly) for April 2021

Companies Act Related Compliance

- Due date for Form 11 for LLP

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