



JSA

JAYA SHARMA & ASSOCIATES

NEWSLETTER

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MCA AND RBI UPDATES

https://www.rbi.org.in/	December 11, 2020	On Tap Targeted Long-Term Repo Operations – Extension of Specific Sectors	https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=50790
https://www.rbi.org.in/	December 12, 2020	FAQs on Resolution Framework for Covid-19 related stress	https://www.rbi.org.in/Scripts/FAQView.aspx?Id=137
www.mca.gov.in	December 17, 2020	Companies (Compromise, Arrangements and Amalgamations) Second Amendment Rules, 2020	http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_18122020.pdf
www.mca.gov.in	December 18, 2020	Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020	http://mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf
www.mca.gov.in	December 24, 2020	Companies (Share capital & Debentures) Second Amendment Rules, 2020	http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_24122020.pdf
https://www.rbi.org.in/	December 24, 2020	RBI Bulletin- December 2020	https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=50851
www.mca.gov.in	December 24, 2020	Companies (Incorporation)Third Amendment Rules, 2020	http://mca.gov.in/Ministry/pdf/ThirdAmdtRules_24122020.pdf

SEBI UPDATES

1. Dec 02, 2020- Operational guidelines for Transfer and Dematerialization of re-lodged physical shares
https://www.sebi.gov.in/legal/circulars/dec-2020/operational-guidelines-for-transfer-and-dematerialization-of-re-lodged-physical-shares_48336.html
2. Dec 07, 2020- Extension of timeline for submission of public comments on "Review of requirement of Minimum Public Offer for large issuers in terms of Securities Contracts (Regulation) Rules, 1957"
<https://www.sebi.gov.in/reports-and-statistics/reports/dec-2020/extension-of-timeline-for-submission-of-public-comments-on-review-of-requirement-of-minimum-public-offer-for-large-issuers-in-terms-of-securities-contracts-regulation-rules-1957-48367.html>
3. Dec 09, 2020- e-Voting Facility Provided by Listed Entities
https://www.sebi.gov.in/legal/circulars/dec-2020/e-voting-facility-provided-by-listed-entities_48390.html
4. Dec 10, 2020- Adjudication order in respect of Acumen capital market (India) limited.
https://www.sebi.gov.in/enforcement/orders/dec-2020/adjudication-order-in-respect-of-acumen-capital-market-india-limited_48404.html
5. Dec 16, 2020- SEBI Board Meeting
https://www.sebi.gov.in/media/press-releases/dec-2020/sebi-board-meeting_48451.html
6. Dec 24, 2020 Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub- rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957
https://www.sebi.gov.in/legal/master-circulars/dec-2020/master-circular-on-i-scheme-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48531.html

1. Home First Finance all set for Rs 1,200 crore **IPO**.

Home First Finance Co (HFFC), a mortgage financier backed by private equity funds Warburg Pincus (WP), True North and Singapore's sovereign wealth fund GIC, is in final stages of listing its shares locally in an IPO that seeks to raise up to Rs 1,200 crore. True North is the largest shareholder in the company with a 33 percent stake followed by WP with a 25 percent stake. In early October, WP had invested Rs 700 crore in the company which included about Rs 625 crore of secondary sale by existing investors and a Rs 75 crore infusion into the company. Home First Finance CEO Manoj Viswanathan told *ET* that WP's investment which was completed in October was a positive pre-IPO signal as a large investor was ready to invest in the midst of uncertainty while also giving us some capital.

2. Compliance professionals seek extension for CFSS and LLP Settlement Scheme till March.

The CFSS and LSS were introduced on April 1, 2020 for a period of six months offering a one-time opportunity to the defaulting companies and LLPs respectively to file the pending documents delayed with MCA without charging any additional fees. The schemes were extended till December 31st, 2020. After the deadline for filing tax returns by businesses has been extended till February 15, the company secretaries and chartered accountants are seeking extension of the Company Fresh Start Scheme (CFSS) 2020 and LLP Settlement Scheme (LSS) 2020 till March 31st, 2021.

3. Most Provisions of Companies (Amendment) Act, 2020, Came in force from 21st December 2020.

MCA has issued notification in the Official Gazette in this regard on 22nd December 2020. This amendment was passed by parliament on September 22, 2020 to decriminalize minor procedural or technical lapses under the Companies Act, 2013 into civil wrong. The following provisions of the said Act shall come into force, namely- Section 1; Section 3; Sections 6 to 10 (both inclusive); Sections 12 to 17 (both inclusive); Clauses (a) and (b) of section 18; Sections 19 to 21 (both inclusive); Clause (i) of section 22; Section 24; Section 26; Sections 28 to 31 (both inclusive); Sections 33 to 39 (both inclusive); Sections 41 to 44 (both inclusive); Sections 46 to 51 (both inclusive); Section 54; Section 57; Section 61; and Section 63.

CASE STUDY -1

30.09.2020	Mr. Pankaj Kumar Mishra (Appellant) vs. Registrar of Companies, Mumbai & Ors. (Respondents)	NCLAT Company Appeal (AT) No. 121 of 2020 Justice Jarat Kumar Jain Member (Judicial) Balvinder Singh Member (Technical)
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The Tribunal must give a reasonable opportunity of making representations and of being heard before passing an order, to the Registrar, the Company and all the persons concerned under Section 252 (1) of the Companies Act, 2013.

Fact of the Case:

The name of the Company (Viking Ship Mangers Pvt Ltd.) was struck off by ROC Mumbai from the Register of Companies. The Principal Commissioner of Income Tax-15, Mumbai (Respondent No. 2 herein) challenged the order of ROC before the NCLT, Mumbai bench (Tribunal) under Section 252 of the Companies Act, 2013. It is stated before the Tribunal that the Company has certain Financial transactions that have been entered into by the Company for the Assessment year 2011-12 and information regarding this were received from the office of ITO Income Tax Officer 15 (3) (2) Mumbai. However, no return of income has been filed. Therefore, notice under Section 148 of the IT Act, 1961 has been issued for Assessment year 2011-12 proposing to assess/ reassess the income. The Company has been struck off from the Register of Companies.

Therefore, it is difficult to assess the defunct Company and it will cause huge loss of revenue to the Government of India. Hence, it was prayed that the name of the Company be restore in the Register of Companies. The Authorized representative for the Registrar of Companies submitted before the Tribunal that they do not have any objection to restore the name of the Company in the Register of Companies. The NCLT, Mumbai Bench by the impugned order allowed the Appeal and directed to restore the name of the Company in the Register of Companies. However, before passing of impugned order no notice has been served on the Company, but the Company was arrayed as the Respondent. Being aggrieved with this order, the Appellant Ex-Director and Majority Shareholder and Power of Attorney Holder of the Company has filed this Appeal. Appellant submitted that Section 252 (1) of the Companies Act, 2013, provides that before passing any order under this Section, the Tribunal must give a reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the persons concerned. Rule 37 of the NCLT Rules, 2016 also provides that the Tribunal shall issue notice to the Respondent to show cause against the Application or Petition on date of hearing to be specified in the notice.

Issues

The main contention of Appellant was: Whether the order given by the Tribunal of restoring the name of the company in Register of Companies is sustainable in Law, as it has been passed without giving any reasonable opportunity of making representations or of being heard to the Appellant?

Judgment

The NCLAT held that without giving any opportunity of being heard, the order has been passed by the NCLT. Hence, the order is not sustainable in law. Therefore, it is set aside, and the matter is remitted back to the NCLT, Mumbai bench with the direction that after hearing the parties decide the said appeal under Section 252 of the Companies Act, 2013, as per law without influence by its earlier Order.

CASE STUDY -2

23.09. 2020	Alibaba Nabibasha (Petitioner) vs. Small Farmers Agri Business Consortium & Ors.(Respondents)	Delhi High Court CRL. M.C. 1602/2020, CRL. M.A. 9935/2020 Justice V. Kameswar Rao
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After resignation, Director can't be held responsible for daily affairs of Company including Cheques issued and dishonoured.

Facts of the case

The petition was filed seeking quashing of five complaint cases initiated against the Petitioner. These complaint cases are primarily grounded on the return of five cheques which were issued on behalf of the Respondent No.2 company for a total amount of Rs. 45 Lakhs. Petitioner submitted that he ceased to be the Director of the Respondent No.2 company w.e.f. 27. 10. 2010, at least eight years prior to the issuance of the cheques in question and the resignation of the Petitioner was also notified to the Registrar of Companies by the Respondent No.2 by filing Form 32 dated 04. 01.2011, which is a public document.

The Petitioner contended that he was not the Director when the underlying contract was executed between the Respondent No.1 and Respondent No.2, nor when the cheques were issued and when they were presented. According to the Respondent, the Petitioner was involved in the discussion before an agreement was executed between the Respondent No.1 and the Respondent No.2. Further, the Petitioner being a responsible Director of accused Respondent No.2 Company participated in meetings and assisted the officials of the Respondent No.1 who had visited the Respondent No.2 for verification of its financial and physical status.

Issue:

The contention of the Petitioner was: Whether Director of the Company after resignation is still held responsible for daily affairs of Company including Cheques issued and dishonoured?

Judgement

Delhi High Court held that, in cases where the accused has resigned from the Company and Form 32 has also been submitted with the Registrar of Companies then in such cases if the cheques are subsequently issued and dishonoured, it cannot be said that such an accused is in-charge of and responsible for the conduct of the day-to-day affairs of the Company, as contemplated in Section 141 of the NI Act. Thus, Petitioner after his resignation cannot continue to be held responsible for the actions of the Company including the issuance of cheques and dishonour of the same. Hence, complaint cases filed under Section 138 of the NI Act, against the petitioner are quashed.

LIST OF JSA ARTICLES PUBLISHED:

Serial No.	Name of Article	Link
1.	Internal Control-Process For Achieving Objectives. This Article has been authored by Jaya Sharma and Mehul Solanki and same was published in 200 th Edition Of ICSI MYSURU CHAPTER.	https://drive.google.com/file/d/1kU07rAVu9mUl_MWNRwoc7Llmw2oKJYyV/view

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