



JSA

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NEWSLETTER

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MCA AND RBI UPDATES

www.mca.gov.in	January 28,2021	Relaxation of additional fee in filing all AOC-4 e-forms.	http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.429012021.pdf
www.mca.gov.in	January 22, 2021	Companies (CSR Policy) Amendment Rules, 2021.	http://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules22012021.pdf
www.mca.gov.in	January 22, 2021	Filling up of Executive Director, Chief General Manager, General Manager, Dy. General Manager, Assistant General Manager, Manager & Assistant Manager level posts in NFRA at New Delhi on Deputation/Short term Contract basis.	http://www.mca.gov.in/Ministry/pdf/NoticeNFRA_22012021.pdf
www.mca.gov.in	January 18, 2021	Gazette of India (Extra-Ordinary) in Hindi & English -for authorization under Section 272 (1)(e) of Companies Act, 2013	http://www.mca.gov.in/Ministry/pdf/NotificationAuthorization_20012021.pdf
www.mca.gov.in	January 08,2021	Invitation of comments from public on Pre-packaged Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016	http://www.mca.gov.in/Ministry/pdf/NoticeInvitation_08012021.pdf
https://www.rbi.org.in/	January 07,2021	Risk Based Internal Audit (RBIA) Framework – Strengthening Governance arrangements	RBI/2020-2021/83 Ref.No.DoS.CO.PPG./SEC.04/11.01.005/2020-21
https://www.rbi.org.in/	January 05,2021	Introduction of Legal Entity Identifier for Large Value Transactions in Centralised Payment Systems	RBI/2020-2021/82 DPSS.CO.OD.No.901/06.24.001/2020-21

1. January 06, 2021 - Refund of Security Deposit
https://www.sebi.gov.in/legal/circulars/jan-2021/refund-of-security-deposit_48677.html

2. January 08, 2021 - Transfer of excess contribution made by Stock Exchanges from Core SGF of one Clearing Corporation to the Core SGF of another Clearing Corporation.
https://www.sebi.gov.in/legal/circulars/jan-2021/transfer-of-excess-contribution-made-by-stock-exchanges-from-core-sgf-of-one-clearing-corporation-to-the-core-sgf-of-another-clearing-corporation_48698.html

3. January 08,2021 - Monthly Reporting of Portfolio Managers
https://www.sebi.gov.in/legal/circulars/jan-2021/monthly-reporting-of-portfolio-managers_48705.html

4. January 11, 2021 - Revision in Daily Price Limits (DPL) for Commodity Futures Contracts.
https://www.sebi.gov.in/legal/circulars/jan-2021/revision-in-daily-price-limits-dpl-for-commodity-futures-contracts_48720.html

5. January 15,2021 - Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the CoVID -19 pandemic
https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_48790.html

6. January 29, 2021 - Circular on Revision of Monthly Cumulative Report.
https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-revision-of-monthly-cumulative-report_48927.html

1. Government will reserve up to 10% in LIC's IPO for LIC policyholders.

Provisions have been added in the LIC Act to provide some reservation to policyholders as shareholders. LIC policyholders, who have had a hand in creating this institution, will get an opportunity to own a part of the PSU, DIPAM secretary Tuhin Kanta Pandey told Nikunj Ohri. In an interview, Pandey said up to 10 per cent of the issue size of LIC's IPO will be reserved for policyholders.

<https://www.deccanherald.com/national/10-of-lic-ipo-to-be-kept-aside-for-policyholders-centre-947039.html>

2. Budget 2021: Single-person companies can be set up to boost startup incorporation.

Government will incentivize incorporation of One Person Companies by allowing them to grow without any restrictions. The move is expected to benefit more than 200,000 companies in easing their compliance requirements. Government will incentivize the incorporation of One Person Company (OPC) by allowing such companies to grow without any restrictions. This, she said, would boost ease of doing business. OPCs will henceforth be allowed to convert into any other type of company at any time and will not face any restriction on either paid-up capital or turnover.

<https://www.livemint.com/budget/news/budget-2021-single-person-companies-can-be-set-up-to-boost-startup-incorporation-11612168778411.html>

3. Trusts and societies have till April 1 to register with MCA under CSR rules.

Each CSR project would be given a unique registration number upon submission of the Form CSR-1 which can be used to track the project. The corporate social responsibility rules that came into effect from Friday have given time till April 1, 2021 to implementing agencies such as trusts and societies to register with the ministry of corporate affairs while also setting a three year time-limit for any CSR project, among a series of other amendments introduced by the government. "It is a one-time registration in a simple single-page form where details of the members, PAN number etc. has to be provided which can help us identify the implementing agencies on the MCA21 portal," a senior government official told Business Standard.

https://www.business-standard.com/article/companies/trusts-and-societies-have-till-april-1-to-register-with-mca-under-csr-rules-121012201321_1.html#:~:text=The%20corporate%20social%20responsibility%20rules,a%20series%20of%20other%20amendments

CASE STUDY -1

21.09.2020	Dr. Rajesh Kumar Yaduvanshi (Petitioner) vs. Serious Fraud Investigation Office (SFIO) & Anr. (Respondents)	Delhi High Court CRL. REV. P. 1308/2019 and CRL. M.A. Nos. 43209/2019, 3644/2020, 7626/2020, 7627/2020 & 10502/2020 Justice Vibhu Bakhru
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Person as a Nominee Director of the Company can't be summoned for offences in respect of Sections 128, 129, 448 read with Section 447 of the Companies Act 2013, without any specific allegations against him in Investigation report of being complicit or having acted in bad faith, when he is not involved in the day to day affairs of the company as well as not assigned with any of executive work of the company.

Fact of the case

The petitioner has filed the present petition impugning a summoning order dated August 16, 2019 issued by the learned ASJ in Complaint Case No. 770/2019 captioned "Serious Fraud Investigation Office (SFIO) vs. Bhushan Steel Limited and Ors.", to the limited extent that it directs issuance of summons to the petitioner. The learned Court had found that there was sufficient material placed on record against the petitioner for him to face prosecution in respect of offences under Sections 128, 129, 448 read with Section 447 of the Companies Act, 2013. The petitioner was Punjab National Bank Limited's nominee on the Board of Directors of Bhushan Steel Limited ('BSL') at the material time.

Issue:

The principal issue that arises for consideration is:

1. Whether the petitioner can be prosecuted for the alleged fraud committed by BSL and/or promoters solely for the reason that the petitioner was a director of BSL and,
2. Whether there is any material on record to indicate that the petitioner was complicit in the commission of the alleged offence.

The Petitioner submitted that there is no specific allegation in the SFIO report that the petitioner was even remotely connected or aware of the same and, therefore, his name does not feature as being involved in the fraudulent routing of funds. Further, it was submitted that merely mentioning the petitioner's name as being one of the persons who is allegedly liable to be prosecuted under Sections 128, 129 and 448 of the Companies Act, 2013, without ascribing any specific role or pointing out any culpable conduct would not constitute sufficient material to persuade any Court to issue summons. Hence, there was no allegation in the complaint that the petitioner has connived with the Promoters or any other person to falsify the accounts and, therefore, the impugned order is wholly erroneous.

The Respondent submitted that the petitioner was a Nominee Director appointed by PNB on the Board of BSL and was expected to be independent, vigilant and cautious against any fraudulent acts committed by BSL. He was also required to raise red flags and inform PNB of any fraudulent activity.

Judgement

Delhi High Court observed that there is no allegation that the petitioner was involved in the affairs of BSL except in his capacity as a Nominee Director of PNB. In such capacity, he was not assigned any executive work of BSL but was merely required to attend and participate in the Board Meetings of BSL. Even, SFIO investigation report does not contain any specific allegations against the Petitioner of being complicit or having acted in bad faith. Hence, the reasoning of the learned Trial Court that the petitioner had connived with the Promoters and is liable to be proceeded against, is clearly unsustainable and not supported by the allegations made in the complaint or the SFIO Investigation Report. Hence, the impugned summons issued to the petitioner and the impugned order, to the limited extent that it directs issuance of summons to the petitioner, are set aside.

CASE STUDY -2

09.08.2020	TAMILNADU TERMINATED FULL TIME TEMPORARY LIC EMPLOYEES ASSOCIATION (Appellant) vs. S.K. ROY, THE CHAIRMAN, LIC (Respondent)	Supreme Court Content Petition © No. 459 of 2015 in Civil Appeal No. 6950 of 2009 along with batch of review petitions. V. Gopala Gowda & C. Nagappan, JJ
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LIC directed to pay back wages and compensation to all badly workmen whose services were terminated in 1988.

Brief facts:

These Review Petitions arise from the impugned judgment and order dated 18.03.2015 passed by this Court in Civil Appeal No. 6950 of 2009 and connected appeals, whereby it was held that the Award passed by Central Government Industrial Tribunal, New Delhi (CGIT) in I.D. No. 27 of 1991 is legal and valid and the same be restored and implemented by the Life Insurance Corporation of India (hereinafter referred to as the "LIC") by absorbing the concerned workmen in the permanent posts. It was further held that the Corporation would be liable to pay all consequential benefits including monetary benefits taking into consideration the revised pay scale in the cases of those workmen who had attained the age of superannuation. Decision: Impugned judgment modified.

Reason: The learned Attorney General further submits that as on 31.03.2015, LIC had 55,427 Class III employees and 5,190 Class IV employees. If LIC is directed to consider the absorption of the workmen to the advertisement, then the number of Class III employees will increase by 11.14% and Class IV employees by 56.65% and the same will affect the employee's ratio in addition to the increase in its financial burden and that the same will be contrary to the interests of the policyholders. The learned Attorney General estimates the financial liability for implementing the order of this Court at approximately Rs.7087 crores, with the annual liability at around Rs.728 crores per year and that this will be a huge financial burden for LIC to bear. On the other hand, the learned counsel appearing on behalf of the respondents-workers submit that it becomes clear from a perusal of the Review Petitions filed by LIC that it is trying to re-agitate the case on merits. For the limited purpose of modifying the relief granted in the Civil Appeal only with regard to the Back wages, we directed Mr. Ashok Panigrahi, the learned counsel appearing on behalf of the review petitioner-LIC to submit a document containing the pay scales indicating the basic pay and other emoluments payable to the concerned workmen. The same were furnished with the periodic revisions in the years 1992, 1997, 2002, 2007 and 2012, without furnishing the other component figures which would be the gross salary of the different classes of workmen in the present dispute. These periodic revisions of pay of basic salary, along with other component figures comprising the gross salary including Dearness Allowance, House Rent Allowance etc. etc., as applicable, must be accounted for while computing the amount due to the workmen towards the back wages. The temporary and badli workers of LIC, who are entitled for regularisation as permanent workmen in terms of the impugned judgment and order dated 18.03.2015 passed by this Court, by applying the terms and conditions of the modified award dated 26.08.1988 passed by Justice Jamdar, are held to be entitled to full back wages as well. However, keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits. The back wages must be calculated on the basis of the gross salary of the workmen, applicable as on the date as per the periodical revisions of pay scale as stated supra. The computation must be made from the date of entitlement of the workmen involved in these cases, that is, their absorption, till the age of superannuation, if any concerned workman has attained the age of superannuation as per the regulations of the review petitioner-LIC, as applicable to the concerned workman. With the above modifications to the judgment and order sought to be reviewed, these review petitions are disposed of in the terms as indicated above. Since the judgment and order is passed in favour of workmen and their dispute is being litigated for nearly twenty five years, the directions contained in the judgment and order dated 18.03.2015 with the above modifications shall be complied with by the review petitioner-LIC within eight weeks of the receipt of the copy of this order.

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_MWNRwoc7Llmw2oKIYyV/view

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