



# JSA

JAYA SHARMA & ASSOCIATES

## NEWSLETTER

MARCH 2021

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## MCA AND RBI UPDATES

<a href="http://www.mca.gov.in">www.mca.gov.in</a>	February 19,2021	Companies (Specification and definitions details) 2nd Amendment Rules 2021.	<a href="http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf">http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	February 1, 2021	Companies (Incorporation) 2nd Amendment Rules 2021.	<a href="http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf">http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	February 1, 2021	Companies (Specification of Definition details) Amendment Rules 2021.	<a href="http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf">http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	February 1, 2021	Companies (compromises, arrangements and amalgamations) Amendment Rules 2021.	<a href="http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf">http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	February 23,2021	Inclusion of "Fino Payments Bank Limited" in the Second Schedule of the Reserve Bank of India Act, 1934	<a href="https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12034&amp;Mode=0">https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12034&amp;Mode=0</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	February 18,2021	Master Direction on Digital Payment Security Controls	<a href="https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12032&amp;Mode=0">https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12032&amp;Mode=0</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	February 16,2021	Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)	<a href="https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12029&amp;Mode=0">https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12029&amp;Mode=0</a>

1. February 26, 2021 - Extension of facility for conducting meeting(s) of unitholders of REITs and InvITs through Video Conferencing (VC) or through other audio-visual means (OAVM).  
<https://www.sebi.gov.in/legal/circulars/feb-2021/extension-of-facility-for-conducting-meeting-s-of-unitholders-of-reits-and-invits-through-video-conferencing-vc-or-through-other-audio-visual-means-oavm-49307.html>
2. Feb 23, 2021 - Pre-Expiry Margin on commodities under Alternate Risk Management Framework.  
<https://www.sebi.gov.in/legal/circulars/feb-2021/pre-expiry-margin-on-commodities-under-alternate-risk-management-framework-49229.html>
3. Feb 09, 2021- Revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015.  
<https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015-49068.html>
4. Feb 02, 2021- Revised Framework for Innovation Sandbox.  
<https://www.sebi.gov.in/legal/circulars/feb-2021/revised-framework-for-innovation-sandbox-48983.html>
5. Feb 02, 2021 - Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds  
<https://www.sebi.gov.in/legal/circulars/feb-2021/setting-up-of-limited-purpose-clearing-corporation-lpcc-by-asset-management-companies-amcs-of-mutual-funds-48982.html>

### 1. LIC IPO: Up to 10% of issue size to be reserved for policyholders.

The LIC Amendment Act has been made part of the Finance Bill, thereby bringing the required legislative amendment for launching IPO of the country's largest life insurer. Up to 10% of the LIC IPO issue size would be reserved for policyholders, Minister of State for Finance Anurag Thakur said. In her Budget Speech 2021, Finance Minister Nirmala Sitharaman said the initial public offering (IPO) of Life Insurance Corporation (LIC) would be launched in the next financial year, beginning April 1.

### 2. Several big businesses are in fray for setting up NUE.

The Reserve Bank of India (RBI) came up with a framework for the pan-India umbrella entity for retail payments back in August 2020, wherein the central bank said that an entity must have a minimum paid-up capital of Rs 500 crore. The RBI notification said that the objective of the framework is to set up pan-India umbrella entity or entities focusing on retail payment systems. "Such entity shall be a Company incorporated in India under the Companies Act, 2013 and may be a 'for-profit' or a Section 8 Company as may be decided by it," it said.

### 3. SEBI widens scope of key personnel at AMCs.

Investment and redemptions by key personnel are monitored by SEBI, investors SEBI has modified the term of 'Key Managerial Personnel' of asset management company to Key Personnel in order to widen the scope of scrutiny by covering more officials who are not in managerial position. In a revised norms announced on Thursday, SEBI extended the Key Personnel list by including CEO, CIO, Chief Risk Officer, Chief Information Security Officer, Chief Operation Officer, Fund Managers, Compliance Officer, Sales Head, Investor Relation Officers, heads of other departments, dealers of the AMC and other persons as deemed fit and identified by AMC and Trustees.

## 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.

### Issue

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?

### Judgement

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.

### Fact 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 <sup>th</sup> Edition Of ICSI MYSURU CHAPTER.	<a href="https://drive.google.com/file/d/1kU07rAVu9mUl_MWNRwoc7Llmw2oKIYyV/view">https://drive.google.com/file/d/1kU07rAVu9mUl_MWNRwoc7Llmw2oKIYyV/view</a>

Should you wish to write to us with your valuable feedback or seek any inputs from us, you are welcome at [bodha@jsa-cs.com](mailto:bodha@jsa-cs.com).

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