



JAYA SHARMA & ASSOCIATES

# NEWSLETTER

JUNE 2021

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## MCA AND RBI UPDATES

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|---|--------------|--|---|
| <a href="http://www.mca.gov.in">www.mca.gov.in</a>            | May 03, 2021 | Relaxation on levy of additional fees in filing of certain Forms under the Companies Act, 2013 and LLP Act, 2008 | <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf</a>             |
| <a href="http://www.mca.gov.in">www.mca.gov.in</a>            | May 03, 2021 | Gap between two board meetings under section 173 of the Companies Act, 2013                                      | <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf</a>             |
| <a href="http://www.mca.gov.in">www.mca.gov.in</a>            | May 13, 2021 | List of forms providing waiver of additional fee as per Circular no. 06/2021 and 07/2021                         | <a href="http://www.mca.gov.in/Ministry/pdf/FeeWaiver_13052021.pdf">http://www.mca.gov.in/Ministry/pdf/FeeWaiver_13052021.pdf</a>                               |
| <a href="http://www.mca.gov.in">www.mca.gov.in</a>            | May 20, 2021 | Clarification on offsetting the excess CSR spent for FY 2019-20  | <a href="http://www.mca.gov.in/Ministry/pdf/Circular_20052021.pdf">http://www.mca.gov.in/Ministry/pdf/Circular_20052021.pdf</a>                                 |
| <a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a> | May 05, 2021 | Credit to MSME Entrepreneurs   | <a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12084&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12084&amp;Mode=0</a> |
| <a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a> | May 05, 2021 | Relaxation in OD facility for States Governments/UTs   | <a href="https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51529">https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51529</a>       |
| <a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a> | May 21, 2021 | Relaxation in timeline for compliance with various payment system requirements                                   | <a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12095&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12095&amp;Mode=0</a> |

1. May 03, 2021- SEBI eases timelines for compliance with regulatory requirements by debenture trustees  
<https://www.livemint.com/mutual-fund/mf-news/sebi-eases-timelines-for-compliance-with-regulatory-requirements-by-debenture-trustees-11620052521534.html>
2. May 05, 2021- SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/226878.pdf>
3. May 05, 2021- SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/226884.pdf>
4. May 12, 2021- Procedure for seeking prior approval for change in control of SEBI registered Portfolio Managers.  
[https://www.sebi.gov.in/legal/circulars/may-2021/procedure-for-seeking-prior-approval-for-change-in-control-of-sebi-registered-portfolio-managers\\_50116.html](https://www.sebi.gov.in/legal/circulars/may-2021/procedure-for-seeking-prior-approval-for-change-in-control-of-sebi-registered-portfolio-managers_50116.html)
5. May 14, 2021- Relaxation from compliance to REITs and InvITs due to the CoVID -19 virus pandemic  
[https://www.sebi.gov.in/legal/circulars/may-2021/relaxation-from-compliance-to-reits-and-invits-due-to-the-covid-19-virus-pandemic\\_50127.html](https://www.sebi.gov.in/legal/circulars/may-2021/relaxation-from-compliance-to-reits-and-invits-due-to-the-covid-19-virus-pandemic_50127.html)
6. May 21, 2021- Enhancement of overall limit for overseas investment by Alternative Investment Funds (AIFs)/Venture Capital Funds (VCFs)  
[https://www.sebi.gov.in/legal/circulars/may-2021/enhancement-of-overall-limit-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-\\_50219.html](https://www.sebi.gov.in/legal/circulars/may-2021/enhancement-of-overall-limit-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-_50219.html)

### **1. KFC, Pizza Hut Franchisee Seeks SEBI's Nod for IPO.**

The operator of Pizza Hut and KFC in India has sought the market regulator's approval to go public. Devyani International Ltd. will offer fresh equity shares worth up to Rs 400 crore and an offer-for-sale of 12.5 crore equity shares by Dunearn Investments (Mauritius) Pte. Ltd.—an arm of private equity firm Temasek and its promoter RJ Corp Ltd. in its initial public offering, according to a draft red herring prospectus.

### **2. Crypto exchanges say SEBI or a new entity, not RBI, should regulate the sector.**

Exchanges have reasoned that cryptocurrency assets are closer to commodities than currencies, Cryptocurrency exchanges have communicated to the government that market regulator Securities and Exchange Board of India (SEBI) is more suited to regulate the space than the Reserve Bank of India (RBI).

### **3. SEBI proposes segregation and monitoring of collateral at client level**

The Securities and Exchange Board of India (SEBI) has proposed segregation and monitoring of collateral at client level to ensure protection of investors' collateral. This would help ensure utilization of a client's collateral towards the margins of that client only. Also, in case of default by a trading or clearing member such readily available collateral information will also help ensure expeditious return of collateral to each non-defaulting client after adjustment of any dues of the respective clients.

### **4. SEBI proposes merger of debt securities rules into single one.**

To ease compliance burden on listed entities, SEBI proposed merger of listing rules pertaining to debt securities and non-convertible redeemable preference shares into a single regulation.

## CASE STUDY -1

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| May 01, 2021 | Regional Provident Fund Commissioner vs. Vandana Garg and Others | Supreme Court in Civil Appeal Nos.4230-4234 OF 2020 Justice R. FNariman |
|--------------|--|---|

### Brief facts:

The Corporate Debtor defaulted in payment of dues/damages/interest, including employees share of contributions, since April 2014, which were deducted from their wages. The total EPF dues up to the date are to the tune of ₹ 2,84,69,797/-. The Adjudicating Authority had initiated CIR Process and the Interim Resolution Professional ('IRP') issued a public announcement inviting claims pending. The Appellant submitted its claims in Form 'F', as suggested by the IRP vide his letter dated December 31, 2018. The claim Form 'F' was forwarded to the Resolution Professional and an email was sent that asked the Appellant to submit its claim and the supporting documents in Form 'B' again. In response to that, the Appellant submitted the claim in Form 'B'. After that, Respondent has informed that the claim in form 'B' for the period from April 2014 to October 2017 amounting to ₹ 1,95,01,301/- is admitted to be paid when the prospective bidder takes over the Corporate Debtor. The RP further communicated that the PF dues from May 2017 to April 2019 of the Corporate Debtor had been admitted. As per the due settlement, as forwarded by the Resolution Professional, the Corporate Debtor had to remit the total of ₹ 75,14,594/- from November 2017 to April 2019. However, out of these dues of ₹ 75,14,594/-, only dues amounting to ₹ 9,48,183/- was admitted. The Appellant, sought clarification from the RP regarding the amount payable to the Appellant. Then the RP responded that the claim already admitted would be settled as per the Resolution Plan. The Appellant contends that waving off the Provident Fund dues is not only the violation of Section 11 of the Employees Provident Fund Act (EPF Act), which lays down the priority of charge of Provident Fund dues but also a violation of Section 36 (4) (a) (iii) and Section 30 (2) (e) of The Insolvency and Bankruptcy Code 2016 which lays down that the Provident Fund dues are outside Liquidation Estate

### Judgement:

It is necessary to mention that the question of applicability of Section 36 (4) (a) (iii) of the Insolvency and Bankruptcy Code 2016 arises at the stage of the formation of Liquidation Estate by the Liquidator. Since the Corporate Debtor has not gone into Liquidation and is currently under Insolvency Resolution, Section 36 of the I&B Code cannot be applied. Moreover, no fund could be excluded from the Liquidation Estate in terms of Section 36 (4) (a)(iii) of the I & B Code 2016.

A successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted. (Supreme Court Judgement: Essar Steel India Ltd). Much higher than the amount claimed by the Appellant in its claim before the Resolution Professional and the same was not justified. The approved Resolution Plan is binding on the Corporate Debtor, Stakeholders, including the statutory authorities, to whom the Corporate Debtor owes any debt (Section 31 of the IBC). The legislative intent behind is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise. On the approval of the Resolution Plan by the Adjudicating Authority, all such claims that are not a part of the Resolution Plan shall stand extinguished. No person will be entitled to initiate continuing any proceedings regarding a claim that is not part of the Resolution Plan. The Appeal is dismissed – no order as to costs.

## CASE STUDY -2

27.05.2021 | Vijay Sai Poultries Pvt. Ltd. (Appellant) vs. Vemulapalli Sai Prameela & Ors. (Respondents)

National Company Law Appellant Tribunal

### **Brief facts:**

The Appellant 'Vijaya Sai Poultries Pvt. Ltd.' has filed this Appeal against the order dated September 16, 2019 passed by the NCLT, Amaravati Bench, whereby the Adjudicating Authority allowed the application filed by Petitioners (Respondents herein) and directed that forensic audit be conducted of the Appellant company since March 31, 2004. Petitioners (Respondents herein) have filed Petition under Sections 59, 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement against the Managing Director of the Company. It was alleged that he has been operating the finances of the Appellant Company in an arbitrary and whimsical manner and has siphoned off Crores of Rupees belonging to the Appellant Company without accounting for the same. The Appellant submitted that there is no prima facie finding of oppression or mismanagement as required under Section 242 (4) and 241/242 of the Companies Act, 2013. The Impugned Order is without reasoning or finding of fact and in fact, contains a one-line order directing that forensic audit be conducted. It is settled law that there must be a recording of reasons in the order in support of conclusion arrived at. The giving of reasons in support of their conclusions by the judicial or quasi-judicial authority is essential to prevent unfairness or arbitrariness in reaching the conclusions. For this proposition, Appellant relied on the judgments rendered by the Hon'ble Supreme Court in the matters of Karanti Associates Pvt. Ltd. & Ors. Vs. Masood Ahmad Khan & Ors. It was further submitted that the application has been filed under Rule 131 of NCLT Rules 2016 which relates to production of documents and form of summons. An order of directing that a forensic audit to be conducted could not have been passed in such an application.

### **Judgement:**

The NCLAT based on the principles laid down by the Hon'ble Supreme Court in the Case of Kranti Associates (Supra) has observed that, in India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. A quasi-judicial authority must record reasons in support of its conclusions. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. In light of the principles laid down by the Hon'ble Supreme Court, it is held that there is nothing in the order to justify the directions given by the NCLT for conducting forensic audit of accounts of the Company that too for more than 15 years. The Adjudicating Authority must record reasons in support of conclusions. Hence, the impugned order is set aside.

**LIST OF JSA ARTICLES PUBLISHED:**

| Serial No. | Name of Article  | Link   |
|------------|--|--|
| 1.         | Central Scrutiny Cell: A torch bearer for enhanced corporate governance<br><br>This Article has been authored by Mehul Solanki, Devyani Bhati and Saurabh Vaze and the same is published on Taxguru.     | <a href="#">Central Scrutiny Cell: A torch bearer for enhanced Corporate Governance (taxguru.in)</a> |
| 2.         | CSR Amendments- A Journey from Recommendatory to Mandatory<br><br>This Article has been authored by Mehul Solanki, Ayush Maheshwari and Menakshi Bajaj and the same is published on Compliance Calendar. | <a href="#">Blogs   Compliance Calendar LLP</a>  |

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