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JAYA SHARMA & ASSOCIATES

NEWSLETTER

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MCA AND RBI UPDATES

www.mca.gov.in	June 09, 2021	Companies (Incorporation) 4 th Amendment Rules 2021	https://www.mca.gov.in/bin/dms/getdocument?mds=sbRk0d1avtQVOZrw%252BKS2GA%253D%253D&type=open
www.mca.gov.in	June 18, 2021	Companies (Indian Accounting Standards) Amendment Rules, 2021	https://www.mca.gov.in/bin/dms/getdocument?mds=ItGlPzL9Zdszuby4p%252Bvmbw%253D%253D&type=open
www.mca.gov.in	June 30, 2021	Relaxation of time for filing of forms related to creation or modification of charges under the companies act 2013	https://www.mca.gov.in/bin/dms/getdocument?mds=vqTLu4GNC8MKujYEiUpIEg%253D%253D&type=open
www.mca.gov.in	June 30, 2021	Relaxation on levy of additional fees in filing of certain forms under the companies act 2013 and LLP act 2008	https://www.mca.gov.in/bin/dms/getdocument?mds=oNI%252BU4n7x%252FntbDPEaxYULO%253D%253D&type=open
https://www.rbi.org.in/	June 14, 2021	Investment in Entities from FATF Non-compliant Jurisdictions	https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12114&Mode=0
https://www.rbi.org.in/	June 23, 2021	Gold (Metal) Loans – Repayment	https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12117&Mode=0
https://www.rbi.org.in/	June 25, 2021	New Definition of Micro, Small and Medium Enterprises	https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12122&Mode=0

1. June 02, 2021: Streamlining the process of IPOs with UPI in ASBA and redressal of investors grievances
https://www.sebi.gov.in/legal/circulars/jun-2021/streamlining-the-process-of-ipos-with-upi-in-asba-and-redressal-of-investors-grievances_50401.html
2. June 03, 2021: Circular on Enhancement of Overseas Investment Limits
https://www.sebi.gov.in/legal/circulars/jun-2021/circular-on-enhancement-of-overseas-investment-limits_50415.html
3. June 14, 2021: Relaxation from the requirement of minimum vesting period in case of death of employee(s) under SEBI (Share Based Employee Benefit) Regulations, 2014
https://www.sebi.gov.in/legal/circulars/jun-2021/relaxation-from-the-requirement-of-minimum-vesting-period-in-case-of-death-of-employee-s-under-sebi-share-based-employee-benefit-regulations-2014_50545.html
4. June 16, 2021: Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 - System Driven Disclosures for inclusion of listed Debt Securities
https://www.sebi.gov.in/legal/circulars/jun-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-for-inclusion-of-listed-debt-securities_50572.html
5. June 18, 2021: Norms for investment and disclosure by Mutual Funds in Derivatives
https://www.sebi.gov.in/legal/circulars/jun-2021/norms-for-investment-and-diclosure-by-mutual-funds-in-derivatives_50612.html
6. June 25, 2021: Circular on Amendment to SEBI (Alternative Investment Funds) Regulations,
https://www.sebi.gov.in/legal/circulars/jun-2021/circular-on-amendment-to-sebi-alternative-investment-funds-regulations-2012_50694.html

1. Govt eases listing norms for companies having over `1 lakh cr m-cap.

Companies that have a market capitalisation of more than `1 lakh crore at the time of listing can now sell just five per cent of their shares, with the latest amendment in rules, a move that will be beneficial for the government during the proposed initial public offer of LIC. Such entities will be required to increase its public shareholding to 10 per cent in two years and raise the same to at least 25 per cent within five years. The Department of Economic Affairs under the finance ministry has amended the Securities Contracts (Regulation) Rules.

2. SEBI bars Franklin Templeton from launching new debt schemes for 2 yrs, fines ₹5 cr.

SEBI has barred Franklin Templeton Asset Management (India) from launching new debt schemes for two years. In an order on Monday, the market watchdog also imposed a ₹5 crore penalty on the asset management company, which is to be paid within 45 days. The fund house has been ordered to refund the investment management and advisory fees collected from June 4, 2018, till April 23, 2020, with respect to the six wound-up debt schemes along with simple interest at the rate of 12 per annum. The amount, which stands at over ₹512 crore, is to be paid within 21 days from today and will be utilised towards repaying unitholders.

3. SEBI tightens norms on independent directors.

In order to give more power to non-promoting shareholders in the Company, market Regulator SEBI has said that with effect from January 2022 Two thirds of the nomination and remuneration committee shall comprise of Independent Directors.

CASE STUDY -1

May 01,
2021

Zacharia Maramkandathil Mohan and Ors. vs. Union of India

Supreme Court in Civil Appeal Nos.4230-4234 OF
2020 Justice R. FNariman

Brief facts:

More than 200 petitions were filed challenging the Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013 and the disqualification thrust upon the petitioners for acting as Directors of Companies, pursuant to Sections 164 and 167. The petitioners are persons who are disqualified pursuant to Section 164(2) for failure of their respective Companies to file Financial Statements/Annual Returns

Several important questions of law were raised, including:

- Whether Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013 are ultra vires the Constitution of India, being violative of Article 14 or 19?
- Whether the principles of natural justice should be read into Section 164(2) in view of the nature and severity of consequences arising from its operation?
- Whether Section 164(2) is retrospective in its operation?
- Constitutionality and consequences of the first proviso to Section 164(2) and the proviso to Section 167(1)(a), inserted by the Companies (Amendment) Act, 2017 with effect from May 07, 2018
- Whether the action of the respondents in deactivating the DINs of the petitioners, is justified?

Judgement:

The Kerala High Court ruled that Section 164(2) and Section 167(1) of the Companies Act, 2013 are not ultra vires Article 14 or Article 19(1)(g) of the Constitution of India. Further, Section 164(2) is not retrospective in operation and only the defaults made by Companies in filing Financial Statements / Annual Returns in the financial year 2014-15 and subsequent financial years can be taken into account for disqualifying a Director under Section 164(2) of the Companies Act, 2013. Furthermore, it was held that The Director Identification Numbers (DINs) of the petitioners allotted under Rule 10 of the Companies (Appointments and Qualifications of Directors) Rules, 2014, are not liable to be deactivated or cancelled solely for the reason that the petitioners stand disqualified for appointment / reappointment as Directors of Companies by operation of Section 164(2). Consequently, there will be a direction to the respondents to re-activate the Director Identification Numbers (DINs) of the petitioners forthwith. However, it is made clear that the respondents will be at liberty to cancel or deactivate the DINs of the petitioners for any reasons laid down in Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules.

CASE STUDY -2

27.05.2021 | SREI Equipment Finance Limited (Appellant) vs Rajeev Anand(Respondent)

National Company Law Appellant Tribunal

Brief facts:

Appellant-financial creditor had granted two loans to the respondent corporate debtor and later on restructured the loans. As the corporate debtor was in default an application under section 7 of the IBC was filed. NCLT admitted the application but on appeal NCLAT dismissed the application. Against this dismissal the appellant is before the Supreme Court.

Judgement:

A bare reading of the NCLT order shows that it is only after a perusal of the documents, pleadings, and the supplementary affidavit of 03.08.2018, including the counter affidavit in the earlier section 7 application, that the NCLT came to the conclusion that a loan amount remained outstanding. The NCLAT, when it dealt with the NCLT order, wrongly recorded that documents which were already rejected by the adjudicating authority could not have been the basis of the order of admission. The NCLAT also wrongly recorded that there was no further evidence in support of the fact that any amount was outstanding. Further, the NCLAT also held that a 'document' filed in the earlier petition that was dismissed as withdrawn could not have been relied upon by the adjudicating authority. The NCLAT is wrong on all these counts. As has been stated earlier, documents evidencing an outstanding loan amount were produced; a supplementary affidavit dated 03.08.2018 was also relied upon; and the admission made in the counter affidavit that was made in the first round of litigation, can by no means be described as a 'document' in an earlier petition that could not be relied upon. The 'document' was not a pleading by the appellant – it was a counter affidavit by the corporate debtor in which a clear admission of the debt being outstanding was made.

For all these reasons, we set aside the NCLAT order and restore that of the NCLT. The resolution proceedings will continue from the stage at which they were interrupted.

LIST OF JSA ARTICLES PUBLISHED:

Serial No.	Name of Article	Link
1.	Abridged SEBI Norms for Start-ups Listing by Mehul Solanki and Ishita Samani. This Article has been authored by Mehul Solanki and Ishita Samani and the same is published on Compliance Calendar.	https://bit.ly/2SJa3im
2.	REIT- Affordable Way of Real Estate Investing This Article has been authored by Mehul Solanki and the same is published on Compliance Calendar	https://bit.ly/3hfh8ka
3.	Eye opening Contribution of Section 464 of the Companies Act, 2013. This Article has been authored by Mehul Solanki., Ayush Maheshwari and Menakshi Bajaj and the same is published on Taxmann	https://bit.ly/367VeJ9
4.	Legal implications of Informal Guidance. This Article has been authored by Mehul Solanki, Devyani Bhati and Saurabh Vaze and the same is published on Taxguru.	https://bit.ly/3prKZZj

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