



JSA

JAYA SHARMA & ASSOCIATES

NEWSLETTER

AUGUST 2021

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MCA AND RBI UPDATES

www.mca.gov.in	July 07, 2021	Government brings Department of Public Enterprises under Finance Ministry	https://economictimes.indiatimes.com/news/economy/policy/govt-brings-dept-of-public-enterprises-under-finance-ministry/articleshow/84196995.cms
www.mca.gov.in	July 19, 2021	36,191 new Companies incorporated from April to June 2021, an increase of 17,223 new Companies	https://www.pib.gov.in/PressReleasePage.aspx?PRID=1736934
www.mca.gov.in	July 22, 2021	The MCA notified the commencement date for Section 4 of the Companies (Amendment) Act, 2020	https://www.egazette.nic.in/WriteReadData/2021/228417.pdf
www.mca.gov.in	July 22, 2021	The Companies (Incorporation) Fifth Amendment Rules, 2021 (July 22, 2021)	https://www.egazette.nic.in/WriteReadData/2021/228419.pdf
https://www.rbi.org.in/	July 08, 2021	Cessation of LIBOR: Transition arrangements	https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51870
https://www.rbi.org.in/	July 14, 2021	Issue and Regulation of share capital and securities - Primary (Urban) Cooperative Banks - Draft circular for comments	https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51893
https://www.rbi.org.in/	July 23, 2021	Loans and Advances – Regulatory Restrictions	https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12132&Mode=0

1. July 01, 2021: Consultation Paper on Review of certain provisions related to Superior Voting Rights Shares Framework.
https://www.sebi.gov.in/reports-and-statistics/reports/jul-2021/consultation-paper-on-review-of-certain-provisions-related-to-superior-voting-rights-shares-framework_50843.html
2. July 05, 2021: Issue of No Objection Certificate for release of 1% of Issue Amount.
https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jul-2021/1625479657397.pdf#page=1&zoom=page-width,-15,850
3. July 06, 2021: Standard Operating Procedure for listed subsidiary company desirous of getting delisted through a Scheme of Arrangement wherein the listed parent holding.
<https://www.sebi.gov.in/legal/circulars/jul-2021/standard-operating-procedure-for-listed-subsiary-company-desirous-of-getting-delisted-through-a-scheme-of-arrangement-wherein-the-listed-parent-holding-company-and-the-listed-subsiary-are-in-the-s-50926.html>
4. July 12, 2021: Paytm Money allows applications before IPO opens, begins with Zomato
<https://www.moneycontrol.com/news/business/startup/paytm-launches-pre-ipo-feature-begins-with-zomato-7157701.html>
5. July 19, 2021: Consultation Paper for introduction of Swing Pricing.
https://www.sebi.gov.in/reports-and-statistics/reports/jul-2021/consultation-paper-for-introduction-of-swing-pricing_51234.html

1. Paytm gets shareholders' nod to raise Rs. 12,000 crore, founder Vijay Shekhar Sharma to be declassified as promoter

One97 Communications, the parent company of fintech major Paytm on July 12 received approval from its shareholders at an extraordinary general meeting to raise Rs. 12,000 crore through a fresh issue of shares, paving way for one of India's largest initial public offerings (IPO) in recent times. The issue will also have a secondary, where existing shareholders will sell their shares. This will bring the total amount to Rs. 16,600 crore.

2. Investment advisors cannot take power of attorney from clients: SEBI

In a letter issued to Waterfield Advisors, a SEBI Registered Investment Advisory firm catering to high networth individuals, SEBI provided guidance rejecting the ability of investment advisors to take a Power of Attorney (PoA) from clients. Under SEBI rules, investment advisors can provide implementation services but cannot charge for them. Waterfield had asked whether a PoA can be part of such implementation services.

3. Exchanges announce host of safeguards for investors in cos under IBC

SEBI and stock exchanges have announced further safeguards to protect small investors and curb price manipulation in shares of companies under insolvency resolution process. The National Stock Exchange (NSE) and BSE said they have initiated several steps to curtail information asymmetry and confusion in the market when it comes to listed companies undergoing Corporate Insolvency Resolution Process (CIRP) as per the Insolvency and Bankruptcy Code (IBC).

July 2021	13,	In re Emerald Court Co-operative Housing Society Limited
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GST AAR Maharashtra

GST is applicable on Co-operative Housing Society (CHS) maintenance charges if Members' monthly contribution exceeds Rs.7500**Brief facts:**

The applicant, Emerald Court Co-op Housing Society Ltd. is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security, cleaning, repairs, water, common electricity, etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc. Presently, the CHS is raising monthly bills on its members which consist of 2 parts, one is the property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged. The applicant had sought the advance ruling on the issue of chargeability of GST on such transactions since there could be no sale by the Co-operative Housing Societies to their own permanent members, for the doctrine of mutuality would come into play.

Judgement:

The Maharashtra Authority of Advance Ruling (AAR) ruled that housing societies should pay Goods and Services Tax (GST) on Maintenance Charges if Members' monthly contribution exceeds Rs.7,500. The AAR took in to consideration a retrospective amendment dating back to July 01, 2017, made by the Finance Act, 2021 whereby a CHS and its members are treated as 'distinct entities.' According to a government circular, a CHS has to levy and collect GST at 18% on the maintenance charges, if these exceed Rs. 7,500 per month per member. However, it should be noted that smaller societies with an annual turnover of Rs. 20 lakh or less do not have to register and consequently do not have to comply with GST obligations.

CASE STUDY -2

June 28,
2021

In the matter of Mohit Agro Commodities Processing Pvt. Ltd. & Ors

National Company Law Appellant Tribunal

When the 'Transferor and Transferee Company' involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders and Creditors can be dispensed with.

Brief facts:

The Appellant Company ('Transferor Company' and 'Transferee Company') filed Applications under Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 seeking dispensation of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors in respect of the scheme of Amalgamation of the 'Transferor Company' with the 'Transferee Company'. It is contended that there is no change in the capital structure of the 'Transferor Company' till the date of approval of the schemes by the Board of Directors. It is further stated that the 'Transferor Company' is a Wholly Owned Subsidiary of the 'Transferee Company' and that both the Companies are incorporated in similar type of nature of activities and that the 'Transferee Company' had acquired the 'Transferor Company' as a business supportive mechanism for ease of operations.

Judgement:

The NCLAT has observed that Section 232(1) of the Companies Act, 2013 uses the word 'may' which introduces an element of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. Section 232 is a specific provision carved out by the Legislature when both conditions maintained in clauses (a) and (b) of sub-Section (1) of Section 232 are met.

Therefore, in the instant case it is held that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Hence, when the 'Transferor and Transferee Company' involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured and Unsecured Creditors can be dispensed with.

LIST OF JSA ARTICLES PUBLISHED:

Serial No.	Name of Article	Link
1.	Unravelling Section 450 of the Companies Act 2013 This Article has been authored by Mehul Solanki, Devyani Bhati and Saurabh Vaze and the same is published in Compliance Calendar	https://bit.ly/3i11Hfl
2.	Listing of Corporate Debts This Article has been authored by Mehul Solanki, and the same is published in Compliance Calendar	https://bit.ly/3zLFjx8
3.	Resolution- A vital concept This Article has been authored by Mehul Solanki, Aayush Maheshwari and Menakshi Bajaj and the same is published in Tax Guru	https://bit.ly/3f5AFC4

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.

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