



# JSA

JAYA SHARMA & ASSOCIATES

## NEWSLETTER

SEPTEMBER 2021

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## MCA AND RBI UPDATES

<a href="http://www.mca.gov.in">www.mca.gov.in</a>	August 03, 2021	Important Decisions taken by the Council of the ICSI at its 278th Meeting held on July 26, 2021	<a href="https://www.icsi.edu/media/webmodules/List_Important_Decisions_278th_Council_Meeting_26_07_2021.pdf">https://www.icsi.edu/media/webmodules/List_Important_Decisions_278th_Council_Meeting_26_07_2021.pdf</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	August 04, 2021	Rajya Sabha passed the Limited Liability Partnership (Amendment) Bill, 2021	<a href="http://164.100.47.4/BillsTexts/RBillTexts/Asintroduced/LLP%20as%20int-E.pdf">http://164.100.47.4/BillsTexts/RBillTexts/Asintroduced/LLP%20as%20int-E.pdf</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	August 05, 2021	The Companies (Specification of definitions details) Third Amendment Rules, 2021	<a href="https://www.mca.gov.in/bin/dms/getdocument?mds=BW%252BhMYuS7OEaivjpQALEqw%253D%253D&amp;type=open">https://www.mca.gov.in/bin/dms/getdocument?mds=BW%252BhMYuS7OEaivjpQALEqw%253D%253D&amp;type=open</a>
<a href="http://www.mca.gov.in">www.mca.gov.in</a>	August 05, 2021	Notification under Section 393A of the Companies Act, 2013	<a href="https://www.mca.gov.in/bin/dms/getdocument?mds=o23jWYkDh8z2%252FHp9wmxBtQ%253D%253D&amp;type=open">https://www.mca.gov.in/bin/dms/getdocument?mds=o23jWYkDh8z2%252FHp9wmxBtQ%253D%253D&amp;type=open</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	August 11, 2021	Global banks unwind lucrative India trades after RBI warning	<a href="https://economictimes.indiatimes.com/industry/banking/finance/banking/global-banks-unwind-lucrative-india-trades-after-rbi-warning/articleshow/85231986.cms">https://economictimes.indiatimes.com/industry/banking/finance/banking/global-banks-unwind-lucrative-india-trades-after-rbi-warning/articleshow/85231986.cms</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	August 16, 2021	Directions under Section 35A read with Section 56 of the Banking Regulation Act, 1949– Mantha Urban Co-operative Bank Limited, Mantha, District: Jalna, Maharashtra - Extension of period	<a href="https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52065">https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52065</a>
<a href="https://www.rbi.org.in/">https://www.rbi.org.in/</a>	August 18, 2021	RBI issues new guidelines for locker in banks	<a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12146&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12146&amp;Mode=0</a>

1. August 03, 2021: SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/228705.pdf>
2. August 03, 2021: SEBI (Credit Rating Agencies) (Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/228699.pdf>
3. August 03, 2021: SEBI (Portfolio Managers) (Third Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/228701.pdf>
4. August 13, 2021: SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021  
<https://egazette.nic.in/WriteReadData/2021/228972.pdf>
5. August 16, 2021 : SEBI issues Directions to NCDEX regarding trading in Chana  
[https://www.sebi.gov.in/media/press-releases/aug-2021/sebi-issues-directions-to-ncdex-regarding-trading-in-chana\\_51857.html](https://www.sebi.gov.in/media/press-releases/aug-2021/sebi-issues-directions-to-ncdex-regarding-trading-in-chana_51857.html)

### **1. Requirement of minimum number and holding of unit holders for unlisted Infrastructure Investment Trusts (InvITs)**

SEBI vide its notification dated July 30, 2021, amended the provisions of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) to provide the requirement of minimum number of unit holders in an InvIT. SEBI vide this circular has provided that the registered unlisted InvITs which have already issued units as on the date of this circular, shall comply with the new provisions for the minimum number of unit holders in an InvIT within a period of six months from the date of this circular.

### **2. NSE IFSC to introduce trading in US Stocks**

NSE International Exchange (NSE IFSC), a wholly owned subsidiary of the National Stock Exchange of India Ltd (NSE), has announced that trading in select US Stocks will soon be facilitated through the NSE IFSC platform. The offering will be in the form of unsponsored depository receipts. IFSCA has facilitated the same under the Regulatory Sandbox. The entire trading, clearing, settlement and holding of US Stocks will be under the regulatory structure of IFSC Authority. This initiative is a first of its kind at IFSC where Indian retail investors will be able to transact on the NSE IFSC platform under the Liberalized Remittance Scheme (LRS) limits prescribed by the Reserve Bank of India (RBI).

### **3. SEBI bans 15 entities in ZEE Ltd insider trading case; impounds Rs 24 crore**

SEBI on Thursday barred 15 entities, including individuals, from the capital markets for indulging in insider trading in the scrip of Zee Entertainment Enterprises Ltd (ZEEL). Also, the capital markets regulator impounded ill-gotten gains to the tune of Rs 23.84 crore from certain entities, according to an interim order. The SEBI found that a group of connected or related entities have taken long position in the scrip of ZEEL in the cash and derivatives segments. Following the announcement of first quarter results of FY 2020, the entities have squared off the long positions and generated huge profits. SEBI also restrained all the 15 entities from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further order.

02.08.2021	Commissioner of Income Tax (Exemption) vs. Batanagar Education and Research Trust	Supreme Court
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**Entity which misuses Status under Section 12AA Income Tax Act, 1961 not entitled to retain it****Fact of the case:**

The Trust was registered under Section 12AA of the Income Tax Act, 1961 (the Act) and was also accorded approval under Section 80G (vi) of the Act. In a survey conducted on an entity, it was prima facie observed that the Trust was not carrying out its activities in accordance with the objects of the Trust. A show cause notice was, therefore, issued by the CIT. The CIT (Exemption) cancelled registration of the Trust on the ground that the Trust had received bogus donation from School of Human Genetics and Population Health. The Income Tax Appellate Tribunal dismissed the appeals filed by the Trust. The Calcutta High Court allowed the appeal filed by the Trust and set aside the cancellation order.

**Judgement:**

In appeal, the bench comprising Justice Uday Umesh Lalit and Ajay Rastogi noted that the answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under Section 12AA of the Act.

"These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under Sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by Section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under Sections 12AA and 80G of the Act", the Court said.

## 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.	<a href="https://bit.ly/3i11HfI">https://bit.ly/3i11HfI</a>
2.	Listing of Corporate Debts.  This Article has been authored by Mehul Solanki, and the same is published in Compliance Calendar	<a href="https://bit.ly/3zLFjx8">https://bit.ly/3zLFjx8</a>
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	<a href="https://bit.ly/3f5AFC4">https://bit.ly/3f5AFC4</a>

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

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