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Reshaping Investor Grievance Redressal: A detailed Analysis.

Background

Securities & Exchange Board of India [SEBI] revolutionized the manner of resolving investor grievances with the introduction of SEBI Complaints Redress System [SCORES].

Over the years since the introduction of SCORES, SEBI has been proactive in revamping the SCORES platform and the manner in which investor grievances are resolved in the securities market.

Since the date on which SCORES was launched it has been observed that SEBI has made timely changes with periodic reviews and has accordingly made the SCORES portal more efficient.

SEBI vide its master circular dt: November 7, 2022 ['Master Circular'] combined all previous circulars issued by SEBI with regards to investor grievances and this Master Circular now provides for all SEBI circulars relating to investor grievance at one place.

Introduction

SEBI issued circular no. SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023 ['September 2023 Circular'] which has revamped grievance redressal mechanism through SCORES. Vide this September 2023 Circular SEBI has rescinded the relevant part of the Master Circular which **shall be effective from 4th December 2023.**

September 2023 Circular introduces a significant shift in the process of resolving investor grievances by offering investors two levels of review. Under September 2023 Circular, complaint lodged on SCORES will be automatically forwarded to the concerned entity and if required to the designated body thereby providing a two level of review system for the investors.

SEBI has in its Board Meeting Note dt: June 28, 2023, highlighting the need for revamping grievance redressal mechanism, has stated that under the existing SCORES grievance mechanism SEBI looks at the redressal provided by the entity and disposes the complaint with reasoned remarks. Due to the same, the impression that has been created is that the onus to resolve grievances is on SEBI. However, it is to be noted that onus of redressing the grievances is squarely the responsibility of concerned entities as the principal relationship of the investor is with entity directly. SEBI further highlighted that investor charters puts the onus to redress the investor grievances on concerned regulated entities. SEBI further stated that based on study of complaints handled by SEBI during last 3 financial years, SEBI has sought clarification in approximately 14 percent of ATRs received from entities. Therefore, 86% of ATRs of entities/Exchanges/Depositories are directly being communicated to the investors without need for SEBI to intervene. Further, Investors are broadly satisfied with the ATRs of entities as investors preferred review against closure of complaints in 5% of cases only[1]. Hence in order to Redesign SCORES as a platform for the investors to seek timely redressal of their grievances from entities directly and for the investors who are dissatisfied with the redressal provided by entities, an opportunity for two levels of review be given even before option to opt for the ODR mechanism a consultation paper dt: May 19,2023 was floated for public comments. This consultation paper along with its public comments received on it was discussed in SEBI Board Meeting dt: June 28, 2023 and the proposal for revamping SCORES mechanism was approved.

[1] https://www.sebi.gov.in/sebi_data/meetingfiles/jul-2023/1688556982069_1.pdf

This article aims to dissect the key features outlined in the 20th September, 2023 SEBI circular shedding light on the enhanced mechanisms in the process of redressing Investor grievances.

Features and actionable arising out September 2023 Circular

1. **Auto routing and auto escalation:** As per Point no. 1.3 of September 2023 Circular complaint filed on SCORES portal would be automatically routed to the concerned entity and to the concerned Designated Body. Once the concerned entity resolves the complaint, action taken report along with the grievance would be automatically forwarded to complainant. Further under the revamped process now the copy of the complaint and the reply given by the concerned entity i.e. action taken report shall be forwarded to the Designated Bodies. With this auto routing facility now entities would now be relieved from the hassles of periodically checking SCORES portal. Instead, now the complaint would be received on the registered mail id of the concerned entity. SEBI has also asked.

   Auto escalation: As per September 2023 Circular if the complaint is not resolved within the time stipulated or if it is resolved by concerned entity but complainant is not satisfied with the grievance then after a stipulated period of time the complaint will either be escalated or closed. E.g., in case of a complaint made against a listed entity is not resolved within a period of 21 days or if it is resolved within 21 days but it is submitted for review after redressal then the complaint will be auto escalated to the Designated Body. Similar procedure would be applicable in case the matter is not resolved or review is submitted on resolution by designated body. This makes the revamped process comprehensive and time bound.

2. **Designated Bodies identified to enhance the Investor Grievance resolution Mechanism:** SEBI under the September 2023 Circular has now authorised Designated Bodies to oversee the grievance redressal mechanism. List of Designated Bodies for each type of market participant is notified by SEBI in the September 2023 circular. This notification of Designated Bodies provides for two levels of review of complaints. Designated Bodies would be responsible for monitoring and handling of the grievance redressal by the concerned entities. Further Designated Bodies would be responsible for taking non-enforcement actions including issuing advisories, caution letters for non-redressal of investor grievances and referring to SEBI for enforcement actions. Initially when the complaint is lodged on the SCORES portal it is the responsibility of the concerned entity or the Intermediary to submit the Action Taken Report [ATR] within a period of 21 calendar days. The Designated Bodies shall monitor the ATRs submitted by the concerned entities within their domain and shall provide feedback for improving the quality of redressing investor grievances whenever required. Also, to ensure that the concerned entity submits the ATR within 21 calendar days shall be the responsibility of the Designated Bodies. The Designated Bodies shall maintain Management Information Systems [MIS] reports, which shall be shared with the concerned entities so that the latter can adequately track timelines for submission of ATR. For listed entities designated body as per September 2023 Circular is Stock Exchange. But it is not clear as to which stock exchange would be Designated Body? SEBI vide its September 2023 Circular has stated that in case the listed company fails to comply with Reg. 13(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 then penalty would be levied by Designated Stock Exchange as per SEBI Circular dt: August 14, 2020.Regulation 13 (1) provides for resolving complaints within 21 calendar days so it is clear that if listed entity fails to resolve the complaint within 21 calendar days then the designated stock exchange would intervene , so here the Designated Body would be the designated stock exchange.

3. **Grievances against Stock Brokers and Depository Participants would also now be settled through SCORES portal under** September 2023 Circular. So now Stock Brokers

and Depository Participants would also have to register themselves on SCORES portal. This registration on SCORES portal would be as a 'Stock Broker' and 'Depository Participant'. So for e.g., if a listed company is in the business of stock broking then it would have registration on SCORES as a listed company but now it will also have to take a separate registration as a 'stock broker' or depository participant as the case may be.

4. All the concerned entities need to keep in mind that the timeline for resolution of complaint is now reduced to 21 days. So with effect from December 2, 2023 all complaints received through SCORES portal or received directly by listed entity needs to be resolved within 21 days from receipt of complaint. This timeline would be applicable for all complaints received either as a listed entity or in any other capacity. Viz. stock broker, merchant banker, depository participant etc.

5. **Process of resolving complaints against entities:**
   - At the point when any grievance arises to an investor then it is mandatory for the said investor to approach the concerned entity for the redressal of the grievance. The concerned entity shall handle such issues relating to investor grievance through their designated persons/of icials. However, this mandate is only to the investors and not the customers of the concerned entity, i.e only investor complaints are covered within the ambit and not the business complaints.
   - The Complainant has the option to lodge the complaint on the SCORES portal within a period of one year from the date of occurrence of cause of action where the complaint was either rejected by the concerned entity or where no communication was received from the concerned entity or where the redressal provided by the concerned entity is not satisfactory to the complainant.
   - Once the complaint is lodged on the SCORES portal then the process of auto routing and auto escalation of the complaints comes into play and it shall be automatically forwarded to the concerned entity and the designated body. It must be noted that the concerned entity must upload the ATR on SCORES within 21 calendar days which will be automatically routed to the complainant through SCORES.
   - In cases where the complainant is not satis ied, or no ATR is received within a period of 21 calendar days then the designated body shall resolve the complaint within 10 days and upload the ATR for the same on SCORES.
   - Where the complainant is not satis ied,or no ATR is received from the designated body then it shall lead to the intervention of SEBI.
   - It has been provided that if any complaint is received beyond a period of one year, **then only SEBI has the authority to either accept or reject such complaint**.
   - Also, only in the case of listed entities it has been speci ied that the designated stock exchange can take action by way of levying ines of Rs 1000/- per day per complaint on the listed entity for its failure to redress categories of complaints as mentioned in Schedule V. However, there is no clarity as to what the categories of complaints for other types of entities shall be and what shall be the action taken against them.
   - If any listed company has given access to RTA of the SCORES portal, they need to revisit this practice as SEBI has clearly stated that if RTA fails to resolve the complaints, then the company would be held responsible.

6. **Resolution of Business complaints or Investor Complaints iling report under Reg. 13(3) of SEBI LODR:**

Till now it was a practice that during the quarter the concerned entity had to keep a track of the SCORES portal and check what are the complaints which it has received pertaining to Investor grievances. Depending upon the nature of the entity and the businesses which it has, there might be multiple email addresses or the same email address which the concerned entity may have.

Now with the revamp of SCORES portal and the Investor Grievance mechanism whereby there is an auto routing and auto escalation facility the complaints will be directly routed on the email Ids provided by the concerned entity.

Supposedly if a company has given the same email id i.e., of the Compliance officer of the entity as per SEBI LODR for all types of complaints received through SCORES then there is a possibility that all such complaints shall be received on such registered email id. Further if access to SCORES portal is with RTA, then all such complaints would be accessible to the RTA which may even include the complaints relating to entity as a stock broker or merchant banker etc. as going forward all complaints would be auto routed and auto escalated to such registered email id. Also, it needs to be borne in mind that at the time of filing Statement of investor Grievances report as per Regulation 13 (3) of SEBI LODR only the data pertaining to Investor grievances is filed.

However, where the company has maintained a bifurcation between the emails IDs i.e., different email id for SCORES registration as a stock broker or merchant banker and different email id for SCORES registration as listed entity then it would be easy to track and resolve complaints.

Conclusion:

To sum it up, the changes brought in by the September 2023 Circular make it easier for people who invest in the stock market to get help when they have a complaint or grievance. SEBI, the authority overseeing this has now made sure that when someone complains it goes directly to the concerned entity, they have the grievance with respect to.

Also, a deadline of 21 days is set for the concerned entity to redress the complaint. In cases where the investor is still not satisfied there is now a two-level review system in place. These changes aim to make things fairer and quicker making the securities market a more trustworthy place.

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023468/reshaping-investor-grievance-redressal-a-detailed-analysis-experts-opinion

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Mandatory Listing of Non-Convertible Debt Securities by Listed Entities

Background

Securities and Exchange Board of India ('SEBI') vide its 'Consultation Paper on proposal for introduction of the concept of General Information Document (GID) and Key Information Document (KID), mandatory listing of debt securities of listed issuers and other reforms under the NCS Regulations' ['CP 2023'] dt: February 9, 2023, had sought comments from stakeholders on proposal of necessitating listed issuers to list subsequent issuances of debt.

SEBI vide this CP 2023 highlighted that Regulation 28 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['LODR Regulations'], inter alia, provides that every listed entity shall before issuing any security, obtain in-principle approval from a recognised stock exchange(s). Hence, it precludes any entity having listed specified securities from issuing further specified securities without necessarily listing them. However, there are no provisions in this regard in the LODR Regulations, for issuers of debt securities[1]. Hence, presently, there exist entities which have outstanding unlisted as well as listed debt securities.

CP 2023 and replies from stakeholders were discussed at SEBI Board Meeting held on June 28, 2023. In these discussions it was highlighted that there were various concerns due to which this decision of mandatory listing of debt was placed. SEBI highlighted that parallel issuance of non-convertible debt securities (both listed and unlisted) by the same issuer gives rise to information asymmetry with regard to the debt raised by the issuer, the differences in covenants between two types of issuances, difference in prices of similar products in listed and unlisted space, etc. This results in undesirable opacity in the corporate bond market. SEBI further stated from the informally gathered data from the market it is seen that difference in the effective yields of listed vis-à-vis unlisted NCDs is often as high as 25-50 basis points, and often the difference does not appear to have an apparent economic rational. If investor wants to exit, there may not be enough buyers for unlisted NCDs, and the investors may not be able to realise a fair price for such unlisted NCDs. Accordingly, the proposal for mandatory listing of debt securities was approved at the Board Meeting of SEBI.

Introduction

SEBI has now vided its amendment notification dt: September 21, 2023, introduced provision relating to mandatory listing of debt securities by adding regulation 62A under LODR Regulations. Regulation 62A became effective from September 19, 2023. Regulation 62A has now provided a cut off date for mandatory listing of non-convertible debt securities. Regulation 62A (1) reads as follows:

(1) A listed entity, whose non-convertible debt securities are listed shall list all nonconvertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchange(s).

[1] https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-proposal-for-introduction-of-the-concept-of-general-information-document-gid-and-key-information-document-kid-mandatory-listing-of-debt-securities-of-listed-issuers-and-othe-_67948.html

(2) A listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023, are outstanding on the said date, may list such securities, on the stock exchange(s).

(3) A listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, shall list all outstanding unlisted nonconvertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within three months from the date of the listing of the nonconvertible debt securities proposed to be listed.

(4) Notwithstanding anything contained in this regulation, no listed entity shall be required to list the following securities:

(i) Bonds issued under section 54EC of the Income Tax Act, 1961 (43 of 1961);

(ii) Non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such securities and multilateral institutions;

(iii) Non-convertible debt securities issued pursuant to an order of any court or Tribunal, or regulatory requirement as stipulated by a financial sector regulator namely, the Board, Reserve Bank of India, Insurance Regulatory and Development Authority of India or the Pension Fund and Regulatory Development Authority.

(5) The securities issued by the listed entity under clauses (ii) and (iii) of sub-regulation (4) shall be locked in and held till maturity by the investors and shall be unencumbered.

(6) A listed entity proposing to issue securities under sub-regulation (4) shall disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium (by any name called), period of maturity and such other details as may be required to be disclosed by the Board from time to time.]

As per regulation 62A (1) of LODR Regulations listed entities having their non-convertible debt securities would have to list all their non-convertible debt securities proposed to be issued on or after January 1, 2024. So listed entities whose debt securities are listed as on September 20, 2023, if it voluntarily delists its non-convertible debt securities on or before December 31, 2023, then it will not have to mandatorily list all its issue of non-convertible debt securities post January 1, 2024.

As per regulation 62A (3) of LODR Regulations listed entity who is proposing to list non-convertible debt securities on or after January 1, 2024, will have to list all outstanding unlisted non-convertible debt securities issued on or after January 1, 2024. It means if any listed entity (i.e., a listed entity that has listed its designated securities other non-convertible debt securities) is proposing to make a fresh issue of non-convertible debt securities and is going to list the same or is proposing to list any of its already issued non-convertible debt securities**,** then it will have to list all outstanding unlisted non-convertible debt securities that are issued on or after January 1, 2024. This listing will have to be done within three months from the date of listing of non-convertible debt securities. Even if

SEBI has further stated that as per regulation 62A (2) of LODR Regulations issue of unlisted non-convertible debt securities made on or before December 31, 2023, and are outstanding on December 31, 2023, may be listed.

Impact analysis

SEBI had in CP 2023 and its Board Meeting Note of June 28, 2023, highlighted that as per information obtained from the depositories National Securities Depositories Ltd and National Securities Depositories Limited, as on January 31, 2023, there were 839 issuers having outstanding listed NCDs. Out of these, 583 issuers (69%) had only listed NCDs outstanding. The remaining 256 (31%) issuers have both unlisted and listed NCDs that are outstanding.

Out of these 256 issuers, 177 issuers had issued unlisted NCDs while having outstanding listed NCDs. These 177 issuers, majority comprised of companies in private sector and NBFCs followed by housing finance companies and banks. Companies in private sector and NBFCs are majorly issuing unlisted debt when they already have debt listed on stock exchanges. Further it was highlighted by SEBI that the proportion of unlisted debt amongst these 177 issuers was around 8% of their total unlisted debt (i.e., out of total outstanding debt of Rs 12,58,471 crores issued by these companies 103,946 crores worth of debt was unlisted). Hence it can be inferred that this amendment would majorly impact companies in the private sector and NBFCs. These entities have listed and unlisted NCDs simultaneously. Now these entities would have to decide whether to be entirely listed or unlisted?

Conclusion

1. **Listed debt would now be mapped with LEI number –** As per SEBI circular dt: May 3, 2023[2], issuers proposing to issue and list non-convertible securities, on or after September 01, 2023, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the ISIN. Similarly, issuers proposing to issue and list securitised debt instruments and security receipts, on or after September 01, 2023, shall report their LEI code to the Depositories at the time of allotment of the ISIN. Regulation 62A of LODR Regulations read with SEBI Circular May 3, 2023, states that all listed non-convertible debt would be mapped with LEI number.

   Now let us see what the purpose was of bringing LEI?
   Purpose of LEI was stated in a statement quoted in Developmental and Regulatory Policies dated October 4, 2017, of Reserve Bank of India (RBI).
   The same is as follows, "*It has been decided to require banks to make it mandatory for corporate borrowers having aggregate fund-based and non-fund-based exposure of Rs 5 crore and above from any bank to* ***obtain Legal Entity Identifier (LEI) registration and capture the same*** *in the Central Repository of Information on Large Credits (CRILC).* ***This will facilitate assessment of aggregate borrowing by corporate groups, and monitoring of the financial profile of an entity/group****…"*[3] This shows that purpose of LEI was to map borrowings by any entity.
   Entities proposing to list non-convertible debt will have to assess applicability of LEI and ensure that LEI number is obtained. The mapping of Legal Entity Identifier (LEI) can provide insight into a company's total borrowings and may impact the financial standing of the entity or group.

[2] https://www.sebi.gov.in/legal/circulars/may-2023/introduction-of-legal-entity-identifier-lei-for-issuers-who-have-listed-and-or-propose-to-list-non-convertible-securities-securitised-debt-instruments-and-security-receipts_70875.html
[3] NOTI827FB2CBDDD52D4E2C941681CE92E5678C.PDF (rbi.org.in)

2. **Mandatory Debt Listing vs Being Categorized as Large Corporate:** As per SEBI circular dt: October 19, 2023, the framework for fund raising by issuance of debt securities by large corporates shall come into effect from January 1, 2024, and April 1, 2024. As per para 3.2 of SEBI circular October 19, 2023, entities inter-alia having outstanding long-term borrowings of Rs 1000 crore or above would be categorized as Large Corporates. For entities classified as Large Corporates, 25% of incremental borrowings have to be made from the debt market. So, if a listed entity proposes to list its debt post January 1, 2024, then it would come under purview of listed entity and if it is fulfilling criteria mentioned for categorizing as Large Corporate as SEBI circular dt: October 19, 2023, then it would be categorized as Large Corporate and will have to comply with corporate governance norms of LODR Regulations.

   Moreover, in the case of a listed entity already classified as a Large Corporate, there is now a requirement for them to source 25% of their incremental borrowings from the debt market. Now if this listed entity is proposing to issue to non-convertible debt securities it will have to do 100% borrowing from debt market.

3. **Option to voluntarily delist the debt securities now available with companies – It would require 100% consent from all NCD holders.** SEBI in its Board Note dated June 28, 2023, stated it has made the said option available.

   So, entities will have to consider whether they want to continue to be listed or not.

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023439/mandatory-listing-of-non-convertible-debt-securities-by-listed-entities-experts-opinion

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SEBI's Informal Guidance on Contra Trade Provisions

Background

The Securities Exchange Board of India ('SEBI') recently issued an informal guidance on October 25, 2023, to Rama Mines (Mauritius) ltd ('RML') under SEBI (Informal Guidance) scheme, 2003, in connection with SEBI (Prohibition of Insider Trading) Regulations,2015 ('PIT Regulations') of Contra Trade Provisions[1]. Before we dwell into the Informal Guidance('IG') given by SEBI let us first understand what contra trade provisions are exactly.

In simpler language, the Designated Person ('DP') and their immediate relatives are restricted from entering into contra trade (opposite trades) executed within time frame of six months. The intent of contra trade is basically to ensure that person who are privy to UPSI do not make short term profits in the securities of the listed company.

Also, Clause 10 of Schedule B of PIT Regulation states that the code of conduct shall specify the period, which in any event shall not be less than six months, within which a DP who is permitted to trade shall not execute a contra trade. The plain reading of this clause indicates that provisions of contra trade are applicable to designated persons in their individual capacity.

However, in the present IG facts of the case before SEBI were different. In this case dealing in shares of listed entity was by two non-individual shareholders with the listed entity and not between individuals themselves. So, in this case its necessary to understand how would contra trade provision apply when two non-individual DPs (with different PANs) are not dealing amongst themselves but are dealing with the listed entity? Going further we will also try to understand what are the actionables for compliance officers of listed entity pursuant to this informal guidance.

Introduction

In the present matter there was a company named Deccan Gold Mines ('DGML') which was incorporated under the Companies Act 1956 and was listed on Bombay Stock Exchange('BSE'). The paid-up capital of DGML as on date was 12,68,35,164 equity shares of Re.1 each (face value).

The Shareholding of the Promoter/Promoter group in DGML was as under:

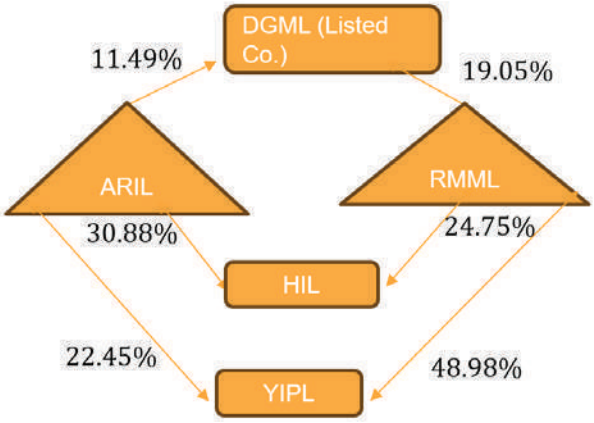
a. Rama Mines (Mauritius) ltd ('RMML') had shareholding of 19.05% and Australian Indian Resources Limited, Australia ('AIRL') had shareholding of 11.49%.

b. Further Yandal Investments Pty. Ltd. ('YIPL') held 48.98% shares of RMML and 22.45% of AIRL. Halcyon Investments Ltd. ('HIL') held 24.75% of RMML and 30.88% of AIRL.

c. This meant that RMML and AIRL had common shareholders.

A pictorial representation of the facts of this case are given below:

[1] https://www.sebi.gov.in/enforcement/informal-guidance/oct-2023/in-the-matter-of-rama-mines-mauritius-ltd-under-sebi-prohibition-of-insider-trading-regulations-2015_78308.html



ARIL was allotted 1,45,78,729 shares of DGML on Mar 02, 2023, which were subject to a lock- in for a period of 18 months. Now, RMML was proposing to sell equity shares of DGML in the open market.

Question for Informal Guidance

The question for informal guidance was whether provision of contra-trade applies to trades made by an individual promoter or whether the entire category of Promoter & promoter group is considered for the same. E.g. if an entity in the Promotor Group has acquired shares (Purchase by AIRL in this case on Mar 2, 2023), then whether the restriction on contra trade apply to it separately or will it apply to the entire Promoter &Promoter Group (which includes RMML)?

Answer by SEBI

SEBI gave informal guidance stating that consequent to the provisions of regulation 9 of the PIT Regulations and clause 3 and 10 of Schedule B of the PIT Regulations, provision of contra trade restrictions may apply to trades made by the promoter individually. However, in this case, both promoters of DGML i.e., RML &ARIL are corporates which in turn have common promoter shareholders (i.e., HIL and YIPL) with majority shareholding in RMML &AIRL. Thus, RMML and AIRL are being controlled by the same set of shareholders. Therefore, in the instant matter, provision of contra trade restrictions would apply to RMML and AIRL jointly i.e., if AIRL has purchased the shares of DGML then restrictions on contra trades shall apply to AIRL as well as RMML.

Contra trade is considered to have happened when a DP trades within a period of six months. As stated above purpose of contra trade is avoid short term profits by dealing in listed company shares by a DP who has access to UPSI.

But in the current situation the DP dealing in shares are not same. Also, they are not dealing amongst themselves. Then SEBI has also stated that it would amount to contra trade. With this background let us understand some more informal guidance given by SEBI on contra trade till now.

	KDDL Ltd[2]	Arvind ltd[3]	Raghav Commercial ltd[4]
Facts of the matter[5]	The company had come out with a rights issue on May 7,2021 and allotment of shares was completed on May 17,2021. Dream Digital Technologies Ltd (member of promoter group of co. ('Buyer') holds 17,615 fully paid equity shares as on July 16,2021 and it includes 2000 shares allotted pursuant to rights issue on May 17,2021. Further Mr. Pranav Shankar Saboo, member of promoter group of company ('Seller') holds 8,10,851 fully paid equity shares and this includes 1,30,000 shares allotted pursuant to rights issue on May 17,2021.	1.One Mr. P was one of the promoters of Arvind ltd, also one of the successors of the Lalbhai family. 2. Mr. P who was also director in Arvind ltd was holding shares of co. in following capacity: In his personal capacity. In the capacity of trustee for the benefit of Mr. P's family. In the capacity of trustee for the benefit of beneficiaries other than Mr. P's family and In the capacity of executor of various wills.	The promoter/promoter group of HEG ltd. Consisted of individuals/HUF/Bodies corporate who held 59.62% stake in the co. RSWM ltd and other members of promoter & promoter group ('selling shareholder') traded/sold certain number of shares in the open market during the period September 16, 2019, to September 25, 2019. It was proposed to undertake inter se transfer of certain no. of shares by way of block deal executed on stock exchange.
Query	The buyer proposes to buy equity shares of a company from the seller through inter se transfer of shares as per	1. Whether Mr. P will be considered designated person for the shares held by him under his personal capacity alone or for all shares	Whether contra trade provisions apply to trades made by an individual promoter or whether the entire promoter & promoter

[2] https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2022/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-sept-2022_64336.html

[3] https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2022/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-sept-2022_64336.html

[4] https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2022/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-sept-2022_64336.html

[5] ***Only data relevant to explain current IG is taken from below mentioned IG's. Respective IG's can be read in greater detail at the link mentioned below.***

	Reg.10(1)(a)(ii) of SAST Reg. 2011. Whether proposed inter se transfer would violate contra trade provision?	held under all capacities? 2. If he is considered as designated person than whether contra trade restrictions be applicable to all shares held in all capacities collectively or individually?	group is considered for the same?
SEBI's IG	If first trade is an acquisition by way of rights issue/ FPO then, subsequent sale of shares before 6 months from date of acquisition would be considered as contra trade.	Mr. P to be identified as DP one must refer to 9(4) Of PIT Reg. Further if Mr. P is specified as a designated person by the board of directors of company, the restrictions of contra trade would be applicable to all shares held under PAN of Mr. P irrespective of capacities in which Mr. P holds shares in a company.	Contra trade restrictions shall apply to trades made by promoters individually and not the entire group.

Conclusion:
As can be understood from the above table, we can see that SEBI's view with respect to violation of contra trade restrictions has been individual trade centric and PAN based. However, the view as explained in the current IG is different, the reason being that even if shareholders are different with different PAN but as they are controlled by common promoter shareholders. Contra trade restrictions shall differ based on facts of the case and SEBI has widened the scope of contra trade restriction with this IG.

Contra trade and pre-clearance under PIT Regulations are inherently viewed with suspicion. So, the Compliance Officer under PIT Regulations shall exercise due care and caution while granting relaxation from contra trade and while giving pre-clearance. Going forward care and caution needs to be exercised while granting pre-clearance or granting relaxation from contra trade provisions when there is a trade by or between two non-individual shareholders. Further it also needs to be seen what view would SEBI take if RMML and AIRL (i.e., two non-individual entities with common promoter shareholders but with different PAN) traded within themselves?

This article is published in Taxmann. The link to same is as follows: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023506/sebis-informal-guidance-on-contra-trade-provisions-experts-opinion

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Streamlining Investor Affairs: SEBI's Progressive Measures in Securities Transmission and Reporting

In the intricate world of investments, regulatory bodies play a pivotal role in ensuring transparency, efficiency, and investor protection. The Securities and Exchange Board of India (SEBI), in its ongoing commitment to enhancing investor ease, bought two significant circulars[1] aimed at simplifying procedures and ensuring smoother transitions in cases of investor demise and transmission of securities.

It has been actively engaged in streamlining and enhancing the processes within the securities market. Two significant circulars issued by SEBI, namely "Centralized Reporting of Investor Demise through KRAs" and "Simplification and Standardization of Securities Transmission Documents," hold paramount importance in shaping the landscape of investor protection and ease of operations within the financial market.

Centralized Reporting of Investor Demise through KRAs:

SEBI's directive focuses on streamlining the process of reporting an investor's demise through KYC Registration Agencies (KRAs). The Centralized Reporting of Investor Demise through KRAs (KYC Registration Agencies) focuses on establishing a robust mechanism to report investor demises efficiently. It is imperative to understand this circular within the broader context of safeguarding investor interests and ensuring the seamless transmission of securities post an investor's demise. **This move holds great significance as it impacts the seamless transfer of investments to rightful heirs or beneficiaries.**

The circular necessitates KRAs to set up a robust system capable of receiving and processing information related to an investor's demise. By creating this centralized reporting mechanism, SEBI aims to ensure that critical information reaches all financial entities and intermediaries where the deceased investor held investments. This pivotal step intends to expedite the transfer process, facilitating a smoother transition of assets during an emotionally challenging time for the investor's family or beneficiaries.

Simplification and Standardization of Securities Transmission Documents:

Complementing the endeavour to streamline investor affairs, SEBI's circular dated 18th May 2022 (Simplification of procedure and standardization of formats of documents for transmission of securities) addresses the simplification and standardization of documents required for the transmission of securities. This initiative aims to harmonize and standardize the documentation involved in the transfer of securities due to various events, including death, transmission, nomination, and more.

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[1] **Circular No: SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 – May 18, 2022 – Simplification of procedure and standardization of formats of documents for transmission of securities**

Circular No: SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/0000000163 – October 03, 2023 - Centralized mechanism for reporting the demise of an investor through KRAs (KYC Registration Agency)

By standardizing these documents, SEBI endeavours to minimize complexities and discrepancies that often arise during the transmission process. The objective is to establish uniformity in the documentation required, thereby facilitating a more efficient and expedited transfer of securities to the legal heirs or beneficiaries.

Upon a deeper examination, it becomes apparent that the Centralized Reporting of Investor Demise through KRAs is an extension of the principles outlined in the standardization circular. By integrating the mechanisms of centralized reporting into the standardized transmission documents, SEBI intends to create a comprehensive framework that not only simplifies the transmission process but also ensures prompt and accurate reporting of investor demises.

The amalgamation of these two circulars reflects SEBI's commitment to fortifying the investor protection framework by addressing crucial aspects related to transmission and reporting procedures in the event of an investor's demise. Let's delve into each circular to grasp the nuances and how they intertwine to create a more cohesive regulatory framework.

Synergy between Circulars:

The synergy between these circulars' manifests in their combined impact on the entire lifecycle of securities transmission post an investor's demise. The standardization of documents simplifies the procedural complexities, while the centralized reporting mechanism ensures swift dissemination of information, creating a more robust and efficient ecosystem.

The amalgamation of these circulars signifies a progressive step towards enhancing investor confidence and ensuring a smoother experience for legal heirs or beneficiaries involved in the transmission of securities. SEBI's efforts underscore a commitment to fostering transparency, efficiency, and investor-centricity within India's securities market.

SEBI Circular dated 03rd October 2023 – Centralized Mechanism for reporting the demise of an investor through KRAs.

This circular was brought due to a recent SAT order – Prem Lata v/s SEBI & Anr[2].

In the said order, a widow continued trading using her deceased husband's account for over a period of five years. Upon the stockbroker's default, she sought recourse by filing a claim with the NSE's Investor Protection Fund (IPF). However, the claim was rejected by the NSE's Committee, stating it was inadmissible for trades executed after the account holder's death.

The Committee's decision was rooted in the belief that the agreement between the deceased husband and the broker became ineffective upon his demise. Consequently, any trades conducted in the demat account post the account holder's passing couldn't be recognized. Additionally, the widow's claim, filed after a period exceeding 24 months from the account holder's death, was considered akin to a loan transaction.

However, upon appeal, the Securities Appellate Tribunal (SAT) held a different perspective. It emphasized that there's no presumption that a trading account ceases to exist upon the account holder's death. The record presented demonstrated ongoing trades and settlements post the husband's demise, indicating the continued existence of the trading account until the broker's default.

Considering the unique circumstances of the case, the SAT allowed the appeal, asserting that the husband's death had no bearing on the claim filed under the IPF. It directed the NSE Committee

[2] SAT Judgement dated August 23, 2023 - https://sat.gov.in/english/pdf/E2023_JO2022781.PDF

to process the widow's claim and issue an appropriate order for disbursing the claim amount within six weeks.

However, it's noteworthy that the SAT, responding to SEBI/NSE's request, specified that the relief granted in this particular case shouldn't set a precedent. This decision was based on the unique and specific circumstances involved, emphasizing that each case should be evaluated individually.

This case motivated SEBI to bring in a mechanism in place as this matter highlighted the flaws in the system eventually leading it to bring in the said circular.

This circular shall come into effect from January 01, 2024.

Intermediary Obligations:

Following this SEBI circular, notifier of a deceased account holder can rightfully claim the funds and securities within the account. Once necessary documentation is submitted, they gain the authority to transfer these to their demat and bank accounts.

When an intermediary is notified of an investor's demise by joint account holders, nominees, legal representatives, or family members ("notifiers"), they must request and verify the following: -

- Death certificate
- PAN from the notifier
- Proof of identity
- Relationship with the deceased, and
- Contact details of the notifier need to be self-certified and retained.

If the death certificate is unavailable, the intermediary will mark the investor's KYC status as "On Hold" and request the certificate from the relevant parties.

Once the death certificate is verified, the intermediary promptly submits a "KYC modification request" to the KRA, accompanied by necessary documents. Debit transactions in the deceased investor's account are then halted.

KRA Obligation and Intimation of Transmission:

The KRA will autonomously validate and verify the request within the subsequent working day. Once verified, the KYC record will be updated to "Blocked Permanently," with notifications sent to linked intermediaries. These intermediaries are then required to immediately suspend debit transactions and notify the notifier within 5 days. They must also provide the necessary transmission request form and document list for the transfer process.

To maintain uniformity and consistency across the industry, SEBI has directed Stock Exchanges, Depositories, and industry associations like AMFI and RAIN to collaboratively establish Standard Operating Procedures (SOPs). These SOPs will be developed in consultation with stakeholders, including KRAs, and will be made available on their respective websites as well as those of the intermediaries.

Possibilities:

If an investor passes away, the investor from a joint account holder(s) or nominee(s) or legal representative or family member (referred to as notifiers) will notify the intermediary. In terms of adherence, the notifier must promptly notify the intermediary about the investor's demise,

providing necessary documentation like death certificate and other details. The intermediary then shall proceed with verification process and once the same is successfully completed, it shall intimate the KRA. The KRA will establish a centralized reporting system to receive and process this information. This will ensure that details regarding the deceased investor reach all financial institutions and intermediaries where the investor held investments. If this process encounters issues or delays, it might impact the smooth transition to the rightful beneficiaries.

Regarding the potential freezing of the PAN (Permanent Account Number), SEBI's circular does not explicitly mention this consequence. However, delays or issues in reporting the demise might lead to complications in accessing or transferring the deceased investor's assets. It's crucial to adhere to the reporting guidelines to avoid such complications.

In scenarios involving joint shareholding, the process might differ. Typically, in joint shareholding situations, the surviving holder retains ownership of the securities. However, proper documentation and legal procedures might be necessary to effectuate this transfer smoothly. The notifier must inform the intermediary about the demise to initiate the necessary steps for the transfer or management of the deceased investor's shareholding.

Overall, adherence to the reporting guidelines set by SEBI is essential to ensure a smooth transition and prevent complications or delays in accessing or transferring investments in case of an investor's demise. Joint shareholding situations might involve different procedures, but timely reporting remains crucial for the proper management of the deceased investor's holdings.

Conclusion:

SEBI's recent circulars underscore its unwavering commitment to investor protection and the evolution of a robust regulatory framework. By introducing measures that streamline processes and enhance efficiency, these directives aim to alleviate procedural complexities and ensure a smoother transition of investments during critical junctures.

Investor confidence and trust are the cornerstones of a thriving financial ecosystem. SEBI's initiatives play a pivotal role in fortifying these pillars, paving the way for a more investor-friendly environment.

These measures by SEBI mark a significant stride towards ensuring a seamless transmission of securities and a standardized reporting mechanism during challenging times. As investors navigate the dynamic landscape of financial markets, these initiatives stand as a testament to SEBI's commitment to safeguarding investor interests and fostering a more transparent and efficient investment environment.

This article amalgamates both circulars to highlight SEBI's concerted efforts to simplify procedures and ensure smoother transitions for investors in the realm of securities transmission and reporting.

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SEBI's Roadmap for Debt Market Development: Tackling Compliance Issues

Background

Despite adequate presence of legal framework for issuance of debt securities, the debt market in India is not as dynamic as equity market. With a view to deepen the bond market, Union Budget 2018-2019 included a proposal that entities may be mandated to meet a certain percentage of their funding requirements from capital markets through issuance of corporate bonds. In line with budget announcement SEBI brought in circular dt: November 26, 2018 ['November 2018 Circular'] whereby a new category of entities was formed termed as 'Large Corporate ['LC']. LC meant those entities whose long-term borrowings exceeded Rs 100 crores. Long term borrowings were defined in November 2018 Circular. LCs were mandated to raise 25% of their borrowings from debt market in a block of three years. Considering prevailing market conditions SEBI in its board meeting dt: March 29, 2023, approved a proposal to extend compliance for LC for one year. SEBI also formed a 'Working Group and Corporate Bond and Securitization Advisor Committee' ('CoBoSAC') to recommend revised framework for LC. CoBoSAC recommended certain changes to be made to the framework of LC. Accordingly, SEBI floated a consultation paper for public comments on August 10, 2023, in this regard. In this article, we shall try to deliberate upon some of the criticalities with respect to this circular.

Introduction

Consultation paper and comments received on the same were placed before SEBI Board for discussion. SEBI Board approved in its meeting held on September 21, 2023, approved the proposal for making amendment to LC framework after considering the consultation paper and comments received on it. Pursuant to this SEBI brought circular dt: October 19, 2023 ['October 2023 circular'] notifying revised LC framework.

Implementation of October 2023 circular

1. **Stock exchange to release list of entities covered under the LC framework:** November 2018 Circular specified a format under which listed entities would have to declare whether they are LC or not. This disclosure was required to be given within a specified period from the end of the financial year (i.e., 30 days).

   With the revised framework for LC listed entities are now not required to submit disclosure, submit any declarations. As per the October 2023 circular Point 5.1 stock exchanges would release a list identifying entities as LC. This list shall be issued on 30th June for listed entities having fiscal year of April to March and on 31st March for listed entities having fiscal year of January to December. This list would be available on stock exchanges website and entity identified as LC would be intimated separately. List of entities who would be LC will be prepared based on financial results submitted by listed entities as per regulation 52 and regulation 33 of Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements), Regulations, 2015 ['SEBI LODR'] filed by listed companies within 60

days from the end of financial year. If we refer to the format for filing of annual consolidated financials it does not provide for disclosure of 'outstanding borrowing'[1]. An amount of outstanding borrowing would be required to ascertain whether a particular entity would be LC. Further the manner in which amount of outstanding borrowing is to be ascertained for categorizing an entity as LC as per October 2023 circular is different than outstanding borrowing amount provided in balance sheet. Outstanding borrowings or outstanding debt figure as would be reflected in the balance sheet of an entity cannot be considered as Outsanding Borrowing for the purpose of ascertainment of LC.

So, here even if October 2023 circular casts a responsibility on the stock exchange to provide a list of LC but stock exchange would not be able to get the number of outstanding borrowings from financials. To resolve this issue, the stock exchanges may have to ask for additional data from the listed entities. So, it needs to be seen whether stock exchanges would come up with a separate utility or XBRL file for getting this figure for identifying whether a particular entity is a LC.

2. Collision with regulation 62A of SEBI LODR

October 2023 circular requires the listed entities to raise 25% of their outstanding borrowings through listed debt securities. So listed entities categorized as HDVLDE would have to raise 25% of their incremental borrowing requirement from debt market in a block period of three years. It needs to be highlighted here is that SEBI LODR now prescribes listed entities who have their non-convertible debt securities listed or entities proposing to list their non-convertible debt on recognized stock exchange shall list all their non-convertible debt securities issued on or after January 1, 2024 ['reg. 62A of SEBI LODR'].

Entity is categorized as LC for the first time: If an entity is categorized as LC for the first time and is now proposing to borrow through a mix of issuance of non-convertible debt securities and borrowings through other modes on or after January 1, 2024, then it will have to borrow 25% of their incremental borrowings by issuing and listing of non-convertible debt securities. Once a company gets its non-convertible debt securities listed then it will be covered by provisions of reg. 62A of SEBI LODR. In accordance with regulation 62A this entity will have to list all proposed issues of non-convertible debt securities. It means it would not have the option to have unlisted non-convertible debt securities [except for non-convertible debt securities issued prior to 31st December,2023]

Listed entity already categorized as LC decides to do borrow through issue of NCDs only: Now as far as the listed entity is borrowing only 25% debt through debt securities and the remaining is through other modes, there is no challenge in compliance with October 2023 circular. But if the listed entity plans to borrow through issuance of non-convertible debt securities only, then as per regulation 62A,

[1] https://www.bseindia.com/downloads1/Regulation_33_Financial_Result.pdf, https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-filing-financial-information-for-issuers-of-non-convertible-securities_53136.html

the listed entity will have to list all its debt securities on stock exchange and the limit of 25% prescribed by the circular shall become redundant.

Conclusion.

In conclusion, while SEBI's initiative to define and regulate large corporates through the circular on Issue and Listing of Non-Convertible Debt Securities is aimed at fostering transparency and investor protection, certain criticalities need careful consideration. The challenge of data collation for determining standalone outstanding borrowings raises questions about the practicality of the prescribed process. The potential collision with Regulation 62A of SEBI LODR 2015 also adds complexity, necessitating a harmonized approach. It becomes imperative for SEBI and stock exchanges to collaborate in addressing these issues, providing clarity to listed entities, and ensuring a seamless implementation of the compliance framework. As the market evolves, regulatory bodies should remain agile, open to feedback, and responsive to industry concerns, thereby fostering a robust and effective regulatory environment for the development of the debt securities market.

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Corporate Social Responsibility and Its Contribution to the Social Impact of Business Responsibility Sustainability Reports

In an era where businesses are no longer evaluated solely on their financial performance, the concept of Corporate Social Responsibility (CSR) has emerged as a powerful force shaping the corporate landscape. CSR has evolved from being a buzzword to becoming an integral part of a company's identity, influencing its relationship with stakeholders, its long-term sustainability, and its contribution to society. Companies recognize that they exist within a broader community and have a role to play in improving the well-being of that community. Simultaneously, they understand that ethical and sustainable business practices can lead to a positive public image, customer loyalty, and long-term financial gains.

One of the primary tools used by corporations to communicate their CSR initiatives and their broader commitment to sustainability is the Business Responsibility Sustainability Report (BRSR). This report serves as a vital platform for businesses to showcase their achievements and contributions in the realm of social impact.

The Essence of Corporate Social Responsibility

Corporate Social Responsibility, often referred to as CSR, is a concept that extends beyond the traditional boundaries of profit-making and emphasizes a company's responsibility towards society and the environment in which it operates. It encompasses a range of ethical, social, and environmental initiatives that go beyond the core business activities. CSR initiatives in common parlance may include charitable donations, sustainable business practices, employee welfare programs, environmental conservation efforts, and more.

The Business Responsibility and Sustainability Report (BRSR)

The Business Responsibility Sustainability Report is a comprehensive document that interalia outlines a company's commitment to environmental, social and governance responsibility. It provides a detailed account of the company's initiatives, performance, and impacts in these areas. The BRSR is a means for companies to transparently communicate their efforts and achievements to stakeholders, including customers, investors, employees, and regulatory authorities.

The Symbiotic Relationship Between CSR and BRSR

CSR and BRSR share a symbiotic relationship, each reinforcing the other. Let us delve into how CSR initiatives contribute to the social impact of Business Responsibility Sustainability Reports.

1. Enhanced Transparency and Accountability

A core principle of CSR is transparency, and this is also a fundamental requirement of a BRSR. Through CSR initiatives, companies demonstrate their commitment to being accountable for their actions, thereby increasing the transparency of their operations. When these efforts are documented in a BRSR, stakeholders gain insight into the company's ethical and responsible practices, building trust and credibility.

2. Showcasing Positive Impact

CSR initiatives often lead to tangible social and environmental benefits. Companies can use the BRSR to provide concrete evidence of the positive impact they have on various aspects of society, including job creation, community development, and sustainability efforts. These quantifiable achievements serve as powerful endorsements of a company's commitment to social responsibility.

3. Stakeholder Engagement

It involves active engagement with stakeholders, including customers, employees, suppliers, and local communities. Through CSR, companies listen to and address the concerns of these stakeholders. The BRSR serves as a platform to highlight these interactions, showing that a company values the opinions, needs of its stakeholders, and acts on them.

4. Inspiring Others

A well-documented CSR initiative in a BRSR can serve as an inspiring example for other companies. When one organization showcases the positive outcomes of their responsible actions, it encourages others to follow suit, creating a ripple effect that can drive societal change.

5. Addressing Societal Challenges

CSR often focuses on addressing societal challenges, such as poverty alleviation, education, healthcare, and environmental sustainability. By addressing these challenges, companies contribute to the overall well-being of society. It allows them to communicate their efforts, sharing best practices and innovative solutions that can help society as a whole make progress in these areas.

6. Attracting Investment

Investors are increasingly looking beyond financial performance when evaluating companies. A robust CSR program, highlighted in a BRSR, can attract socially responsible investors who want to support businesses that align with their values and principles. As a result, companies with strong CSR initiatives may enjoy greater access to capital and lower borrowing costs. Mutual funds have dedicated ESG funds[1].

The Social Impact of Business Responsibility Sustainability Reports

BRSRs not only serve as a platform for companies to report their CSR activities but also have a substantial social impact in themselves. Here is how:

1. Raising Awareness

BRSRs are accessible to the public, making them a valuable source of information for consumers, investors, and the public. These reports raise awareness about societal issues, environmental concerns, and responsible business practices. They educate stakeholders about the impact of corporate activities on the world, leading to informed decision-making and advocacy for change.

2. Holding Companies Accountable

By disclosing CSR initiatives and their outcomes, BRSRs hold companies accountable for their promises and actions. Stakeholders can use these reports to assess whether a company's practices align with its stated values and commitments, and they can demand greater accountability when needed.

[1] https://www.axismf.com/mutual-funds/equity-funds/axis-esg-equity-fund/ee-dg/direct

3. Encouraging Collaboration

BRSRs can serve as a catalyst for collaboration among businesses, government agencies, non-governmental organizations (NGOs), and other stakeholders. These reports facilitate discussions about societal challenges and the role of different entities in addressing them, encouraging collective efforts to drive positive change.

4. Influence on Public Policies

The collective power of BRSRs can influence public policies by shedding light on issues that require regulatory intervention. Government agencies and policymakers often consider the information provided in BRSRs when formulating new laws and regulations related to corporate social responsibility and sustainability.

Conclusion

Corporate Social Responsibility is more than just a corporate buzzword; it is a fundamental commitment to ethical, social, and environmental responsibility. The Business Responsibility Sustainability Report serves as a powerful tool for companies to communicate their CSR initiatives and achievements, thus contributing to the social impact of these reports.

By enhancing transparency, showcasing positive impact, engaging with stakeholders, inspiring others, addressing societal challenges, and attracting investment, companies play a pivotal role in fostering a more responsible and sustainable society. BRSRs, in turn, raise awareness, hold companies accountable, encourage collaboration, facilitate benchmarking, and influence public policies, creating a dynamic cycle that drives positive change.

In an increasingly interconnected world, the collaboration between companies, stakeholders, and society at large is essential for addressing pressing global challenges. CSR and BRSRs play a crucial role in this endeavour, acting as catalysts for social impact, responsible business practices, and a better future for all.

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Does a Shareholder has locus standi to challenge the Resolution Plan?

In the matter of Ravi Shankar Vedam - Appellant v/s Tiffins Bartyes Asbestos and Paints Limited – Respondent-1 and Vasudevan Respondent -2 Embassy Property Development Private Limited - Respondent - 3 in the order passed by National Company Law Appellant Tribunal (NCLAT) dated 13 June 2023

Facts of the Case:

- The application was filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the Tiffins Bartyes Asbestos and Paints Limited who is Corporate Debtor(CD) by Udhyaman Investments Private Limited – the Financial Creditor (FC). The application was approved and Corporate Resolution Insolvency Process (CIRP) was initiated. And Mr. Vasudevan was appointed as Resolution Professional (RP).
- RP filed an application with NCLT to approve the Resolution Plan submitted by Embassy Property Development Private Limited - Respondent 3.
- Another application was filed with NCLT by Mr. Ravi Shankar Vedam - the appellant who was 38 % shareholder of the CD seeking for forensic audit of the books of account of the CD and not to approve resolution plan till disposal of the application.
- The appellant being a major shareholder of the CD claimed that Udhayaman Investments Private Limited was not a FC of the company and their inclusion in this category had influenced insolvency proceedings.
- It was also stated that stated that the directors were suspended directors and that the company took action beyond board approvals and in such situation, it was necessary to conduct forensic audit to ascertain the actual financial creditors.
- NCLT approved the Resolution Plan vide Order dated 12 June 2019 which was also approved by Committee of Creditors (CoC) and dismissed the application of the appellant on the following grounds
    - IBC doesn't prescribe any role for the shareholders of the CD during CIRP as there is no requirement for any approval of the shareholders to implement actions under the resolution plan except to the explanation u/s 30(2) of the IBC and such approval shall be deemed to be given and it shall not be a contravention of that Act or Law.
    - Any objection raised by the shareholder cannot be considered by the NCLT while approving/rejecting the resolution plan.
    - *Reliance is placed on the judgement given by Hon'ble NCLAT in J M Financial Asset Reconstruction Company Limited us. Well-Do Holding and Exports Pvt. Ltd, and Ors., wherein, it has been held that the* ***Shareholders and Promoters being ineligible to file the Resolution Plan under Section 29A, has no right to raise their grievances In view of it this Authority is not legally required to entertain any kind of objection pertaining to the Resolution Plan approved by the CoC. Therefore, the objections raised by the shareholder are hereby rejected****."*
- Aggrieved by the order of NCLT – an appeal was filed with NCLAT.

Arguments of the Appellant:

- It was argued that CIRP was initiated fraudulently and with a malicious intent for a purpose other than the Resolution of Insolvency; that the Successful Resolution Applicant (SRA) was admittedly the Co-Subsidiary of the CDs;

- The RP was duty bound under Regulation 35A of the Corporate Persons Regulations' read with Section 25(2) (j), 43, 45, 49, 50 and Section 66 of the IBC to form an opinion on whether the CD has been subjected to any of the Transactions covered therein;
- That the RP was duty bound under the provisions of the Code to protect and preserve the value of assets of the CD;
- It was highlighted that during the CoC meetings - a proposal for conducting the Forensic Audit was placed before the CoC, which was rejected; that the decision by the CoC was taken by 91.90% voting share, out of which 46.20% voting share was by ineligible persons;
- Further, RP gave a report stating that he was not taking any responsibility about the authenticity of the Financial Transactions that occurred prior to his engagement;
- The account of the CD after 'CIRP' commenced was inconsistent when compared with the 'Tax Audit Accounts' before 'CIRP';
- The Impugned Order was a non-speaking Order and that approval of the Resolution Plan has no nexus with the Appellant's prayer for a Forensic Audit in the interest of Justice;
- NCLT failed to consider that the three claimants, who were termed as Financial Creditors by the RP in the 2nd CoC Meeting which were directed to be deleted as Financial Creditors from the list of CoC by the NCLT, and therefore the Resolution Plan filed by the SRA should not have been approved, without directing the RP to reconstitute the CoC;
- It was also submitted that there was material irregularity in the exercise of power by the RP and that the CD was sold at a throw away price of Rs. 89 Crores, despite the fact that the CD had assets to the tune of Rs. 150 Crores, and that the refusal of RP to conduct the Forensic Audit despite specific remarks made by the erstwhile Auditors, was in contravention of the provisions of the law for the time being in force;
- NCLT ought not to have admitted the Application for initiation of CIRP by FC in so far as the Application was in clear violation of Section 65 of the Code for suppression of material facts as the presence of Mr. Poobalan and his aides were involved in the functioning of the Company till 2018 and thereafter being a member of CoC, was in violation of Section 29A of the Code;
- It was submitted that Mr. Poobalan was in charge of the day-to-day affairs of the CD Company and was working hand in glove with the RP for their personal benefits and the RP was determined to undervalue the Company;
- It was further stated that the Company had paid advances to various third parties and had not given details of these advances and that the RP had kept these documents confidential;
- There was 'Material irregularity' in the conduct and exercise of the powers of the RP and that had the Forensic Audit been done, CIRP would not have been triggered against the CD and that the NCLT ought not to have approved the Resolution Plan without reconstituting the CoC.

Arguments of the Respondents:

- It was contended that a 'shareholder' does not have locus to challenge a Resolution Plan which has already been approved; that the Code recognizes 'stakeholders' only in the Liquidation process;
- In 'CIRP', stakeholders had no role to play and further drew the attention to the family tree explaining the relationship between the brothers and their wives and the number of shares held by each, for the better understanding of the case;

- It was highlighted that the Application seeking Forensic Audit in which it was submitted that the Applicant's, father, played a significant role in building the business of the CD and was actively involved in the management of the business till the financial year 2011-2012, but unfortunately due to deterioration in health in the second half of 2012, his involvement was greatly reduced and the Applicant's brother, who was appointed as the Managing Director of the Company was looking after the management along with his wife Mr. Geetha Vedam and two other Directors;
- It was not the debtors who were managing the Company and from 2011-2018, the 'Appellant'/ 'Applicant' did not raise any issue, that various Creditors have approached different Courts seeking other reliefs, the MoU was entered into with the FC on 16 April 2016, where by 'M/s Udhyaman Investments' had given a loan of Rs. 11,50,00,000/-, at the request of the CD;
- It was submitted that the MoU was entered into between the CD and FC keeping in view, the mutual interest of both the parties. It was consented that the CD would pay to FC, a sum of Rs. 11,50,00,000/- with interest of 18% p.a. as recorded in the 'Joint Memo of Compromise';
- It was stated before the NCLT by the FC, who had filed the Section 7 Application, that the CD had given a cheque to the FC for an amount of Rs. 8,82,68,439/-, on 3 April 2014, which was dishonoured due to lack of funds;
- That the CD had raised all the issues through its Managing Director and also preferred an Appeal, which was dismissed by NCLT;
- When 'EOI' was published, the Appellant had approached the RP stating that he was intending submitting a Resolution Plan, and stepped in when the CoC was finalising the Plan;
- None of these issues were ever raised during 'CIRP' and that the Appellant was the Director at that point of time and was aware of the Statutory Applications as he was active till 20 November 2012 and thereafter his brother had become the Managing Director;
- Also, it was highlighted that the Resolution Professional had acted based on the Valuation Report of the registered valuers.

Findings:

- **Right of Shareholders during insolvency proceeding – a Shareholder has no locus standi to challenge the Resolution Plan- i**n an Insolvency process, when an insolvency of Debtor is imminent, the fiduciary duty of the directors and managers, who are agents of the shareholders, shifts to the creditors to preserve the value of the enterprise for maximising the returns for creditors. The legislature in its wisdom, has curtailed the 'Rights of the Shareholders' based on the established 'Principles of Creditors' in the control framework. The Court provides the shareholders right to file a claim only in the Liquidation Process as stakeholders and the advances of stakeholders as stated in Regulation 2(k) includes shareholders only because unlike CIRP, in Liquidation, distribution to stakeholders is in accordance with the waterfall mechanism. Shareholders are excluded from representation, participation or voting in the CoC and are represented in the CoC only through the directors and can speak only through the directors.
- Once the CIRP is triggered, the Management of the affairs of the CD lies with the IRP and the shareholders do not have a right to file any claim in the CIRP but can only do so in the Liquidation Process.
- The Explanation to Section 30(2) of the IBC contemplates for '*Deemed Approval*' of the shareholders of the resolution plan and its implementation and even a shareholder, is deemed to have given its approval for implementation of the resolution plan, and such

'*Deemed Approval*' cannot be taken away or undone by objecting to the resolution plan. NCLAT held that giving the shareholder a right to challenge the resolution plan or raise objections against its Approval, would '*render the Explanation redundant*'.

- The CIRP proceedings are proceedings *in rem* to the extent that once a petition filed by a Financial Creditor/ Operational Creditor against the CD is admitted, it becomes a collective Creditors Proceedings and all Creditors, pool their Security Interest, in a common manner and the same is distributed as provided for, under Section 30(4) of the IBC, subsequent to the approval of the plan by the CoC.
- From the observations of the High Court of Delhi in the matter of *ICP Investments (Mauritius Ltd.) Vs. Uppal Housing Pvt. Ltd. & Ors., it is clear that once the affairs of the CD was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable.*
- Keeping in view, the scope and intent of the Legislature, and that IBC is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, hence ***a Shareholder has no locus standi to challenge the Resolution Plan.***
- The Hon'ble Supreme Court judgment in *Arunkumar Jagatramka V. Jindal Steel & Power Ltd. & Anr.* , it is *clear that the Foundational Principles of the Insolvency and Bankruptcy Code, cannot be disturbed and NCLT is of the considered view that giving the Shareholder the locus to challenge the approval of the Resolution plan tantamount to disturbing the Foundational Principles of the Insolvency and Bankruptcy Code*.
- From the decision rendered by the Hon'ble Supreme Court *in Kalparaj Dharamshi v. Kotak Investment Advisors Ltd. it is crystal clear that the discretion of the Tribunals is circumscribed by Section 31 limited to scrutiny of the Resolution Plan, if it is in violation of Section 30 of the IBC.*
- *Judgment of the Supreme Court states that the Commercial Wisdom of the CoC has been given paramount importance and that there can be judicial intervention only when there is any material irregularity or if the Plan is not in adherence to Section 30(2) of the IBC.*
- The Hon'ble Apex Court, in the matter of *Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp Solutions Ltd. & Anr., has clearly laid down that subsequent to the approval of the Resolution Plan of the CoC and before the approval by the NCLT, no modifications / alterations can be called for as IBC is a time bound process*.

Held:

- NCLAT was of the earnest view that there was no material irregularity in the approval of the Resolution Plan and to the fact that the Resolution Plan was successfully implemented and we do not find it a fit case to interfere in the well-reasoned orders of the NCLT and hence appeal failed and was accordingly dismissed.

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Compliance Chronicles: Unveiling the Audit Committee's Role in Company Secretary Remuneration

Introduction

In today's ever-evolving landscape of compliance, the concept of related party transactions has taken center stage. When it comes to complying with related party transaction related provisions, two significant steps come into play: the identification of related parties and obtaining approvals from the audit committees or board of directors for transactions involving these related parties.

In the realm of identifying related parties, different statutes have varying criteria for determining who qualifies as a related party. However, as per Section 2 clause 76 sub-clause 2 of Companies Act, 2013 ('the Act'), Point 3 clause d of accounting standard 18 and as per Point 9 Clause A sub-clause III of Indian Accounting Standards 24, key managerial personnel are categorized as related parties. Consequently, transactions with key managerial personnel viz payment of remuneration are considered as related party transactions.

But a question always arises is whether the remuneration paid to company secretary should also be subject to audit committee approval being related party transaction? In this article, we will explore the intricacies of whether the remuneration paid to a company secretary, who is a whole time key managerial personnel, qualifies as a related party transaction and hence requires audit committee approval?

Company secretary is key managerial personnel as per section 2(51)(ii) . Further, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] define key managerial personnel as per the Act . Further as per section 2(76)(ii) of the Act key managerial personnel or his relative is also a related party. Hence as per section 2(51) read with section 2(76)(ii) of the Act company secretary is a related party. Further as per Para 3 clause D of Accounting Standard 18 and Para 9 clause A sub-clause III of Indian Accounting Standard 24 company secretary is key managerial personnel and consequently a related party. Further as per Reg. 2(1) (zb) company secretary would also be considered as related party as LODR Regulations refer to the Act and accounting standards for identifying related party.

1. **Requirement of audit committee approval for payment of remuneration to Company Secretary.**

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[1] "(51) *"key managerial personnel", in relation to a company, means—(ii) the company secretary;"*

[2] *"2(1)(o) "key managerial personnel" means key managerial personnel as defined in sub-section (51) of section 2 of the Companies Act, 2013;"*

[3] "(76) "related party", with reference to a company, means—

(ii) key managerial personnel or his relative;"

[4] "Related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:"

If we refer to the scope of work of audit committee, as prescribed under section 177(4), we may observe that, recommending or approving the remuneration payable to company secretary is not mentioned under its scope. However, clause (iv) of sub-section 4 of section 177 requires the approval of the audit committee for entering transactions with related parties. Therefore, the remuneration of the company secretary shall require approval of the audit committee only if the transaction of payment of remuneration is a related party transaction.

(a) Is payment of remuneration, a related party transaction?

To understand whether any particular transaction with a related party is a related party transaction, we may refer to section 188(1) of the Act which provides a list of transactions which may be considered as related party transactions. Clause (d) of section 188(1) of the Act states that availing or rendering of any services to related parties is a related party transaction. As discussed above, the company secretary is a related party. The company is availing employment services from him and paying remuneration in return of such service. Therefore, payment of remuneration to the company secretary against the employment services rendered by him to the company squarely falls within the scope of related party transactions under the Act. Further, under LODR Regulations, related party transaction[5] refers to transfer of resources, services or obligations between a listed entity and its related party. In the case of a transaction between company and the company secretary, there is rendering of employment service and transfer of resources viz. money in the form of salary. Therefore, this transaction can also be considered as a related party transaction under LODR Regulations as well.

(a) Requirement of board approval for related party transaction with company secretary

Now that it is certain that payment of remuneration to a company secretary is a related party transaction, there arises a question that, whether approval of board of directors is required for payment of remuneration to a company secretary as it is a related party transaction? The answer to this question can be found in the fourth proviso to sub-section (1) of section 188[6]. This proviso states that, if a related party transaction is in ordinary course of business and at arm's length basis, then compliance with sub-section (1) of section 188, that is obtaining board approval shall not be applicable. [7] as per Para 1.2 of guidance note on RPT issued by ICSI, payment of remuneration to employees is an ordinary business and the remuneration payable to company secretary as recommended by nomination and remuneration committee is also at arm's length basis, therefore, the board approval for payment of remuneration to company secretary is not required.

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[5] Related party transactions mean a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

[6] Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:

[7] In common parlance, 'ordinary course of business' would include transactions which are entered into in the normal course of the business pursuant to or for promoting or in furtherance of the company's business objectives, as per the charter documents of the company. For example, in case of a manufacturing company, purchase and sale of goods, taking premises on lease/rent, construction of factory, employing workers, etc. will be considered as ordinary course of business.

(b) Requirement of audit committee approval

Since the transaction of payment of remuneration is exempt from compliance of sub-section (1) of section 188 of the Act, one may infer that, audit committee approval under sub-section (4) of section 177 shall also be exempt for this related party transaction. However, this is not the case clause (iv) of sub-section (4) to section 177 of the Act while prescribing the terms of reference of audit committee, states that, all transactions with all related parties and all modifications thereto should be approved by audit committee further, while prescribing this mandate, the Act does not say that transactions referred to in section 188 or transactions requiring compliance with section 188 shall require audit committee approval. It simply says that all transactions with related parties shall require approval. Therefore, even though payment of remuneration to the company secretary does not require compliance of sub-section (1) of section 188, the approval of audit committee is required for the reason that it is a transaction with a related party.

2. Timeline for audit committee approval

It is an already well settled understanding that the approvals pertaining to related party transactions have to be obtained prior to entering into transaction. So, as per this logic, the approval for payment of remuneration to the company secretary should ideally be obtained before the appointment of the person as company secretary of the company. But this is not the case. As discussed above, payment of remuneration to company secretary is a related party transaction and needs audit committee approval for the reason that, the company secretary is key managerial personnel of the company. But the point worth noting is that the person who becomes the key managerial personnel of the company post his appointment as company secretary. That means, at the time of appointment, he is neither key managerial personnel nor a related party and therefore the remuneration payable to him is not a related party transaction and hence does not require audit committee approval. However, post his appointment as company secretary he becomes key managerial personnel and post this, transactions with him relating to his remuneration shall become related party transactions and shall require audit committee approval.

3. Exception to the timeline of approval

Under normal circumstances, when a company appoints an outsider as company secretary, he is not related to the company at the time of appointment and hence there is no question of related party transactions. But there is one exception to this general principle. Sub-section (3) to section 203 of the Act allows key managerial personnel of the holding company to be appointed as key managerial personnel in the subsidiary company. As per the definition of related party under section 2(76)(ix) r/w rule 3 of Companies (Specification of Definitions) Rules 2014, the key managerial personnel of the holding company are the related party of the subsidiary company[8]. Therefore, where company secretary of holding company is being appointed as company secretary of subsidiary company, then such person is already a related party and hence approval of audit

[8] (76) "related party", with reference to a company, means—
(ix) such other person as may be prescribed; 3 Related Party
For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director 1[other than an independent director] or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

committee shall be required for both, appointment, and payment of remuneration and that to before appointing him as company secretary of subsidiary company.

4. **Omnibus approval**
   As we are aware, if the transactions with a related party are of a repetitive nature, then the audit committee may grant omnibus approval for such repetitive transactions which would remain valid up to one year[9]. Since the remuneration to the company secretary is paid each month prior approval of audit committee would be required every month. As payment of remuneration is a recurring activity every month i.e., it is a repetitive transaction omnibus approval can be taken for such payment. Therefore, while approving the annual increment in remuneration of company secretary, the audit committee is also required to grant omnibus approval for payment of such increased remuneration to the company secretary in each month.

Conclusion

Companies are careful about compliance with provisions relating to related party transactions when they are dealing with related parties from outside the company. But there are chances that a company may miss out on compliances while dealing with directors or key managerial personnel, specifically in the case of routine transactions like payment of remuneration etc. Therefore, companies are required to be extra vigilant while dealing with internal related parties like directors and KMP etc.

This article is published in Taxmann. The link to the same is as follows: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023469/compliance-chronicles-unveiling-the-audit-committees-role-in-company-secretary-remuneration-experts-opinion

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First proviso to sec 177(4) Clause IV R/W rule 16A sub-rule 5 of Companies meetings of board and its powers rules
Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;]
(5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

NEWS UPDATES/AMENDMENTS FOR THE MONTH OF DECEMBER:

Sr. No.	News Updates/Amendments	Link & Brief Summary
	NEWS	
1	NFRA has retrospective jurisdiction, says NCLAT	https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/nfra-has-retrospective-jurisdiction-says-national-company-law-appellate-tribunal/105714034?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-12-04&dt=2023-12-04&em=Y3NhcnRpYWh1amFAZ21haWwuY29t The NCLAT held four auditors of DHFL guilty of multiple violations and barred them from practise for a year. The NCLAT also stated that NFRA has more powers and authority for professional misconduct compared to ICAI.
2	Financial Fraud: Centre gets into pro mode to check digital cons	https://economictimes.indiatimes.com/industry/banking/finance/banking/financial-fraud-centre-gets-into-pro-mode-to-check-digital-cons/articleshow/105763844.cms The government has started discussions on building new filters and safeguards for digital financial transactions amid rising concern over burgeoning cases of fraud.
3	Online gaming lobby groups sign voluntary code of ethics.	https://indianexpress.com/article/business/economy/online-gaming-lobby-groups-sign-voluntary-code-of-ethics-9056104/ The three lobby groups that are co-signatories to the voluntary code are the Internet and Mobile Association of India (IAMAI), E-Gaming Federation (EGF) and the All-India Gaming Federation (AIGF). They have co-signed a code of ethics as the industry attempts to govern itself amid a turbulent time after having faced harsh action on the taxation side.
4	Amendments in SEZ Act to benefit commercial office leasing.	https://etcfo.com/s/qggf1yn India's office space leasing is expected to significantly reduce vacancy across major cities with the recent amendments to the SEZ Act 2005, notified by the Department of commerce on December 6,2023.

5	Principle Of 'Alter Ego' Or 'Piercing Corporate Veil' Not the Basis For 'Group of Companies' Doctrine: Supreme Court	https://www.livelaw.in/top-stories/principle-of-alter-ego-or-piercing-corporate-veil-not-the-basis-for-group-of-companies-doctrine-supreme-court-243903?infinitescroll=1 While approving the 'group of companies' doctrine in the arbitration law jurisprudence, the Supreme Court clarified that the principle of "alter ego" cannot be the basis for applying this doctrine.
6	53 Chinese foreign firms have established business in India, govt tells Parliament	https://www.livemint.com/news/india/53-chinese-foreign-firms-established-business-in-india-govt-tells-parliament/amp-11702292327705.html The data was revealed by Minister of State for Corporate Affairs Rao Inderjit Singh in a written reply to the Lok Sabha on Monday. However, no specific data is maintained about the details of business activities related to providing loans through apps by these companies.
7	7,700 firms voluntarily closed business since setting up C-PACE, govt tells Parliament	https://www.livemint.com/news/india/over-7-700-firms-voluntarily-closed-business-since-setting-up-c-pace-govt-tells-parliament/amp-11702294876528.html Since the setting up of C-PACE, 7,721 companies have been struck off till 05.12.2023, under section 248(2) of the Act... the time taken under C-PACE for voluntary exit has reduced to around 110 days during the current year.
8	Rethink likely on project-specific plans for real estate insolvency	https://www.financialexpress.com/business/industry-rethink-likely-on-project-specific-plans-for-real-estate-insolvency-3340755/ Errant developers may misuse troubled projects for fund diversion despite RERA check, feel govt sources.
AMENDMENTS / CIRCULARS /CONSULTATION PAPERS		
1.	BSE Circular on corporate grouping of listed companies	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231130-27
2.	SEBI Circular on Extension of timeline for implementation of provisions of circular SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September	https://www.sebi.gov.in/legal/circulars/dec-2023/extension-of-timeline-for-implementation-of-provisions-of-circular-sebi-ho-oiae-igrd-cir-p-2023-156-dated-september-20-2023-on-redressal-

	20, 2023, on Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform.	of-investor-grievances-through-the-sebi-complaint-redressal-s-_79499.html
3.	SEBI Circular on revised framework for computation of net distributable cash flow by InvITs.	https://www.sebi.gov.in/legal/circulars/dec-2023/revised-framework-for-computation-of-net-distributable-cash-flow-ndcf-by-infrastructure-investment-trusts-invits-_79657.html
4	NSE Circular on Filing of Announcements pertaining to Loss of Share Certificate/Issue of Duplicate Share Certificate/Closure of Trading Window and Corporate Insolvency Resolution Process ('CIRP') in XBRL format on NSE Electronic Application Processing System (NEAPS) platform.	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE%20Circular-%20Filing%20of%20Announcements%20pertaining%20to%20Loss%20and%20Duplicate%20Share%20Certificate%2C%20Trading%20Window%2C%20CIRP%20in%20XBRL%20format%20on%20NEAPS%201.pdf
5	BSE circular on Filing of Announcements pertaining to Loss of Share Certificate/Issue of Duplicate Share Certificate/Closure of Trading Window and Corporate Insolvency Resolution Process ('CIRP') in XBRL format on BSE listing centre.	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231208-34
6	SEBI Consultation Paper on framework for issuance of subordinate units and Unit Based Employee Benefits - REITs and InvITs	https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-framework-for-issuance-of-subordinate-units-and-unit-based-employee-benefits-reits-and-invits_79760.html
7	SEBI Consultation paper on review of provisions of NCS Regulations and LODR Regulations for ease of doing business and introduction of fast-track public issuance of debt securities.	https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-review-of-provisions-of-ncs-regulations-and-lodr-regulations-for-ease-of-doing-business-and-introduction-of-fast-track-public-issuance-of-debt-securities_79762.html
8	SEBI Circular on amendment to circular dtd July 31, 2023, on	https://www.sebi.gov.in/legal/circulars/dec-2023/amendment-to-circular-dated-july-31-2023-

	Online resolution of dispute in the Indian securities market	on-online-resolution-of-disputes-in-the-indian-securities-market_80110.html
9	SEBI Consultation paper on 'Introduction of optional T+0 and optional Instant Settlement of Trades in addition to T+1 Settlement Cycle in Indian Securities Markets'	https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-introduction-of-optional-t-0-and-optional-instant-settlement-of-trades-in-addition-to-t-1-settlement-cycle-in-indian-securities-markets-_80204.html
10	NSE Circular on Amendment to Circular dated July 31, 2023, on Online Resolution of Disputes in the Indian Securities Market	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_Circular_20122023.pdf

List of Compliance getting effective in 2024

As we are entering the last month of the year 2023, and take a recap of this year 2023, we can see lot of SEBI circulars bringing in some changes. Majority of these changes are of a fundamental nature and corporates will witness a major change in various aspects. Hence, many changes are not made effective immediately by SEBI and have been proposed to become effective from the first day of the next calendar year 2024 .

Let's have a look at these prospective changes along with their effective dates so that all readers can ensure that they are well prepared for implementation of the amended provisions of law:-

Effective Date	Nature of compliance
Jan 1, 2024	**SEBI circular dtd March 16, 2023:** **Common and simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination** As regards physical securities, SEBI, vide circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 dated March 16, 2023, stipulated that folios shall be frozen if PAN, Nomination, Contact details, Bank A/c details and Specimen signature are not submitted by the holders by September 30, 2023. Based on the representations received from investors, Registrars Association of India and various other stakeholders, SEBI now decided to extend the last date for submission of PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their corresponding folio numbers to December 31, 2023 as mentioned in SEBI circular dtd September 26, 2023. Communication to be sent to all physical security holders to check if their folio is incomplete. (Relevant for companies having Calendar year as financial year) https://www.sebi.gov.in/legal/circulars/mar-2023/common-and-simplified-norms-for-processing-investor-s-service-requests-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination_69105.html
Jan 1, 2024	**SEBI Circular dtd June 8, 2023:** **Online Processing of Investor service requests and complaints by RTA** SEBI recently proposed to digitize process relating to submission of various documents to RTA by holders of physical securities. Holders of physical security certificates are required to submit various documents to the RTAs. Such process of digitization was proposed in two phases: 1) Qualified RTAs servicing listed companies to set up functional website. 2) All RTAs to set up a user-friendly online mechanism or portal for service requests/ complaints with certain minimum features as prescribed by SEBI in its circular.

	QRTA's to have functional website for the purpose of this circular from January 01, 2024, and by all other registered RTAs dealing with listed companies from June 01, 2024. ['QRTAs are those RTAs who handle more than 2 crore folios'] https://static.nseindia.com//s3fs-public/inline-files/SEBI_Circular_08062023.pdf
Jan 1, 2024	**SEBI LODR 4th Amendment 2023 dtd September 21, 2023:** **Regulation 62A comes into effect** As per Reg. 62A of SEBI LODR 4th amendment 2023, a listed entity, whose non-convertible debt securities are listed shall list all non convertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchange(s). A listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023, are outstanding on the said date, may list such securities, on the stock exchange(s). A listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, shall list all outstanding unlsted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within three months from the date of the listing of the non-convertible debt securities proposed to be listed. https://www.sebi.gov.in/legal/regulations/sep-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fourth-amendment-regulations-2023_77193.html
Jan 1, 2024	**SEBI Circular dtd October 03, 2023:** **Centralized mechanism for reporting the demise of an investor through KYC Registration Agencies** SEBI is implementing a centralized mechanism to facilitate the reporting and verification of investor demises through KYC Registration Agencies (KRAs). This move is designed to streamline the transmission process in the securities market. To ensure consistency in implementing the circular, Stock Exchanges, Depositories, and industry associations will have to create a common Standard Operating Procedure (SOP). Investors and market participants need to familiarize themselves with the circular's guidelines to ensure compliance and contribute to the overall integrity of the securities market. https://www.sebi.gov.in/legal/circulars/oct-2023/centralized-mechanism-for-reporting-the-demise-of-an-investor-through-kras_77534.html

Jan 1, 2024	**SEBI Circular dtd October 19, 2023:** **Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)** Large Corporate borrowing framework to become applicable from January 1, 2024, for companies having calendar year as financial year. The framework will be applicable if listed entities which as on last date of financial year (i.e March 31 or December 31): a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised Stock Exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and b) have outstanding long term borrowings of Rs.1000 crore or above. and c) have a credit rating of "AA"/"AA+"/AAA ", where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in. https://www.sebi.gov.in/legal/circulars/oct-2023/ease-of-doing-business-and-development-of-corporate-bond-markets-revision-in-the-framework-for-fund-raising-by-issuance-of-debt-securities-by-large-corporates-lcs-_78237.html
Jan 1, 2024	**BSE circular dtd November 17, 2023, and NSE circular dtd November 17, 2023** **SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level** Stock Exchanges (BSE and NSE) had vide their circulars dt: June 28, 2023 ('June 2023 Circular') extended applicability of August 2022 Circular proposing a framework for restricting trading by designated persons ('DPs') by freezing their Permanent Account Number ('PAN') at security level during the Trading Window Closure ('TWC') period to all listed entities. The August 2022 circular was made applicable only for listed companies that are a part of Nifty 50 or Sensex 30 commencing from trading window closure period for declaration of financial results for quarter ending September 30, 2022 whereas June 2023 circular mentioned that for quarter ended September 30,2023 the trading window closure shall start from October 1,2023 and list of companies to be considered for such trading window closure shall be communicated by SEBI by July 21,2023 Further SEBI vide circular dtd July 19, 2023 had communicated phase wise implementation of the framework . The Framework for the Next 1,000

	companies as notified by BSE and NSE via circular in terms of BSE Market Capitalization as of June 30, 2023-PAN Freeze date shall be January 1,2024 onwards. https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_Circular_17112023.zip https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231117-47

Podcast of MMJC! 

Episode 11 - Bird eye's view on CSR compliance!

Corporate Social Responsibility (CSR) is an ongoing commitment and must be undertaken throughout the year.

In this podcast from MMJC - we have delved into CSR compliances for the current financial year, FY 2023-24, highlighting the crucial aspects that businesses need to address before the deadline on 31 March 2024.

The link to the podcast is as follows:
https://www.youtube.com/watch?v=x2bLlvtKzPw