MEHTA & MEHTA
Corporate Legal Firm

VEDANAM वेदनम्

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Why Vedanam?

Mehta & Mehta proudly presents VEDANAM, our monthly newsletter designed to equip legal professionals, Company Secretaries, Chartered Accountants, and all Stakeholders navigating complex regulatory and legal environments. VEDANAM delivers meticulously curated:

- Timely Regulatory Updates
- Comprehensive Case Law Analysis
- Strategic Knowledge Article

With the release of our June 2025 issue, we reaffirm our commitment to providing you with the actionable knowledge needed to proactively navigate and thrive in today's dynamic business and legal landscapes.

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Find the latest updates about our Webinars and Circulars, Notifications and Updates published by SEBI, MCA, RBI, IBBI and other official government site.

SEBI UPDATE - ONE-TIME RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS

SEBI, vide its circular dated April 7, 2026, has granted a one- time relaxation extending the validity of its observation letters under the ICDR Regulations, 2018, for public issues, which are set to expire between April 1, 2026 and September 30, 2026, by allowing such validity to continue until September 30, 2026. This decision has been taken in response to industry representations citing challenges in capital raising due to ongoing geopolitical tensions in the Middle East, resulting in deferred or withdrawn issuance plans and risk of duplication of regulatory processes. The extension is subject to the condition that the lead manager provides an undertaking confirming compliance with Schedule XVI while submitting the updated offer document to SEBI. The circular is effective immediately and has been issued in the interest of investor protection and market development.

SEBI UPDATE - ONE-TIME RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS

SEBI UPDATE - RELAXATION FROM THE APPLICABILITY OF SEBI MASTER CIRCULAR FOR COMPLIANCE WITH THE PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 ON NON-COMPLIANCE WITH THE MINIMUM PUBLIC SHAREHOLDING (MPS) REQUIREMENTS

SEBI, vide circular dated April 7, 2026, has granted a one-time relaxation from the applicability of penal provisions under its Master Circular dated July 11, 2023, concerning non- compliance with Minimum Public Shareholding (MPS) requirements under the SEBI (LODR) Regulations, 2015, for listed entities whose compliance due dates fall between April 1, 2026 and September 30, 2026. This relaxation has been provided in light of industry representations citing challenges in meeting MPS norms due to capital market volatility arising from ongoing geopolitical tensions in the Middle East. Accordingly, stock exchanges and depositories have been directed not to initiate any penal action, including fines or freezing of promoter shareholding, during the said period, and to withdraw any such actions already initiated from

April 1, 2026 onwards. The circular is effective immediately and aims to ease compliance burdens while ensuring orderly market functioning.

SEBI UPDATE -RELAXATION FROM THE APPLICABILITY OF SEBI MASTER CIRCULAR FOR COMPLIANCE WITH THE PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 ON NON-COMPLIANCE WITH THE MINIMUM PUBLIC SHAREHOLDING (MPS) REQUIREMENTS

SEBI UPDATE - EASE OF DOING BUSINESS - MECHANISM FOR LOCK-IN OF PLEDGED SHARES UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

SEBI, vide circular dated April 8, 2026, has introduced a mechanism to facilitate ease of doing business by operationalising the lock-in of pledged shares under the SEBI (ICDR) Regulations, 2018, pursuant to its recent amendments dated March 21, 2026. The circular provides that in cases where creation of lock-in on pledged shares is not feasible, such securities shall be marked as "non-transferable" by depositories for the duration of the lock-in period. To implement this framework, depositories have prescribed necessary procedures, including incorporation of appropriate provisions in the Articles of Association, issuance of intimations to lenders/pledgees, and adequate disclosures in offer documents. Stock exchanges, depositories, merchant bankers, and issuers have been directed to ensure compliance with this mechanism, which is aimed at streamlining processes while safeguarding investor interests.

SEBI UPDATE - EASE OF DOING BUSINESS - MECHANISM FOR LOCK-IN OF PLEDGED SHARES UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

SEBI UPDATE - REVIEW OF REQUIREMENT RELATING TO REGISTRATION FOR A NOT FOR PROFIT ORGANIZATION ON SOCIAL STOCK EXCHANGE (SSE) AND MINIMUM SUBSCRIPTION REQUIREMENT FOR ISSUANCE OF ZERO COUPON ZERO PRINCIPAL INSTRUMENTS

SEBI, vide circular dated April 15, 2026, has introduced relaxations under the Social Stock Exchange (SSE) framework to promote ease of

for Not-for-Profit Organizations (NPOs), including extending the permissible period for NPOs to remain registered without raising funds from two years to three years (subject to SSE approval), and reducing the minimum subscription requirement for issuance of Zero Coupon Zero Principal (ZCZP) instruments from 75% to 50%, provided the SSE is satisfied through due diligence that the partially raised funds can still be meaningfully deployed as per the stated objectives; corresponding amendments have been made to the Master Circular dated January 19, 2026, also requiring disclosures on handling under-subscription scenarios and mandating refund where minimum subscription thresholds are not met, with immediate effect.

SEBI UPDATE - REVIEW OF REQUIREMENT RELATING TO REGISTRATION FOR A NOT FOR PROFIT ORGANIZATION ON SOCIAL STOCK EXCHANGE (SSE) AND MINIMUM SUBSCRIPTION REQUIREMENT FOR ISSUANCE OF ZERO COUPON ZERO PRINCIPAL INSTRUMENTS

SEBI UPDATE - FRAMEWORK FOR NET SETTLEMENT OF FUNDS FOR TRANSACTIONS DONE BY FOREIGN PORTFOLIO INVESTORS (FPIS) IN CASH MARKET

SEBI, vide circular, has introduced a framework permittingnet settlement of funds for outright transactions undertaken by Foreign Portfolio Investors (FPIs) in the cash market, with the objective of improving operational efficiency and reducing liquidity and funding costs arising from the earlier gross settlement mechanism . Under the new framework, transactions involving only outright buy or sell positions in a security during a settlement cycle will be eligible for netting to determine net fund obligations, while transactions involving both buy and sell in the same security will continue to be
settled on a gross basis . The circular clarifies that securities settlement shall remain on a gross basis between FPIs and custodians, and statutory levies such as STT and stamp duty will continue on a delivery basis . Implementation standards will be developed by the CDSSF in consultation with stakeholders, and the framework is to be implemented by December 31, 2026

SEBI UPDATE - FRAMEWORK FOR NET SETTLEMENT OF FUNDS FOR TRANSACTIONS DONE BY FOREIGN PORTFOLIO INVESTORS (FPIS) IN CASH MARKET

SEBI UPDATE - EXTENSION OF TIMELINE FOR COMPLIANCE WITH TERMS AND CONDITIONS BY DEBENTURE TRUSTEES FOR CARRYING OUT ACTIVITIES OUTSIDE THE PURVIEW OF SEBI

SEBI, vide circular, has extended the timeline for compliance with Regulation 9C of the SEBI (Debenture Trustees) Regulations, 1993, which requires debenture trustees to segregate non-SEBI regulated activities into separate business units. Considering industry representations regarding operational challenges, an additional six months has been granted, and the revised deadline for compliance is now October 27, 2026. All other provisions of the earlier SEBI circular dated November 25, 2025 remain unchanged.

SEBI UPDATE - EXTENSION OF TIMELINE FOR COMPLIANCE WITH TERMS AND CONDITIONS BY DEBENTURE TRUSTEES FOR CARRYING OUT ACTIVITIES OUTSIDE THE PURVIEW OF SEBI

SEBI UPDATE - OPERATIONALISATION OF PAST RISK AND RETURN VERIFICATION AGENCY ("PARRVA")

SEBI, vide circular, has operationalised the Past Risk and Return Verification Agency (PaRRVA) framework by granting recognition to Care Ratings Limited as PaRRVA, with NSE acting as the data centre, and commencing operations from May 4, 2026. Investment Advisers (IAs) and Research Analysts (RAs) intending to communicate certified past performance must enrol with PaRRVA by August 3, 2026, failing which such communication will not be permitted thereafter; further, use of pre-PaRRVA performance data will be allowed only until May 3, 2028. The circular also revises the composition of the oversight committee to ensure broader representation and independence, while all other provisions of the earlier circular dated April 4, 2025 remain applicable.

SEBI UPDATE - OPERATIONALISATION OF PAST RISK AND RETURN VERIFICATION AGENCY ("PARRVA")

SEBI UPDATE - FAST-TRACK MECHANISM FOR PROCESSING OF PLACEMENT MEMORANDUM OF AIFS FILED WITH SEBI

SEBI, vide circular, has introduced a fast-track mechanism for processing Private Placement Memorandums (PPMs) of Alternative Investment Funds (AIFs) for non-Large Value Fund (non-LVF) schemes, including Angel Funds, as an ease of doing business measure. Under this framework, AIFs may launch schemes and circulate PPMs after 30 days of filing with SEBI (or from the date of registration for first schemes, whichever is later), without awaiting explicit SEBI approval, subject to incorporation of any SEBI comments. The circular also mandates declaration of first close within 12 months, places responsibility for

accuracy and completeness of disclosures on the Merchant Banker and AIF Manager, prescribes filing requirements and standard disclaimers, and clarifies that all other provisions of the AIF Master Circular dated May 7, 2024 remain unchanged.

SEBI Update - Fast-Track Mechanism for Processing of Placement Memorandum of AIFs filed with SEBI

RBI UPDATE - RESERVE BANK OF INDIA (NON-BANKING FINANCIAL COMPANIES – REGISTRATION, EXEMPTIONS AND FRAMEWORK FOR SCALE BASED REGULATION) AMENDMENT DIRECTIONS, 2026

The Reserve Bank of India (Non-Banking Financial Companies – Registration, Exemptions and Framework for Scale Based Regulation) Amendment Directions, 2026, issued by the Reserve Bank of India, introduce a revised regulatory framework for NBFCs not availing public funds and not having customer interface by formally classifying them as 'Type I NBFCs' and 'Type II NBFCs', while also defining 'Unregistered Type I NBFCs'. The amendment provides that such NBFCs with asset size below ₹1,000 crore may be exempted from registration requirements (Sections 45IA and 45IC of the RBI Act, 1934), subject to specified conditions including absence of public funds, no customer interface, Board-approved undertakings, and mandatory disclosures; eligible existing NBFCs may apply for deregistration by December 31, 2026. It also introduces aggregation norms at the group level, clarifies indirect public funds, and mandates registration where asset size exceeds ₹1,000 crore or where business models change. Detailed procedural requirements for deregistration, auditor reporting obligations, and continued regulatory oversight have been prescribed, while ensuring that such remain subject to broader RBI supervisory powers. These amendments will come into effect from July 1, 2026.

RBI Update - RBI Update - Reserve Bank of India (Non-Banking Financial Companies – Registration, Exemptions and Framework for Scale Based Regulation) Amendment Directions, 2026

RBI UPDATE - RESERVE BANK OF INDIA (NON-BANKING FINANCIAL COMPANIES – RESPONSIBLE BUSINESS CONDUCT) AMENDMENT DIRECTIONS, 2026

The Reserve Bank of India (Non-Banking Financial Companies – Responsible Business Conduct) Amendment Directions, 2026, issued by the Reserve Bank of India, introduce a new provision under Chapter IV (Miscellaneous) by inserting Part E on "Measures in case of declaration of calamity." As per newly added Paragraph 105A, NBFCs are permitted, at their discretion, to extend relief measures to customers in regions affected by declared calamities, including waiver or reduction of fees and charges, for a period of up to one year. This amendment, aligned with the Resolution of Stressed Assets Amendment Directions, 2026 dated April 29, 2026, reinforces customer-centric and responsive conduct during distress situations and will come into effect from July 1, 2026.

RBI Update - Reserve Bank of India (Non-Banking Financial Companies – Responsible Business Conduct) Amendment Directions, 2026

RBI UPDATE - RESERVE BANK OF INDIA (NON-BANKING FINANCIAL COMPANIES – INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING) AMENDMENT, 2026

The Reserve Bank of India (Non-Banking Financial Companies – Income Recognition, Asset Classification and Provisioning) Amendment Directions, 2026, issued by the Reserve Bank of India, introduce key prudential and accounting changes aligned with the Resolution of Stressed Assets Amendment Directions, 2026 dated April 29, 2026. The amendment inserts Paragraphs 27A and 27B to allow borrower accounts impacted by calamities and restructured under Chapter VI-A to retain or regain 'Standard' classification upon implementation of a resolution plan, including upgrading accounts that slipped into NPA during the interim period, while ensuring future classification follows existing norms. Additionally, new provisioning requirements (Paragraphs 36D to 36F) mandate NBFCs to maintain an extra 5% provision on outstanding debt for accounts under such resolution plans, with incremental provisioning for repeated restructuring, subject to a 100% cap, and allow write-back upon satisfactory repayment performance. Further, income recognition norms (Paragraphs 40A and 40B) provide for accrual-based interest recognition for standard restructured accounts, but require cash basis recognition in cases of repeated restructuring. These amendments will come into effect from July 1, 2026.

RBI Update - Reserve Bank of India (Non-Banking Financial Companies – Income Recognition, Asset Classification and Provisioning) Amendment, 2026

IBBI UPDATE - VALUATION STANDARDS FOR THE PURPOSE OF VALUATION CONDUCTED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

One of the objectives of the Insolvency and Bankruptcy Code, 2016 ("the Code") is the maximisation of value of assets of the corporate debtor (CD) in a time bound manner. Valuation of the CD serves as a critical input for evaluation of resolution plans and facilitates informed decision-making by stakeholders, including the committee of creditors, resolution applicants, and adjudicating authorities. Therefore, transparent, objective, and credible valuation of assets of the CD is fundamental to the effective functioning of the insolvency framework

2. For the purposes of valuations under the Code, the following provisions of the amended regulations made under the Insolvency and Bankruptcy Code, 2016 provide that valuations shall be conducted in accordance with such valuation standards as notified by the Insolvency and Bankruptcy Board of India (IBBI/Board) through circular:

(i) clause (c) of sub-regulation (1) of regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; (ii) sub-regulation (3) of regulation 35 of the IBBI (Liquidation Process) Regulations, 2016; (iii) clause (b) of sub-regulation (1) of regulation 3 of the IBBI (Voluntary Liquidation Process) Regulations, 2017; (iv) clause (c) of sub-regulation (1) of regulation 39 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021, and (iv) sub-regulation (2) of regulation 30 of the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

3. In exercise of the powers conferred by the afore-mentioned regulations, the Board hereby notifies the International Valuation Standards (IVS), as issued and updated from time to time by the International Valuation Standards Council (IVSC), as the valuation standards applicable for the purposes of the valuations conducted under the Code and regulations made thereunder, until further orders. 4. This circular shall come into force from the date of its issue and shall apply to all valuation conducted under the Code and regulations made thereunder. 5. This circular is being issued in exercise of the powers conferred under the provisions of section 196 of the Code and regulations made thereunder.

IBBI Update - Valuation Standards for the purpose of valuation conducted under the Insolvency and Bankruptcy Code, 2016.

"SECURED CREDITOR FAILING TO CLEARLY INTIMATE DECISION TO REALISE SECURITY INTEREST IN FORM D WITHIN LIQUIDATION PROCESS REGULATION 21A TIMELINE AND CONTINUING AS SCC MEMBER NOT ENTITLED TO INVOKE OPTION UNDER SECTION 52 OF IBC AT LATER STAGE"

Tata Capital Financial Services Ltd. Vs. Liquidator of Jans Copper Pvt. Ltd. – NCLT Mumbai Bench

FACTS:

Tata Capital, a secured financial creditor, had hypothecated machinery as security for loans given to the corporate debtor. When liquidation commenced (13.08.2024), it filed Form D disclosing security as "NIL", actively participated in SCC meetings, and voted on the Section 230 scheme. Only after the scheme was rejected in February 2025 over six months later did it seek handover of hypothecated assets under Section 52.

Issues

Whether Tata Capital can assert its Section 52 right to realise security interest at such a late stage, given defective Form D disclosure, SCC participation, and non-compliance with Regulation 21A timelines.

Decision - Dismissed.

The Tribunal held Tata Capital disentitled to exercise Section 52 right on three grounds:

- **Form D defect** — Security disclosed as "NIL"; intention to realise never clearly intimated as required under Regulation 21A.

- **SCC participation** — A secured creditor who has not relinquished security is ineligible to be an SCC member under Regulation 31A(2); participation without objection contradicted its stance.
- **Delay & non-compliance** — Enforcement sought 6 months late with no compliance of Regulation 21A(2) payment obligations on record.

"INSOLVENCY PROCEEDINGS CAN RUN PARALLEL TO SARFAESI PROCEEDINGS, THE SAME DOES NOT MEAN THAT THE PROVISIONS OF THE IBC CAN BE INVOKED AS A TACTICAL MEASURE TO OBSTRUCT RECOVERY, ESPECIALLY WHEN THE FACTS INDICATE LACK OF BONA FIDES"

Kalpana Ashok Garg Vs. Standard Chartered Bank – NCLT Ahmedabad Bench

FACTS:
Personal guarantors of a corporate debtor filed petitions under Section 94 of IBC seeking insolvency resolution against themselves. By the time of filing (21.12.2025), the bank had
already taken significant SARFAESI steps NPA classification (01.02.2025), demand notice under Section 13(2) (09.03.2025), symbolic possession under Section 13(4) (28.05.2025), and a Section 14 CMM order (02.12.2025). The petitions were filed immediately after the CMM order, without disclosing these developments, and with disputed service on the bank. Whether Tata Capital can assert its Section 52 right to realise security interest at such a late stage, given defective Form D disclosure, SCC participation, and non-compliance with Regulation 21A timelines.

Issues
1. Whether Section 94 petitions were maintainable despite advanced SARFAESI
proceedings.
2. Whether the Tribunal must examine bona fides beyond mere debt and default.
3. Whether the timing and conduct attracted Section 65 as abuse of process.

4. Whether the Tribunal was bound by the IRP's recommendation for admission.

Decision - Dismissed with costs of ₹2,00,000 each. The Tribunal held

- **Bona fides mandatory -** Section 94 is a statutory right but must be exercised genuinely, not for a collateral purpose.
- **Abuse of process -** Timing of filing, non-disclosure of SARFAESI developments, and absence of any resolution intent showed petitions were filed only to invoke Section 96 moratorium and stall recovery.
- **IRP's recommendation not binding -** Tribunal independently assessed surrounding circumstances which the IRP had not examined.
- **Section 65 attracted -** Petitions initiated for a purpose other than insolvency resolution; interim moratorium ceased and bank permitted to continue recovery proceedings.

"INSOLVENCY PROCEEDINGS MAY BE INITIATED AGAINST A CORPORATE GUARANTOR IRRESPECTIVE OF THE STAGE OF PROCEEDINGS CONCERNING THE PRINCIPAL BORROWER, AND THAT APPROVAL OF A RESOLUTION PLAN DOES NOT IPSO FACTO DISCHARGE THE GUARANTOR'S LIABILITY UNLESS SPECIFICALLY PROVIDED THEREIN"

Kalpana Ashok Garg Vs. Standard Chartered Bank – NCLT Ahmedabad Bench

Facts:

A financial creditor filed a Section 7 petition against a corporate guarantor (Vurupa Trading) for recovery of ₹68.74 crore. The original debt was assigned to the petitioner in 2020, and a corporate guarantee was executed on 20.12.2021. As the debt remained unpaid, the guarantee was invoked by demand notice on 30.04.2024. Notably, CIRP had already been admitted and liquidation ordered against the principal borrower. The respondent opposed the petition on grounds of limitation, prematurity, and maintainability.

Issues:

1. Whether the petition was within limitation.
2. Whether ongoing liquidation of the principal borrower barred CIRP against the
corporate guarantor.
3. Whether financial debt and default were established for admission under Section 7.

Decision - Admitted. The Tribunal held:

- **Limitation** - Default date was 30.04.2024 (date of guarantee invocation); petition filed on 22.05.2025 was well within three years.
- **Guarantor's liability independent** - Relying on Lalit Kumar Jain v. UOI and BRS Ventures v. SREI, Section 14 moratorium does not extend to guarantors; CIRP against principal borrower does not bar proceedings against the guarantor.
- **Debt and default established** - Respondent's own financial statements for FY 2023-24 acknowledged liability under the corporate guarantee.
- **CIRP admitted** - Moratorium declared under Section 14 and IRP appointed.

"THE INSOLVENCY FRAMEWORK UNDER THE IBC IS INTENDED TO FACILITATE RESOLUTION OF GENUINE INSOLVENCY AND NOT TO BE INVOKED AS A SUBSTITUTE FOR RECOVERY PROCEEDINGS, PARTICULARLY IN CIRCUMSTANCES WHERE THE LIABILITY ITSELF IS NOT CLEARLY CRYSTALLISED"

SNJ SYNTHETICS LTD. VS. AKRON FORMULATIONS INDIA PVT. LTD. – NCLT HYDERABAD BENCH

Facts

An operational creditor filed a Section 9 petition claiming ₹1.39 crore (principal ₹1.16 crore + 24% interest) for supply of PET bottles under 56 invoices raised between July–October 2022.

The corporate debtor disputed the quantum, with its own ledger reflecting a lower outstanding of ₹84.40 lakh (below the Section 4 threshold), and showed willingness to pay in
instalments. No agreement was produced to support the claimed 60-day credit period or 24% interest rate.

Issues
Whether an unambiguous operational debt and default were established for admission under Section 9, given significant inconsistencies between the claimed amount and the corporate debtor's ledger.

Decision - Dismissed. The Tribunal held:

- **Running account** - Payments were made at different intervals without correspondence to specific invoices, establishing a running account, not individual invoice-based liability.
- **Interest unsupported** - No agreement or document produced to justify 60-day credit period or 24% interest; interest was computed beyond the transaction period.
- **Ambiguous quantum -** Corporate debtor's ledger showed ₹84.40 lakh (below Section 4 threshold); substantial inconsistency between the two figures required account reconciliation.
- **Not fit for Section 9 -** Dispute was essentially one of account reconciliation, which cannot be adjudicated in IBC proceedings; IBC cannot be used as a substitute for recovery.

"A PURELY SYMBOLIC ADMISSION OF CLAIM AT ONE RUPEE WITHOUT DISCLOSING ANY METHODOLOGY, ANALYTICAL EXERCISE, OR CONTRACTUAL REASONING, AND BY MECHANICALLY REITERATING THE CIRP POSITION, FALLS SHORT OF THE MANDATE UNDER SECTIONS 39 AND 40 IBC READ WITH REGULATION 25"

CENTRAL BANK OF INDIA VS. GVK BAGODARA VASAD EXPRESSWAY PVT. LTD. AND ANR. – NCL HYDERABAD BENCH"

Facts

Central Bank of India filed a claim of ₹184 crore in the liquidation of a corporate guarantor. The liquidator admitted the claim at a token value of ₹1/-, treating the guarantee liability as contingent due to a pending Section 34 arbitration challenge over & quottermination payment.& quot; The bank had earlier issued a recall notice on 16.05.2019 demanding ₹76.70 crore jointly and severally from both the principal borrower and the guarantor, with the account classified as NPA since 2016.

Issues

1. Whether the guarantee liability had crystallised or remained contingent due to
pending arbitration proceedings.
2. Whether admitting the claim at ₹1/- complied with the liquidator's duty to estimate
claims under Regulation 25 read with Sections 39 and 40 of IBC.
3. Whether the liquidator's communication was an independent determination or a mere
reiteration of the CIRP position.

Decision - Impugned communication set aside; fresh determination directed within 2 weeks. The Tribunal held:

- **Best estimate mandatory** - Even if liability were contingent, Regulation 25 obliges the liquidator to make a meaningful best estimate based on available material; ₹1/- with no methodology or reasoning does not qualify.
- **Mechanical reiteration insufficient** - Liquidator merely repeated the CIRP position without independently examining loan documents, guarantee terms, or the arbitral award.
- **Recall notice relevant** - The 2019 recall notice quantifying dues of ₹76.70 crore provided an objective basis for a reasoned estimation exercise.
- **Tribunal declined to quantify** - Left all contentions on quantum and guarantee interpretation open for the liquidator to decide afresh by reasoned order.

CONSEQUENCES OF NON DISCLOSURE OF DUES PAYABLE TO MSME IN FINANCIAL STATEMENTS

A brief on MSMED Act and the disclosure called for in the financial statements of a company

The Micro, Small and Medium Enterprises Development (MSMED) Act was notified in 2006 to address policy issues affecting MSMEs and the act also seeks to facilitate the development of these enterprises and enhance their competitiveness. The act also protects the Micro. Small and Medium Enterprises for getting their payment well within the date and in case of delay, the buyer has to make payment with interest. Besides the above protection, there is also a disclosure requirement in section 22 of the MSMED Act that the buyer need to disclose the unpaid amount with interest in the annual statements of the company. The act further provides that the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues are actually paid to the small enterprise. The disclosure, therefore required in the annual financial statement of the company as per the provisions of the MSMED Act, is as under: - (by way of illustration)

In the Balance sheet, the required disclosure would be

Under the heading Liabilities – in sub heading current liabilities the disclosure would be:-

CURRENT LIABILITIES	As at the end of the	
	CURRENT YEAR	LAST YEAR
Non-current liabilities would be stated as (a) Borrowings (b) Other financial liabilities and Provisions followed by Total non-current liabilities Thereafter:-		
Total non-current liabilities Financial liabilities		

(a) Trade payables (refer note ---) - Total outstanding dues of micro, small and medium enterprises -Total outstanding dues of creditors other than micro, small and medium enterprises	xxxx xxxxx	xxxx xxxxx
(b) Other financial liabilities Other current liabilities Provisions	xxxxx xxxxx xxxxx	xxxxx xxxxx xxxxx
Total current liabilities	**xxxxx**	**xxxxx**

The relevant note would also contain the following disclosures

TRADE PAYABLE	**As at the end of the**	
	CURRENT YEAR	**LAST YEAR**
Total outstanding dues of creditors other than micro, small and medium enterprises	xxxxx	xxxxx
Total outstanding dues of creditors other than micro, small and medium enterprises (i) Related Parties (refer note ---) (ii) Others	 xxxxx xxxxx	 xxxxx xxxxx
Total	**xxxx**	**xxxx**

Details of dues to micro, small and medium enterprises as defined under the MSMED Act, 2006

The Company has certain dues payable to suppliers registered under Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The information as required to be disclosed under MSMED Act has been determined to the extent such parties have been identified on the basis of information available with the Company.

1. Adherence of the provisions of MSMED Act by the company

From the above, one can come to a conclusion at the first place that adhering the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) is mandated by the Government while preparing the

financial statements. And in the second place, if there is any non-compliance, then the law will take its own course of action against the company and the defaulting officers of the company. Hence the company shall have to comply with the disclosure requirements of the MSMED Act in its financial statements.

2. What could be seen as non-compliance?

At the first place, not providing the required disclosure as per the Micro, Small and Medium Enterprises Development Act, 2006 would definitely be a non-compliance.

In the second place, if a company states in the financial statements that the company has not received any information about Micro, Small and Medium Enterprises of the selling company and consequently the amount paid / payable in the year is NIL, would be taken as a compliance or it would be still a non-compliance and how the regulator would look upon this is a question.

3. Determination of compliance / vs. non-compliance

Let us examine the facts as discussed in the second place above.

Since the MSMED Act is passed for the purpose of protecting the interest of the Micro and Medium Enterprises for getting their payment well within the date and in case of delay, the buyer has to make payment with interest, it is the duty of the company to identify the parties whether they are Micro and Medium Enterprises and accordingly they need to make the payment in time, in case of delay, payment with interest and also provide the in the financial statements, the required disclosure. In the second situation narrated under serial number two, means that the company has not acted upon the provisions of the MSMED Act in true spirit to identity the parties and disclose the same in the annual reports and therefore the company would become liable for penal action under section 129(7) read with Schedule III of the Companies Act 2013.

Section 134(5) of the Companies Act 2013 requires that all companies to have a proper compliance management system to ensure compliance with provisions of all applicable laws to a company. It is needless to mention that all companies, whether private or public – listed or unlisted – all the companies have to comply with the requirements as per MSMED Act.

4. Default committed (if any) by the company

If non-compliance in adhering the Section 129 of the Companies Act 2013 which speaks about the financial statements, then the same will amount to violation of the provisions of section 129 of the Companies Act 2013 for the year and the regulator would view that the company and directors have not disclosed the required disclosure in the financial statement about compliance of the MSMED Act and they would initiate issue of show cause notice followed by necessary penal action.

5. Consequences when default committed

As per sub-section (5) of section 206 of the Companies Act 2013, the Central Government carry out the inspection of the books of accounts relating to a particular financial year and if it is noticed that the required disclosure relating to Micro and Medium Enterprises Development (MSMED) Act 2006, then the regulator would take a view that the non-disclosure of this nature has resulted into violation of section 129 of the Companies Act 2013 and they would issue show cause notice initially which would then follow penal actions against the company and the defaulting officers.

6. The Penal provisions as per the Companies Act 2013 on this matter

As per the provision of sub section (7) of section 129, the penal provisions are as under:-

" If a company contravenes the provisions of section 129, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

(It is the same provision which was there in the earlier act of 1956 under its section 211)

7. What follows next?

Either upon taking the inspection of the books of the companies by the inspecting officer of the central government u/s 206 (5) of the companies act or even examination the financial statements submitted by the company to the regulator, the regulation could notice that the required disclosure as per the

provision of Micro, Small and Medium enterprises Development Act 2006 is not made by the company. The regulator also can examine whether the company has acted upon the provisions of the MSMED Act of 2006 and identified the parties from the suppliers whether they are registered under Micro, Small and Medium Enterprises and thereafter provided the required information to be disclosed under MSMED Act, on the basis of information available with the Company.

Upon the establishment of non-compliance, the regulator would issue show cause notice to the company stating that the company has not stated in the balance sheets and its notes to accounts the required disclosure as per the provisions of the MSMED Act and stating that the non-availability of details are not the reasons for not disclosing the amount payable to MSMEs. Further the regulator would state that as the company has not categorically stated that no amount is payable to MSE, the company is liable for penal action and for violation of schedule VI r/w section 129 of the Companies Act 2013.

8. Action from the company

It may not be possible for the company to defend themselves in case of default of the above nature which would attract the penal provisions of the Companies Act leading to regulatory penal actions. Then, there is no other option for the company than going for compounding of offences to get over the violation as per the provisions of section 441 of the Companies Act 2013

9. Further process after filing Compounding Application

Since the offence under this section i.e. 129 of the Companies Act 2013 is compoundable under section 441 of the Companies Act, the company may have to resort filing the compounding application, admitting the offence and with a request to the regulatory authorities to compound the offence and close the issue. As we are all aware in this process of filing the compounding of offence, the company not only spends its time and money but a lot of time in getting the matter resolved finally, involving, (I) e-filing of compounding application, (ii) lodging the physical copies of the application with the concerned Registrar of Companies, (iii) attending the hearing / hearings, (iv) getting the order and finally (v) making the compounding fees etc.to get the matter closed.

10. Disclosure by companies on the above matter

In couple of places in the Annual Financial statements along with board report would be making the required disclosures on this matter as stated below.

10.1 Disclosure In Board Report of the company

In the board report of the company addressed to the shareholders of the company under its heading "Directors' Responsibility Statement" Pursuant to Section 134(5) of the Companies Act 2013, the directors are required to confirm that they have devised proper systems to ensure compliance with the provisions of all applicable laws and that these are adequate and are operating effectively amongst other statements.

10.2 Disclosure in Extract of Annual Return

As required under Section 92(3) read and Rule 12(1) of the Companies (Management and Administration) Rules, 2014 with Section 134(3) (a) of the Companies Act 2013, an extract of the Annual Return in Form No. MGT 9, attached by way of an Annexure forming part of board report is also required to disclose the details of compounding of offences under the headings "Penalties / Punishment / Compounding of offences".

10.3 Disclosure in Secretarial Audit Report – in public companies

Public companies are required to annex the secretarial audit report with the board report

Pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

The Secretarial Auditor based on his review on compliance mechanism established by the company, would be reporting in his secretarial audit report that the company is having adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines

10.4 Disclosure in Corporate Governance Report – in Listed companies

Report on Corporate Governance & Management Discussion & Analysis is required to be annexed by a

separate section titled Report on Corporate Governance together with a Certificate from the Practicing Company Secretary which forms part of the annual report of the company pursuant to Regulation 34(3) read with Schedule V of the SEBI (Listing Obligations And Disclosure Requirements) Regulations 2015 by all the listed companies.

Under the heading "Integrity of Financial Reporting" each Company is required to disclose that they are having adequate controls in place to provide accurate and timely disclosure on all material matters including the financial situation, performance, ownership and governance of the Company and the audit process is supervised by the Audit Committee of the Board and is undertaken by an independent firm of Chartered Accountants, accountable directly to the Audit Committee

Further under the heading "Audit Committee" - the company also required to disclose the review where necessary in respect of compliance with listing and other legal requirements relating to financial statements has been undertaken.

11. Non-compliance would be known to all stakeholders

All the stakeholders of the company, readers, investors, and analyst – all the people who are the recipient of the annual report would know the non-compliance committed by the company and the compounding fees details, which would obviously affect the reputation of the company and its image in the market place.

12. Conclusion

As per sub-section 5 of section 134 of the Companies Act 2013, all companies are required to have a proper system to ensure compliance with the provisions of all applicable laws to the company. Further, the board of directors shall have review periodically reports of all applicable to the company as well steps taken by the company to rectify instances of non-compliances.

Section 205 of the Companies Act 2013 spells out the functions of the company secretary for the first time in the act itself. One of the function spelled out by this section is that the company secretary is required to report compliance with the provisions of not only the Companies Act 2013 but also compliance with the provisions of other applicable laws applicable to the company amongst others.

From the above, it is abundantly clear that the absolute compliance of the provisions of not only the Companies Act 2013 but also other applicable acts are to be ensured and the chief financial officer of the company has to be very vigilant in complying with all the required provisions of the applicable acts while compiling the financial statements for its contents and the required disclosures of the applicable acts to the company with reference to Schedule III of the Companies Act 2013.

Any non-compliance would attract penal actions and the company along with its officers i.e. the directors and the key managerial personnel would be held liable for the regulatory penal actions. Needless to mention that the Chief Financial officer of the company has the primary responsibility for ensuring the accuracy, correctness, compliance relating to financial statements and the required disclosures and the company secretary professionals, who are also occupying the position of key managerial personnel by virtue of definition itself, is entrusted with the responsibilities of ensuring compliance and the company secretary need to work in coordination with the Chief Financial Officer with the check list and ensure the utmost compliance with a team work.

The company needs to have a proper compliance management system to ensure compliance with provisions of all applicable laws to a company which is also stated in Section 134(5) of the Companies Act 2013 as stated earlier, which states that ll companies to have a proper compliance management system to ensure compliance with provisions of all applicable laws to a company.

Last but not the lease that all companies have to ensure absolute compliance with proper compliance mechanism in place and the professionals like chief financial officer and the company secretary need to be very vigilant doing the things "First Time Right" / " Doing What's Right".

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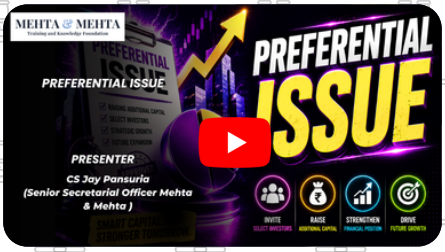

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