MEHTA & MEHTA
Corporate Legal Firm

VEDANAM
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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.

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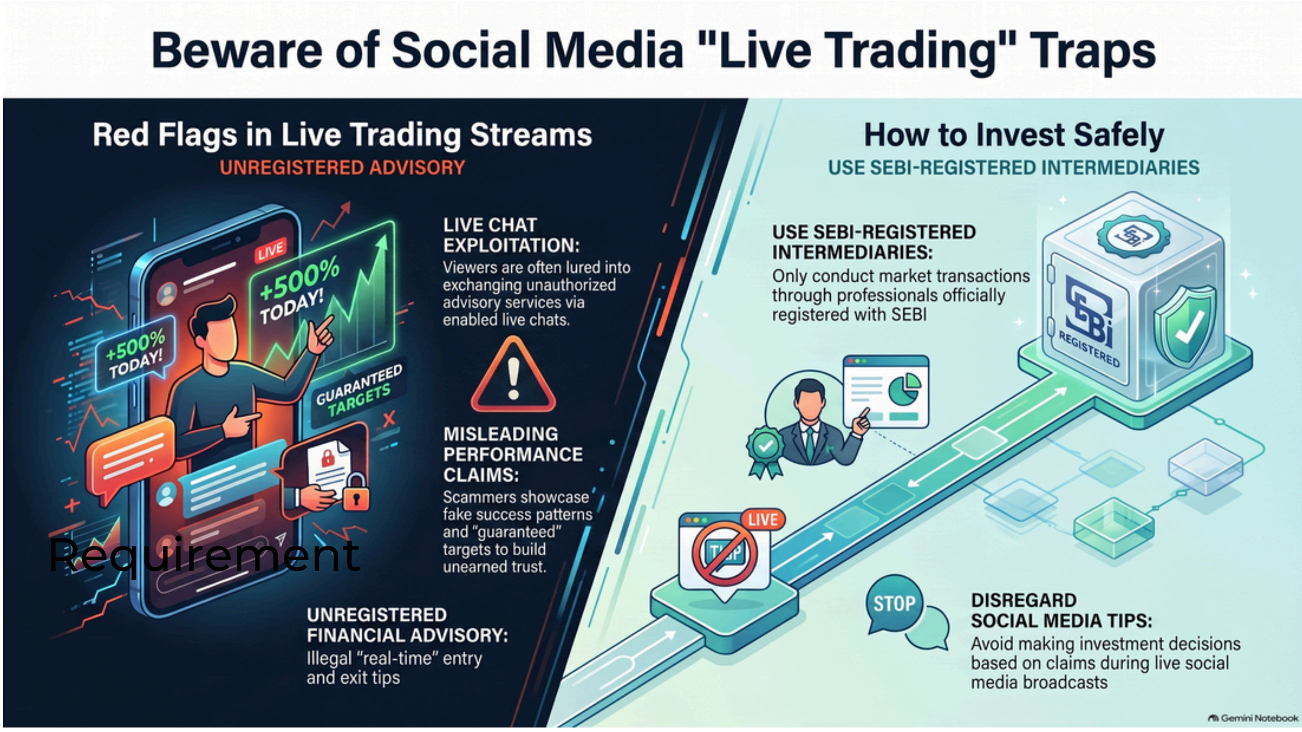
SEBI UPDATE - CAUTION TO INVESTORS REGARDING DISPLAY OF LIVE TRADING STRATEGIES ON SOCIAL MEDIA PLATFORMS



SEBI has released a public advisory flagging a rise in "live trading strategies/real-time strategies" content on social media, and is calling on investors to stay alert while dealing in the securities market. The regulator has noted that certain individuals are running live sessions on social platforms, positioning themselves as offering real-time stock market tips. These sessions reportedly draw large audiences, with live chat features enabled alongside them creating a channel for unregistered advisory services to be exchanged in real time. The hosts present themselves as market experts, walking viewers through entry and exit points, trading strategies, and recommended positions on market indices. Several also claim to trade live on-air, displaying their trade outcomes, the chart patterns they read into live price movement, and the price targets they expect the market to hit. In light of this, SEBI has cautioned investors against relying on such claims or basing investment decisions on these live trading sessions, and has reiterated that investors should engage only with SEBI-registered intermediaries.

<u>SEBI UPDATE - CAUTION TO INVESTORS REGARDING DISPLAY OF LIVE TRADING STRATEGIES ON SOCIAL MEDIA PLATFORMS</u>

SEBI UPDATE - EXTENSION OF TIMELINE FOR ENROLMENT WITH PARRVA AS SPECIFIED IN SEBI CIRCULAR NO. HO/38/14/(4)2026-MIRSD-POD/I/10557/2026 DATED APRIL 29, 2026

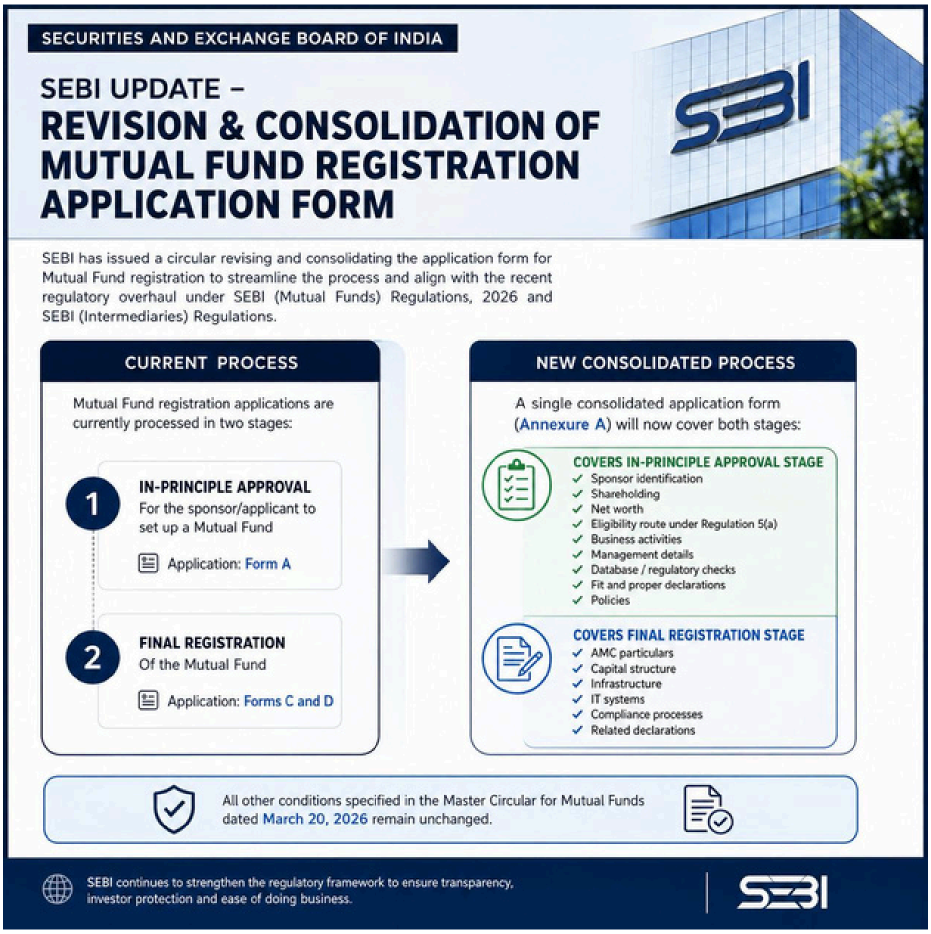
SEBI has issued a circular, extending the deadline for Investment Advisers (IAs) and Research Analysts (RAs) to enrol with the Past Risk and Return Verification Agency (PaRRVA) from August 3, 2026, to September 3, 2026. This extension has been granted following representations received from industry participants and PaRRVA, with the objective of ensuring smooth and seamless implementation of the framework. Accordingly, IAs and RAs intending to communicate certified past performance data to existing or prospective clients must complete enrolment with PaRRVA by September 3, 2026; failing which, they will not be permitted to communicate such certified past performance data.

SEBI UPDATE - EXTENSION OF TIMELINE FOR ENROLMENT WITH PARRVA AS SPECIFIED IN SEBI CIRCULAR NO. HO/38/14/(4)2026-MIRSD-POD/I/10557/2026 DATED APRIL 29, 2026

SEBI UPDATE : REVISION OF APPLICATION FORM FOR MUTUAL FUND REGISTRATION CIRCULAR NO.: HO/24/11/36(24)2026-IMD-RAC4/I/18849/2026

SEBI issued a circular revising and consolidating the application form for Mutual Fund registration. Currently, applications for Mutual Fund registration are processed in two stages: In-Principle Approval for the sponsor/applicant to set up a Mutual Fund, and Final Registration of the Mutual Fund. The In-Principle Approval application requires Form A, and the Final Registration application requires Forms C and D. In view of the recent overhaul of the SEBI (Mutual Funds) Regulations, 2026 and the SEBI (Intermediaries) Regulations, SEBI decided to revise and consolidate the existing forms into a single application form (enclosed as Annexure A). This new form covers both the In-Principle Approval stage (sponsor identification, shareholding, net worth, eligibility route under Regulation 5(a), business activities, management details, database/regulatory checks, fit and proper declarations, and policies) and the Final Registration stage (AMC particulars, capital structure, infrastructure, IT systems, compliance processes, and related declarations). All other conditions specified in the Master Circular for Mutual Funds dated March 20, 2026 remain unchanged.

SEBI UPDATE : REVISION OF APPLICATION FORM FOR MUTUAL FUND REGISTRATION CIRCULAR NO.: HO/24/11/36(24)2026-IMD-RAC4/I/18849/2026


SECURITIES AND EXCHANGE BOARD OF INDIA
SEBI UPDATE –
REVISION & CONSOLIDATION OF MUTUAL FUND REGISTRATION APPLICATION FORM
SEBI has issued a circular revising and consolidating the application form for Mutual Fund registration to streamline the process and align with the recent regulatory overhaul under SEBI (Mutual Funds) Regulations, 2026 and SEBI (Intermediaries) Regulations.
CURRENT PROCESS
Mutual Fund registration applications are currently processed in two stages:
1
IN-PRINCIPLE APPROVAL
For the sponsor/applicant to set up a Mutual Fund
Application: Form A
2
FINAL REGISTRATION
Of the Mutual Fund
Application: Forms C and D
NEW CONSOLIDATED PROCESS
A single consolidated application form (Annexure A) will now cover both stages:
COVERS IN-PRINCIPLE APPROVAL STAGE
Sponsor identification
Shareholding
Net worth
Eligibility route under Regulation 5(a)
Business activities
Management details
Database / regulatory checks
Fit and proper declarations
Policies
COVERS FINAL REGISTRATION STAGE
AMC particulars
Capital structure
Infrastructure
IT systems
Compliance processes
Related declarations
All other conditions specified in the Master Circular for Mutual Funds dated March 20, 2026 remain unchanged.
SEBI continues to strengthen the regulatory framework to ensure transparency, investor protection and ease of doing business.
SEBI

RBI UPDATE - RESERVE BANK OF INDIA (RURAL CO-OPERATIVE BANKS / URBAN CO-OPERATIVE BANKS, REGIONAL RURAL BANKS/ LOCAL AREA BANKS / SMALL FINANCE BANKS/ COMMERCIAL BANKS – INTEREST RATE ON DEPOSITS) SECOND AMENDMENT DIRECTIONS, 2026

RBI issued near-identical amendment directions on August 25, 2026, across six bank categories — Commercial Banks, Small Finance Banks, Local Area Banks, Regional Rural Banks, Urban Co-operative Banks, and Rural Co-operative Banks (Second Amendment for the last one; Third Amendment for the other five). These amend each category's respective "Interest Rate on Deposits" Directions, 2025. The underlying relief being amended: temporary withdrawal of the interest rate ceiling on fresh FCNR(B) deposits (3–5-year tenors) and restriction on interest rates on NRE deposits (3+ year tenors, including renewals), effective June 17, 2026, originally valid till September 30, 2026. The amendment shortens this relaxation window, changing the end-date from September 30, 2026 to August 31, 2026, effective immediately. Mechanically, each notification amends two specific paragraphs in the respective Directions (paragraph numbers vary slightly by category) to reflect the revised date. Legal basis: Section 35A for Commercial Banks/SFBs/LABs/RRBs; Section 35A read with Section 56 for Urban and Rural Co-operative Banks. Net effect: banks across all these categories must revert to normal FCNR(B)/NRE interest rate ceilings a month earlier than originally scheduled.

RBI Update - Reserve Bank of India (Rural Co-operative Banks / Urban Co-operative Banks, Regional Rural Banks/ Local Area Banks / small Finance Banks/ Commercial Banks – Interest Rate on Deposits) Second Amendment Directions, 2026

RESERVE BANK OF INDIA (RURAL CO-OPERATIVE BANKS / URBAN CO-OPERATIVE BANKS, REGIONAL RURAL BANKS / SMALL FINANCE BANKS/ COMMERCIAL BANKS –(CASH RESERVE RATIO & STATUTORY LIQUIDITY RATIO)) FOURTH AMENDMENT DIRECTIONS, 2026

RBI issued Fourth Amendment Directions on August 25, 2026, across five bank categories — Commercial Banks, Small Finance Banks, Regional Rural Banks, Urban Co-operative Banks, and Rural Co-operative Banks — each amending their respective "CRR and SLR" Directions, 2025 (updated June 19, 2026). The underlying relief being amended: an exemption from CRR/SLR maintenance for fresh FCNR(B) deposits (3–5-year tenors) mobilized between June 8, 2026 and September 30, 2026, and fresh NRE term deposits (3+ year tenors,

including renewals) mobilized between June 19, 2026 and September 30, 2026.
The amendment shortens both windows, changing the end-date from September 30, 2026 to August 31, 2026, effective immediately. Mechanically, each notification amends two specific sub-paragraphs (numbering varies by category — e.g., 20(8)/20(9) for Commercial Banks; 21(5)/21(6) for Urban/Rural Co-op Banks). Legal basis: Section 35A of the Banking Regulation Act, 1949, read with Section 42 of the RBI Act, 1934 and Sections 18 & 24 of the BR Act (Rural and Urban Co-op Banks additionally cite Section 56 AACS).
Net effect: banks across these five categories lose the CRR/SLR exemption on such FCNR(B)/NRE deposits a month earlier than originally scheduled — aligning with the parallel deposit-interest-rate amendments issued the same day.

Reserve Bank of India (Rural Co-operative Banks / Urban Co-operative Banks, Regional Rural Banks / small Finance Banks/ Commercial Banks –(Cash Reserve Ratio & Statutory Liquidity Ratio)) Fourth Amendment Directions, 2026

RESERVE BANK OF INDIA (RURAL CO-OPERATIVE BANKS / URBAN CO-OPERATIVE BANKS, REGIONAL RURAL BANKS/ LOCAL AREA BANKS / SMALL FINANCE BANKS/ COMMERCIAL BANKS – INTEREST RATE ON DEPOSITS) SECOND AMENDMENT DIRECTIONS, 2026

RBI issued near-identical amendment directions on August 25, 2026, across six bank categories — Commercial Banks, Small Finance Banks, Local Area Banks, Regional Rural Banks, Urban Co-operative Banks, and Rural Co-operative Banks (Second Amendment for the last one; Third Amendment for the other five). These amend each category's respective "Interest Rate on Deposits" Directions, 2025. The underlying relief being amended: temporary withdrawal of the interest rate ceiling on fresh FCNR(B) deposits (3–5-year tenors) and restriction on interest rates on NRE deposits (3+ year tenors, including renewals), effective June 17, 2026, originally valid till September 30, 2026.
The amendment shortens this relaxation window, changing the end-date from September 30, 2026 to August 31, 2026, effective immediately. Mechanically, each notification amends two specific paragraphs in the respective Directions (paragraph numbers vary slightly by category) to reflect the

revised date. Legal basis: Section 35A for Commercial Banks/SFBs/LABs/RRBs; Section 35A read with Section 56 for Urban and Rural Co-operative Banks. Net effect: banks across all these categories must revert to normal FCNR(B)/NRE interest rate ceilings a month earlier than originally scheduled.

Reserve Bank of India (Rural Co-operative Banks / Urban Co-operative Banks, Regional Rural Banks/ Local Area Banks / small Finance Banks/ Commercial Banks – Interest Rate on Deposits) Second Amendment Directions, 2026

WHETHER AMOUNTS DISBURSED WITHOUT ANY WRITTEN FINANCIAL CONTRACT, INTEREST STIPULATION, REPAYMENT TERMS, OR ESTABLISHED TIME VALUE OF MONEY CAN BE TREATED AS A FINANCIAL DEBT AND DEFAULT UNDER SECTIONS 5(8) AND 3(12) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 FOR ADMITTING A SECTION 7 APPLICATION?

ACP Industries Ltd. v. Brewer Energy Pvt. Ltd.

Facts of the Case:

ACP Industries Ltd. filed a Section 7 IBC application against Brewer Energy Pvt. Ltd. claiming default in repayment of ₹4.88 crore allegedly disbursed between 2015 and 2016. The respondent disputed the claim, asserting that the transactions were merely inter-group fund transfers and not loans.

Contentions:

The applicant argued that the advances constituted a financial debt repayable on demand and that limitation was extended through balance sheet acknowledgments. The respondent contended that there was no loan agreement, no time value of money, no default, and that the claim was time-barred.

Issue:

Whether the applicant had established the existence of a financial debt, occurrence of default, and whether the application was within limitation.

Decision:

The NCLT Hyderabad held that the alleged transactions did not qualify as a financial debt as there was no evidence of consideration for the time value of money. It further found that no default had been proved and that the pattern of transactions indicated possible round-tripping between related entities. The application was also held to be barred by limitation.

Conclusion:
The Section 7 application was dismissed as the applicant failed to establish financial debt, default, or a claim within the limitation period

WHETHER THE COMMITTEE OF CREDITORS CAN DECLINE TO CARRY FORWARD A NEWLY INTRODUCED OPTION IN A MODIFIED RESOLUTION PLAN TO EVALUATION AND E-VOTING ON THE GROUND THAT IT DEVIATES FROM THE COMMITTEE'S PRIOR DIRECTION ON FINALITY AND UNIFORMITY OF PROCESS?

Anil Kumar Aggarwal v. Ductrus Resolution Professional Pvt. Ltd. (RP) and Ors.

Facts of the Case:
The applicant, an unsuccessful resolution applicant in the CIRP of Santur Infrastructures Pvt. Ltd., challenged the CoC's decision not to place Option C of its modified resolution plan for e-voting. The CoC had earlier directed that the proposal discussed in the 12th CoC meeting would be final and no further modifications would be permitted.

Contentions:
The applicant argued that Option C was a compliant resolution proposal and, under Section 30(3) of the IBC, should have been placed before the CoC for consideration and voting. The respondents contended that Option C was a new proposal introduced after the deadline and that its exclusion was a valid exercise of the CoC's commercial wisdom to maintain uniformity and a level playing field.

Issue:
Whether the CoC's decision not to carry Option C forward for evaluation and e-voting was arbitrary or amounted to a procedural irregularity warranting interference by the Tribunal.

Decision:

The NCLT held that Option C had in fact been placed before the CoC by the Resolution Professional and was consciously excluded after deliberation because it was introduced for the first time after the CoC had prohibited further modifications. The Tribunal found that the decision was a legitimate exercise of the CoC's commercial wisdom and was neither arbitrary nor discriminatory.

Conclusion:

The application was dismissed. The Tribunal held that no procedural irregularity or arbitrariness was established and that the CoC's commercial decision could not be interfered with under Section 60(5) of the IBC.

WHETHER A SECTION 7 APPLICATION CAN BE ADMITTED DESPITE THE FINANCIAL CREDITOR AND CORPORATE DEBTOR BEING RELATED PARTIES, WHEN DEBT AND DEFAULT ARE ESTABLISHED AND THE MINORITY SHAREHOLDER ALLEGES COLLUSION, QUASI-EQUITY, AND PENDENCY OF OPPRESSION AND MISMANAGEMENT MPROCEEDINGS?

CMP Industrie S.R.L. v. CMP Euro Technoplast Pvt. Ltd.

Facts of the Case:

The financial creditor filed a Section 7 application against CMP Euro Technoplast Pvt. Ltd. based on ECB (External Commercial Borrowing) loan agreements registered with the RBI. A minority shareholder intervened, alleging that the proceedings were collusive, the loans were quasi-equity in nature, and the petition was intended to defeat pending shareholder disputes and oppression proceedings.

Contentions:

The financial creditor contended that the ECB loans were duly disbursed, carried interest, were registered with the RBI, and that default had occurred. The intervenor argued that the financial creditor and corporate debtor were under common control, the loans were not genuine financial debt, and the petition was a misuse of the IBC.

Issue:
Whether the existence of financial debt and default was established under Section 7, and whether allegations of related-party control, collusion, and pending oppression and mismanagement proceedings could prevent admission of the CIRP application.

Decision:
The NCLT Mumbai held that the ECB agreements, RBI registration, repayment communications, demand notice, and NeSL records conclusively established financial debt and default. The Tribunal found that related-party status did not bar a Section 7 application and that the intervenor failed to produce evidence showing the debt was fictitious or that the proceedings were fraudulent. It further held that pending proceedings under Sections 241 and 242 of the Companies Act could not override the IBC due to Section 238.

Conclusion:
The intervention petition was rejected, and the Section 7 application was admitted. CIRP was initiated against the corporate debtor, moratorium was declared, and an independent IRP was appointed.

WHETHER HOMEBUYERS WHOSE CLAIMS WERE REJECTED BUT WHOSE ALLOTMENT LETTERS ACKNOWLEDGED PAYMENT COULD OBTAIN RECALL AND MODIFICATION OF DISMISSAL ORDERS AFTER SIMILARLY PLACED CO- APPLICANTS SUCCEEDED BEFORE THE NCLAT, AND WHETHER RULE 11 OF THE NCLT RULES, 2016 COULD BE INVOKED TO REOPEN AN EARLIER MERITS DISMISSAL THAT HAD ATTAINED FINALITY?

Anand Avinash Saraph v. Manoj Kumar Agarwal and Anr.

Facts of the Case:

The applicants were homebuyers whose claims had been rejected during the CIRP of D S Kulkarni Developers Ltd. Their earlier applications were either dismissed as infructuous after approval of the resolution plan or, in one case, dismissed on merits for lack of proof of payment. They sought recall of those orders relying on a subsequent NCLAT judgment granting relief to similarly placed homebuyers.

Contentions:

The applicants contended that they were genuine allottees, their allotment letters acknowledged substantial payments, and denying them relief while granting identical relief to similarly placed homebuyers would result in unequal treatment. The applicant in IA No. 728 of 2026 sought recall of an earlier order dismissing his claim.

Issue:

Whether homebuyers whose applications were dismissed as infructuous could obtain similar relief as granted by the NCLAT to other similarly placed allottees, and whether an order dismissing a claim on merits could be recalled under Rule 11 of the NCLT Rules, 2016.

Decision:

The NCLT held that the applicants in IA Nos. 727, 774, and 794 of 2026 were undisputedly reflected as allottees and their claims stood on the same footing as those of homebuyers who had already succeeded before the NCLAT. Accordingly, the Successful Resolution Applicant was directed to accept their claims and treat them similarly to other admitted homebuyers, subject to payment of the balance amount with applicable interest. However, IA No. 728 of 2026 was dismissed because the earlier application had been rejected on merits, no appeal had been filed, and the order had attained finality. The Tribunal held that recalling such an order would amount to an impermissible review under Rule 11.

Conclusion:

The Tribunal allowed IA Nos. 727, 774, and 794 of 2026, recalled and modified the earlier dismissal order to extend benefits available to similarly placed homebuyers, and dismissed IA No. 728 of 2026 as the earlier order had attained finality and could not be reopened through a recall application.

WHETHER A BANKRUPTCY ORDER UNDER SECTION 121 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 CAN BE ASSAILED ON GROUNDS OF WANT OF NOTICE, LIMITATION, AND ALLEGED INCONSISTENCY IN CONNECTED PROCEEDINGS WHEN THE EARLIER EX PARTE, PIRP ADMISSION, CLOSURE, AND RECALL-RELATED ORDERS WERE NEVER CHALLENGED AND HAD ATTAINED FINALITY?

Aditya Vivek Kawde v. Bank of Maharashtra and Anr

Facts of the Case:
The appellant, Aditya Vivek Kawde, was a personal guarantor of Aniirudh Civil Engineers and Contractors Pvt. Ltd. Bank of Maharashtra initiated proceedings under Section 95 of the IBC, resulting in admission of the PIRP. The PIRP was subsequently closed, and the appellant's recall and rectification applications were dismissed. Thereafter, bankruptcy proceedings were initiated under Section 121.

Contentions:
The appellant challenged the bankruptcy order on the grounds of violation of natural justice, non-service of the closure and bankruptcy applications, limitation, improper invocation of the personal guarantee, and inconsistent findings in the proceedings against his father. The respondents contended that all earlier orders had attained finality and that the appellant had been served by email. They also alleged suppression of material facts.

Issue:

Whether the bankruptcy order could be challenged by reopening issues relating to the earlier **PIRP admission and closure orders,** which had attained finality.

Decision:

The NCLAT dismissed the appeal and upheld the bankruptcy order. It held that the earlier exparte, admission and closure orders had not been challenged and had attained finality. The bankruptcy order was therefore a natural consequence of those proceedings.
The Tribunal also held that Section 121 does not require prior notice before passing a bankruptcy order, and the record showed that the appellant had in any event been served by email. The limitation objection was also rejected as the earlier admission order had already concluded that the personal guarantee was first invoked on 28.06.2022. The dismissal of the proceedings against the appellant's father was held irrelevant as the two proceedings were independent.

Conclusion:

An appellant cannot use an appeal against a consequential bankruptcy order to collaterally challenge earlier PIRP orders that have attained finality.

MCA UPDATE : THE COMPANIES (INDIAN ACCOUNTING STANDARDS) AMENDMENT RULES, 2026

MCA notified the Companies (Indian Accounting Standards) Amendment Rules, 2026, vide Notification G.S.R. 725(E) dated August 12, 2026. The amendments, inter alia, revise Ind AS 101 relating to first-time adoption of Indian Accounting Standards, including clarifications concerning hedge accounting transitions, and amend Ind AS 107 to introduce additional disclosure requirements for contracts dependent on electricity purchases. Ind AS 107 has been expanded to introduce new disclosure requirements cover risks, commitments and performance impacts, including unused electricity purchases, sale of unused electricity and related costs. Companies to which Ind AS applies should assess the impact of these amendments on their accounting and financial statement disclosures.

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT (AMENDMENT) ACT, 2026

The Micro, Small and Medium Enterprises Development (Amendment) Act, 2026 received Presidential assent on August 13, 2026. The amendments, inter alia, provide for updated classification of Micro, Small and Medium Enterprises, mandatory settlement of receivables through the Trade Receivables Discounting System (TReDS) for specified entities, a revised framework for Micro and Small Enterprises Facilitation Councils (MSEFCs), strengthened dispute resolution mechanisms and decriminalisation of certain offences. Companies having MSME-related transactions should evaluate the applicability and operational impact of the amended framework.

COMPOSITION OF AUDIT COMMITTEE IN A NBFC - AN ANALYSIS WITH REFERENCE TO NUMBER OF MEMBER'S REQUIREMENT

A brief on Audit Committee

1. The main purpose of constituting an Audit Committee in an organization is to provide oversight of the financial reporting process, the audit process, the company's system of internal controls and compliance with applicable laws, rules and regulations. The Audit Committee also oversees and improve financial practices and reporting in the organization by providing its oversight. The Audit Committee periodically meets the chief executive officer (managing director) of the company along with its chief financial officer and other financial officers to review and maintain effectiveness of organizational controls and as well as external financial reporting.

Governing provisions on Audit Committee under Companies Act 2013

2. Section 177 of the Companies Act, 2013 and Rule 6 and 7 of Companies (Meetings of Board and its Powers) Rules, 2014 deals with the Audit Committee and its requirements.

Companies requiring to constitute Audit Committee under the provisions of Companies Act 2013.

3. As per the provisions of section 177 of the Companies Act, 2013 and Rule 6 and 7 of Companies (Meetings of this section, the following companies are required to constitute an Audit Committee under Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 shall constitute an Audit Committee.

(i) all listed public companies
(ii) all public companies with a paid up capital of Rs.10 Crores or more
(iii) all public companies having turnover of Rs.100 Crores or more
(iv) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits
exceeding Rs.50 Crores or more.

As per the provisions of the Companies Act 2013, the paid up share capital or turnover or outstanding loans, or
borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial
statements shall be taken into account for the purposes of this rule.

Audit Committee in private limited companies under Companies Act 2013

4. From the above governing provisions of Companies Act 2013, under sub-section (1) of section 177 of the Act, the constitution of an Audit Committee in case of private company is not mandatory under the Companies Act.

Exception to the above (constitution of Audit committee in private company)

5. The proviso to clause (71) of definition section 2 of the Companies Act 2013, we can note that a private company is, for the purpose of the Companies Act 2013, deemed to be public company, if it is subsidiary of a public company. This obviously means that a private company which is a subsidiary of public company shall be deemed to be public company for the purposes of this act, even when such subsidiary company continues to be a private company in its articles.

Hence, a private company which is a subsidiary of a limited company under section 2 (71) of the Companies Act 2013, read with rule 3 thereon, is mandatorily required to constitute an Audit Committee and such Audit Committee is required to adhere the provision of section 177 of the Companies Act 2013. The Audit Committee is required to be constituted of a minimum of three directors as its members as per sub-section (2) of section 177 of the Companies Act 2013.

Clarification by MCA

6. MCA vide its notification dated July 5, 2017 exempted from the requirement of appointing an Independent Director pursuant to section 149 (4) read with rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2017 for joint venture companies, wholly owned subsidiary and wholly owned subsidiary and for the a dormant company as defined under section 455 of the Act.

In the same notification, the MCA clarified in respect of constitution of various committees. spelled out that that one needs to understand the impact of the above referred notification in line with the Reserve Bank of India ('RBI') and National Housing Bank ('NHB') Regulations.

Audit Committee in private limited companies under RBI regulations

7. Under the provisions of Reserve Bank of India regulations, the Non-Banking Financial Companies('NBFCs') are required to constitute an Audit Committee in order to comply with the provisions of directions/guidelines/circulars and notifications issued by the Reserve Bank of India, irrespective of a company being either a public limited company or a private limited company.

A brief about Non-Banking Financial Company (NBFC)

7.1 As per the Reserve Bank of India regulations a Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company.

In summary

8. A private Limited company which is incorporated under the Companies Act 2013 (or under the earlier Companies Act 1956), if it is registered with the Reserve Bank of India, as Non-Banking Financial Company and obtained an licence by fulfilling the condition as per para 45-IA of the Reserve Bank of India Act 1934 is required to constitute an Audit Committee though under the provisions of Companies Act 2013 the private companies are not mandated to constitute an Audit Committee barring the private company which is a subsidiary company of a limited company under section 2(71) of the Companies Act 2013 as discussed under para 5 above.

Governing provisions on Audit Committee under RBI Act 1934

8. As per para 68 (1) and (2) of the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company (SI-NDC) and Deposit taking Company required to constitute an Audit Committee as per Master Directions issued by RBI from time to time spelling out the types of companies which are required to constitute an Audit Committee.

Companies requiring to constitute Audit Committee under RBI regulations

9. In terms of extant instructions, a non-banking financial company having assets of Rs. 50 crore and above as per its last audited balance sheet is required to constitute an Audit Committee.

The RBI directions further reads that in addition, NBFCs with deposit size of Rs 20 crore may also consider constituting an Audit Committee on similar lines.

Numbers of members in Audit Committee and its functioning

10. In terms RBI regulations, the Audit Committee required to have not less than three member of its board of directors in the committee.

RBI in its notification has provided an explanation which states that the Audit Committee constituted by a non-banking financial company as required under section 177 of the Companies Act, 2013 shall be the Audit Committee for the purposes of RBI regulations and the Audit Committee shall have the same powers, functions and duties as laid down in Section 177 of the Companies Act, 2013.

Whether NBFC private Limited company form Audit Committee with two members

11. As per the provisions of sub-section 1(a) of section 149, two directors are required in a private limited company. When a private limited company is required to constitute a Corporate Social Responsibility Committee (CSR Committee), the Companies Act 2013, has provided relaxation for constituting CSR Committee with two members instead of the prescribed requirement of minimum three members in the CSR Committee as per sub-section (1) of Section 135.

Going by the above relaxation of the Companies Act, can a private limited company having a licence to operate as a NBFC company under RBI regulations can constitute its Audit Committee with only two members instead of three members.

The answer to the above question is positively "NO". As required under RBI notification dated 8/5/2007 the company is required to constitute an Audit Committee consisting of not less than three directors as the members of its Audit Committee and the company is also required to comply with the requirements of forming valid Audit Committee as per the provisions of section 177 of the Companies Act 2013 consisting three members of the Audit Committee.

Things which could go wrong

12. Hypothetically let us assume that the NBFC private company in question had constituted its Audit Committee consisting of only two members in the committee and the company had been conducting regularly its Audit Committee meetings only with two members as against the requirement of minimum three members required under the RBI regulations. Although the company had constituted the Audit Committee as required under RBI regulations for NBFC companies, the company had not fulfilled the requirement of minimum number of member's requirement of Audit Committee which is a default. If such an event takes place, what would be the consequences?

If the Company has constituted the Audit Committee with only two members against the requirements of minimum three members, as required under the notification of RBI dated 8th May 2007 and has been conducting its Audit Committee meetings, the company has violated section 177 of the Companies Act 2013 which would attract penal actions as per sub-section 8 of section 178 of the Companies Act 2013.

Penal provisions as per the Companies Act 2013 in case of default

14. As per sub-section (8) of section 178 of the Companies Act 2013, the penal provision is that for any contravention of the provisions of section 177, the company shall be punishable with fine which is not less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both

Regulatory Inspection

13. As per sub-section (5) of section 206 of the Companies Act 2013, the Central Government can carry out the inspection of the books of accounts, minute book and other documents relating to a particular financial year. During such inspection, if the inspecting officer notices upon perusal of minutes, of the Audit Committee, that the company has constituted an Audit Committee with only two directors as members against the requirements of three directors as members during the period under inspection of a particular year and has been conducting its meetings only with two members, he would then conclude that the company has violated the provision of section 177 of the Companies Act 2013 during that particular financial year. Then what follows is that the regulator would issue show cause notice initially, which would then follow penal actions against the company and the defaulting officers of the company.

Even if the inspection does not take place, the regulator can scrutinize the documents submitted by the company such as financial statements, Board Report etc. and even they can call for the relevant documents from the company if required.

Issue of show cause notice/reply

14. After the inspection/scrutiny of the documents of the company, the regulator will issue show cause notice to the company and its defaulting officers, calling upon them to show cause within a specified time limit (say 10 days or so) from the date of issue of show cause notice as to why legal action under section 178(8) of the Companies Act 2013 should not be taken against them, failing which the necessary penal action will be initiated. The regulator would also draw the attention of the company and its defaulting officers that as per section 441 of the Companies Act 2013 where under offence in question can be compounded by appropriate authority namely RD/NCLT It the company is in default, not complied with the required regulations, it may not be possible for the company to defend themselves. Then, the option available for the company is going for compounding of offences by getting the compounding of offences application filed with the regulator in order to get over the violation as per the provisions of section 441 of the Companies Act 2013 by admitting the offence that the company.

has constituted an Audit Committee with only two members against the requirements of three members.

Resolving the compounding of offences application

15. Upon filing the compounding application, the company will be required to spend its lot of time and money for getting the matter resolved. The company needs to follow up the matters after the e-filing of compounding application by lodging the physical copies of the application with the concerned Registrar of Companies and attending the hearing/hearings from time to time as and when the hearings are scheduled and finally getting the order from the regulator. Thereafter the company is required to follow the directions of the order and ensure that the compounding fees are remitted as per the order following by necessary further filing of e- forms, thereupon the matter will stand resolved.

Disclosure requirement

16. The company is required to report in its extract of annual return annexed to the board report the details of compounding of offences under the headings "Penalties/Punishment/Compounding of offences pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration)Rules, 2014.

Above disclosure would finally result into

17. 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 the image in the market place.

Conclusion

18. The Companies Act 2013 has substantially strengthened the role and position of the company secretaries. The responsibility of the Company Secretary is to make sure the effective management and administration of the organization and meeting the regulatory and statutory expectation and requirements. Further by virtue of section 203 of the Companies Act 2013, the company secretary is a whole time key managerial personnel of the company and his position stand enhanced but at the same time the Companies Act 2013 casts larger responsibly in ensuring the compliance not only under the Companies Act but also on other applicable laws for the organization. It is to be noted

that for non-compliance of the provisions of law, the company secretary is also an "officer-in-default" thus, subject to liability under relevant penal provisions along with other officers of the company.

The company secretary has to take utmost care in ensuring the required compliance with reference to the applicable provisions of the Companies Act 2013 read with the rules framed thereunder and also the secretarial standards issued by the Institute of Company Secretaries of India which are mandatory.

Prof. R Balakrishnan

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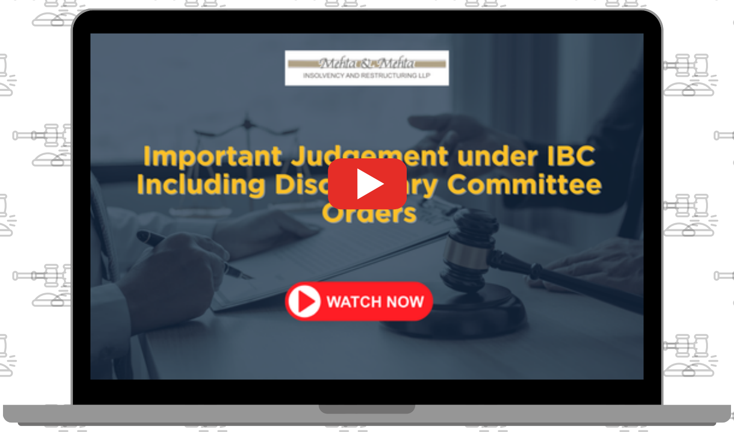

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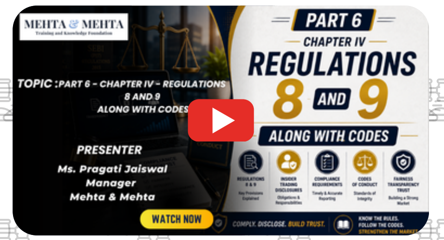

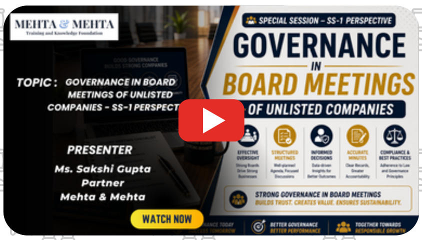

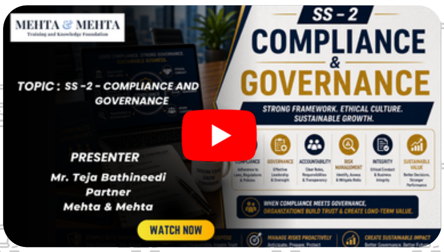

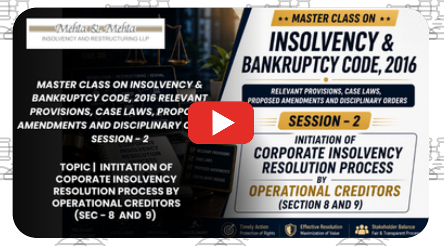

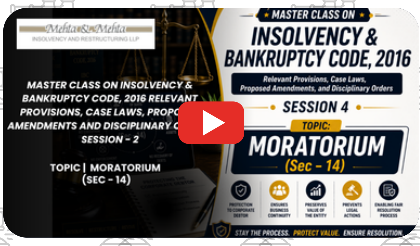

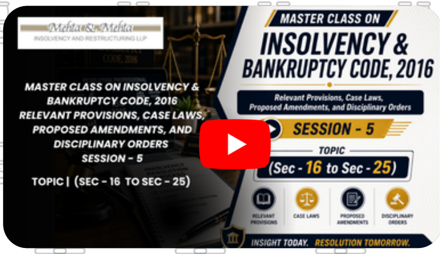

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