

ricago
GRC Bulletin
March 2023

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Compliance
Management

Vendor Audit
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About

ricago is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.



ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

ricago CLASS (Comprehensive Labour Advisory & Special Services), New age platform for end-to-end labour law related information. Our expert team constantly monitors updates & amendments and advises clients accordingly

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MASTER CIRCULAR FOR SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

The Securities and Exchange Board of India has issued Master Circular for Takeover Regulations dated **16th February 2023** which has been prepared to enable the stakeholders to have access to the provision of the applicable circulars at one place.

Format of documents for activities pertaining to Open Offers.

Takeover Regulations provide the acquirer to make an open offer to the public shareholders in case there is a substantial acquisition of shares or voting rights, directly or indirectly, or when there is a change in control of a target company.

Accordingly, Takeover Regulations mandates the following documents to be filed by an acquirer through the manager to an open offer the for necessary information to the shareholders -

- Public Announcement as provided under sub-regulation (2) of Regulation 12.
- Detailed Public Statement as provided under sub-regulation (3) of Regulation 14.
- Letter of Offer as provided under sub-regulation (1) of Regulation 16.
- Pre-offer announcement as provided under sub-regulation (7) of Regulation 18.
- Post-offer announcement as provided under sub-regulation (12) of Regulation 18.
- Recommendation on the offer by the committee of independent directors of the Target Company as provided under sub-regulation (7) of Regulation 26.
- Post-offer report as provided under sub-regulation (7) of Regulation 27.

Format of disclosure documents/reports

Disclosures are fairly critical and important component of the legal regime governing substantial acquisition of shares and takeovers.

The intent behind the disclosures is to ensure that investing public is not deprived of vital information. Further, full disclosure of information material to investors' decisions is the most important means for ensuring investor protection. Investors are, thereby, better able to assess the potential risks and rewards of their investments and, thus, to protect their own interests.

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Accordingly, Takeover Regulations have specified the following reports / disclosures to be filed under various provisions contained therein -

- Format under sub-regulation (5) of Regulation 10 with respect to intimation to Stock Exchanges in respect of acquisition under Regulation 10.
- Format under sub-regulation (6) of Regulation 10 with respect to report to be submitted to Stock Exchanges in respect of any acquisition made in reliance upon exemption provided for under Regulation 10.
- Format under sub-regulation (7) of Regulation 10 with respect to report to be submitted to SEBI in respect of any acquisition made in reliance upon exemption provided for under Regulation 10.
- Format under sub-regulation (6) of Regulation 18 with respect to disclosure to Stock Exchanges about acquisitions made by the acquirer / PAC during the Offer Period.
- Format under sub-regulation (1) and (2) of Regulation 29 with respect to disclosures for acquisition and disposal of shares.
- Format under sub-regulation (1) and (2) of Regulation 31 with respect to disclosure of encumbered shares and details of any invocation / release of such encumbrances to the Stock Exchanges and the Target Company.

Automation of disclosure requirements pursuant to introduction of System Driven Disclosures

SEBI has automated the process of filing of disclosures under Regulation 29 and 31 of the Takeover Regulations of stock exchange level for companies which are listed on nationwide stock exchanges.

Manual filing is required for the following transactions –

- Triggering of disclosure requirement due to acquisition or disposal of the shares, as the case may be, by the acquirer together with persons acting in concert (PACs).
- Triggering of disclosure requirement in case the shares are held in physical form by the acquirer and/or PACs.
- Listed companies who have not provided PAN of promoter(s) including member(s) of the promoter group to the designated depository or companies which have not appointed any depository as their designated depository.

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Online Filing System for submission of documents under the Takeover Regulations

In order to facilitate ease of operations and convenience in terms of submission of relevant documents with SEBI including public announcement, detailed public statement, draft letter of offer, letter of offer, etc., all Merchant Bankers are advised to file the same through online mode only through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>.

Link for SEBI Intermediary Portal is also available on SEBI website www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline at +9122-26449364 or email at portalhelp@sebi.gov.in

Publication of Investor Charter and Disclosure of Complaints by Merchant Bankers on their Websites

Publication of Investors Charter

All the registered Merchant Bankers are advised to disclose on their website, Investor Charter for Substantial Acquisitions of Shares and Takeovers, as provided at Annexure-IV to this master circular.

Disclosure of Investor Complaints

Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has also been decided that all the registered Merchant Bankers shall disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, on each of the aforesaid categories separately as well as collectively, latest by 7th of succeeding month.

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SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2023

The Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2023 shall come into force on the thirtieth day from the date of their publication, i.e., **7th February 2023**, in the Official Gazette.

Disclosures, filing requirements and timelines for public announcement:

22A

- (i) The company, which has been authorised by a special resolution or a resolution passed by its Board of Directors, as the case may be, shall appoint a merchant banker and make a public announcement within two working days from the date of the approval of Board of Directors or of the shareholders, as the case may be.
- (ii) The disclosures in the public announcement shall be made in accordance with Schedule II.
- (iii) The book building process shall commence within seven working days from the date of the public announcement.
- (iv) The public announcement shall contain the detailed methodology pertaining to intimation required to be made prior to the opening of the buy-back offer as specified in Schedule - VI.

Offer procedure: 22B

- (i) The company making the buy-back offer shall disclose the maximum buy-back price, being the upper end of the price range, as approved by the Board of Directors of the company or its shareholders, as the case may be and the book value of the shares or other specified securities of the company.
- (ii) The company shall publish the offer opening announcement on the date of commencement of the buy-back.
- (iii) In case of frequently traded securities, the lower end of the price range shall not be less than the higher of.
 - (a) the closing price of the securities of the company on the date of the Notice as specified in Schedule - VI.
 - (b) the volume weighted average market price of the shares or other specified securities of the company in the fifteen trading days prior to the date of the intimation of the meeting of the Board of Directors approving the buy-back.
- (iv) In case of infrequently traded securities, the lower end of the price range shall not be less than the price of the securities of the company determined on the basis of the report of a registered valuer.

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(v) The buy-back price shall depend upon the price discovered through the bids received from the shareholders within the price range.

Payment to holders of shares or other specified securities: 22C (i) The payment of consideration to holders of shares or other specified securities shall be completed within a period of five working days from the date of closure of the buy-back offer.

Retail and Promoter participation 22D

(i) Retail investors shall have the option to bid at the buy-back price.

Explanation: For the purpose of this Chapter, retail investor's means securities holders who hold shares or other specified securities of the company up to two lakh rupees in value calculated on the basis of the closing price as on the identified date as specified in Schedule- VI.

(ii) Promoters along with their associates shall not be permitted to participate in buy-back through book building.

Methodology of acceptance of bids: 22E.

(i) The buy-back offer shall be kept open for a minimum of two trading days.

(ii) Securities holders can submit bids for any number of shares or other specified securities of the company, not exceeding the total number of securities in the relevant category, at a price within the price range.

(iii) In the event that, the bids are more than the buy-back size:

- a. The price at which hundred per cent of the buy-back size is reached shall be the buy-back price.
- b. shares or other specified securities tendered at or below the buy-back price shall be accepted at the buy-back price and in proportion to the size of the bids received.

(iv) In the event that the bids are less than the buy-back size; all the shares or other specified securities tendered shall be accepted at the highest bid price.

(v) Once the public announcement is made, the buy-back shall not be withdrawn or terminated and bids once placed shall not be withdrawn.

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ADVISORY FOR SEBI REGULATED ENTITIES (REs) REGARDING CYBERSECURITY BEST PRACTICES

Financial Computer Security Incident Response Team (CSIRT-Fin) has provided important recommendations in its report sent to SEBI. The applicable recommendations, in the form of an advisory, are enclosed at **Annexure-A** of this circular. Some important points are:

REs are advised to define roles and responsibilities of Chief Information Security Officer (CISO) and other senior personnel. Reporting and compliance requirements shall be clearly specified in the security policy.

Measures against Phishing attacks/ websites:

- i. The REs need to proactively monitor the cyberspace to identify phishing websites w.r.t. to REs domain and report the same to CSIRT - Fin/CERT - In for taking appropriate action.
- ii. Majority of the infections are primarily introduced via phishing emails, malicious adverts on websites, and third-party apps and programs. Hence, thoughtfully designed security awareness campaigns that stress the avoidance of clicking on links and attachments in email, can establish an essential pillar of defense. Additionally, the advisories issued by CERT-In/ CSIRT-Fin may be referred for assistance in conducting exercises for public awareness.

Measures for Data Protection and Data breach:

- i. REs are advised to prepare detailed incident response plan.
- ii. Enforce effective data protection, backup, and recovery measures.
- iii. Encryption of the data at rest should be implemented to prevent the attacker from accessing the unencrypted data.
- iv. Identify and classify sensitive and Personally Identifiable Information (PII) data and apply measures for encrypting such data in transit and at rest.
- v. Deploy data leakage prevention (DLP) solutions / processes.

Password Policy/ Authentication Mechanisms:

- i. Strong password policy should be implemented. The policy should include a clause of periodic review of accounts of ex-employees Passwords should not be reused across multiple accounts or list of passwords should not be stored on the system.

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- ii. Enable multi factor authentication (MFA) for all users that connect using online/internet facility and also particularly for virtual private networks, webmail and accounts that access critical systems.
- iii. Maker and Checker framework should be implemented in strict manner and MFA should be enabled for all user accounts, especially for user accounts accessing critical applications.

Cybersecurity Controls:

- i. Deploy web and email filters on the network. Configure these devices to scan for known bad domains, sources, and addresses, block these before receiving and downloading messages. Scan all emails, attachments, and downloads both on the host and at the mail gateway with a reputable antivirus solution.
- ii. Block the malicious domains/IPs after diligently verifying them without impacting the operations. CSIRT-Fin/CERT-In advisories which are published periodically should be referred for latest malicious domains/IPs, C&C DNS and links.
- iii. Restrict execution of "powershell" and "wscript" in enterprise environment, if not required. Ensure installation and use of the latest version of PowerShell, with enhanced logging enabled, script block logging and transcription enabled. Send the associated logs to a centralized log repository for monitoring and analysis.
- iv. Utilize host based firewall to prevent Remote Procedure Call (RPC) and Server Message Block (SMB) communication among endpoints whenever possible. This limits lateral movement as well as other attack activities.
- v. Practice of whitelisting of ports based on business usage at Firewall level should be implemented rather than blacklisting of certain ports. Traffic on all other ports which have not been whitelisted should be blocked by default.

Audit and ISO Certification:

- i. SEBI's instructions on external audit of REs by independent auditors empanelled by CERT-In should be complied with in letter and spirit.
- ii. The REs are also advised to go for ISO certification as the same provides a reasonable assurance on the preparedness of the RE with respect to cybersecurity.
- iii. Due diligence with respect to audit process and tools used for such audit needs to be undertaken to ensure competence & effectiveness of audits.

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REVISED CODE OF ADVERTISEMENT FOR STOCK BROKERS

The Bombay Stock Exchange (BSE) issued Circular for Revised Code of Advertisement for Stock Brokers on 7th February 2023.

Advertisement shall include all forms of communication issued by or on behalf of or in relation to Stockbroker in publicly available media that may influence investment/trading decisions of any investor/prospective investors. It also includes internal communication to registered clients that may influence investment/trading decisions.

Forms of communications shall include but shall not be limited to all written or audio or visual form including social media forms including use of workshops and the like.

Broad guidelines:

- Prior approval for all Advertisement should be obtained from the Exchange before issuance of Advertisement.
- Any Advertisement issued by Authorized Persons/Business Partner/Channel Partner of the members or Influencer/Blogger being paid by members, shall require prior Exchange approval. Any advertisement issued by Authorized Person on their own shall not be entertained by the Exchange.
- Members are hereby advised to undertake adequate due diligence to ensure that content used by the above strictly adheres to the Code of Advertisement prescribed by the Exchange/SEBI from time to time.
- In the event of suspension of any Member by the Exchange, the Member so suspended shall not issue any Advertisement either singly or jointly with any other Member, during the period of suspension.
- In the event of any proceeding/action initiated against a Member by a regulatory body other than the Exchange, the Exchange reserves the right to direct the Member to refrain from issuing any Advertisement for such period as it may deem fit.
- Members should have an internal policy/framework to ensure compliance by itself and Authorized Persons/Business Partner/Channel Partner of the members or Influencer/Blogger being paid by members, with the circulars/guidelines issued by the Exchange/ SEBI for Advertisements.
- Any promotion for the mobile application of the Member (with or without account opening or Products/Services info) will require prior Exchange approval.

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- In case of any third-party issuing Advertisement on any platform without the consent of the Member and the Member disowns the said Advertisement, in such case, the Member is required to take appropriate legal action against such entity and inform the Exchange regarding such action and outcome thereof.
- Information contained in the Advertisement should be accurate, complete and unambiguous.

Advertisement shall contain:

- Name of the Member, complete registered office address, SEBI Registration number (all registration numbers and names of the Exchanges in case of multiple memberships)/ Member ID allotted by Exchange and logo of the Member, if any.
- Standard warning in legible fonts (minimum font size 10) which states '*investments in securities market are subject to market risks, read all the related documents carefully before investing.*' No addition or deletion of words shall be made to the standard warning.
- In audio-visual media-based advertisements, the standard warning in visual and accompanying voice over reiteration shall be audible in a clear and understandable manner. For example, in standard warning both the visual and the voice over reiteration containing 14 words running for at least 5 seconds may be considered as clear and understandable. This is also applicable for video content, or any other content/information issued by Authorized Persons/Business Partner/Channel Partner of the members or Influencer/Blogger.
- In case the mode of advertisement is in the form of SMS/Message/Pop-up, etc. and the details such as full name, logo, complete registered office address, SEBI registration numbers and standard disclaimer are not mentioned, then a hyperlink to the official website must be provided in such SMS/Message/Pop-up, etc. and the website must contain all such prescribed details.
- If there is a mention of content pertaining to any other business activity such as Mutual Funds, IPO, Insurance, Commodities, Bonds, Loans, etc., in the advertisement, then respective registration number(s) where applicable must be mentioned.
- If the member is only a distributor/s for any of the products mentioned in the advertisement, disclaimer that they are only distributor/s of such products must be specifically mentioned in the disclaimer.
- In case any specific security/securities are displayed in the Advertisement as examples, disclaimer that "*The securities are quoted as an example and*

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not as a recommendation” must be mentioned on the same slide of the written creative / frame of the video where the same is displayed and not at the end of the creative / advertisement. The logos of the securities quoted shall not be used in the creative.

- If the Advertisement contains prepaid Brokerage schemes, Exchange Notice No. 20140324-15 dated March 24, 2014 regarding pre-paid schemes should be complied with. In case, anything related to the brokerage rates offered by the Member is mentioned in the Advertisement, then a disclaimer stating that the *“Brokerage will not exceed the SEBI prescribed limit”* must be mentioned.
- Statistical information, charts, graphs, etc. when used should be supported by their source (certification by a practicing professional or other authentic verifiable source, if any).
- Where advertising claims are expressly stated to be based on, or supported by independent research or assessment, source of such data and the period it relates to, must be indicated in the advertisement. Further, authentic source of such information must be provided in the Advertisement.
- Name and Logo of the Exchange shall not be used by the members in their creatives / advertisement.

Advertisement/Material shall not contain:

- Superlative terms, such as best, no. 1, among market leaders, etc. unless such terms are provided by an entity independent of the Member and its affiliates, and whose services are not procured by the Member or any of its affiliates in order to assign the Member such term.
- Any statement which directly or indirectly discredits other advertisements or Member or make unfair comparisons. The advertisement issued should not imitate any advertisement by other Members.
- Any recommendation/promotion of a specific scrip/contract, in any manner including by way of reference to past performance or research material, shall not be permitted.
- Celebrities shall not form part of the advertisements including but not limited to, in the form of cartoons/memes, etc. The word ‘celebrity’ means and includes any person:
 - a. who feature in the top 50 rankings in any celebrity index published by a national publication of repute which is publicly available. The celebrity index should be latest available or at the most one-year old.
 - b. who has played lead role or one of the lead roles in any mainstream / prominent/ popular movies/TV serials/TV shows/web-series on any of the OTT platforms.

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- c. who is an Influencer with more than 10 Lacs followers/subscribers (per social media handle) on any social media platform that includes but not limited to YouTube, Instagram, Facebook, Twitter, etc.
- d. who being a Sports person has been part of National team of the country to which he belongs or has represented his country in international tournaments/events such as Olympic Games, Asian Games, Commonwealth Games, popular sports events telecasted on television such as Kabaddi, Cricket IPL, etc. and competitive games at international level for that given sport, etc.
- e. who has been host or one of the hosts or anchors or one of the anchors for any TV programs such as quizzes, cooking shows, news channels, comedy shows, dance shows, song shows, award functions and such other entertainment programs at least for one season or for a minimum of 10 episodes, as the case may be.
- f. who has been winner or runners-up in any prominent/popular competitive program aired on TV/OTT platform or any prominent personality who has gone through a series of qualifying rounds (for elimination of competitors) which may be known as qualifying round, quarter finals, semifinals and finals or by any other name.
- g. who is a virtual character (fictional computer 'people' or avatars who have the realistic characteristics, features and personalities of humans) that bears influence on their audience/followers.
- h. who in the view of Exchange is capable of influencing the opinion of viewers of the advertisement.

Notwithstanding anything contained in these guidelines, decision of the Exchange shall be final in determining if the person made a part of the advertisement/material is a celebrity or not.

- Incentive/referral schemes
 - a. Members shall refrain from providing any form of incentive/vouchers/ coupons/ certificates/ tokens, by whatever name called, to their clients for account opening/ trading/ activating inactive trading accounts of clients or any kind of subscription plan or for downloading mobile application etc. Members shall not offer any scheme/plan to clients which compel them to undertake/execute trades/transactions with the Member, in order to avail/continue to avail certain benefits, previously given, under brokerage plan/upon account opening.
 - b. Members or anybody associated with the Member including the Authorized Persons/ Associates/ Channel Partners/Influencers/Bloggers shall not promote or incentivize

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trading/transactions, in any form including but not limited to distribution of brokerage waivers/ cashback/ certificates /medals /gifts /prizes/ coupons/ tokens.

- c. Members should abide by the guidelines on incentives/referral schemes issued by Exchange vide Notice no. 20200311-57 dated March 11, 2020, or any other guidelines/ circulars issued from time to time.

Penalties:

Members not complying with the Code for Advertisement may have to face disciplinary proceedings as specified in Exchange notice no. 20180214-31 dated February 14, 2018 or any other penalty as prescribed by the Exchange from time to time.

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CENTRALISED PROCESSING OF EQUALISATION LEVY STATEMENT SCHEME, 2023

The Central Board of Direct Taxes makes the Centralised Processing of Equalisation Levy Statement Scheme, 2023 for processing of statement furnished under Section 167 of the Finance Act, 2016. It shall come into force on the date of its publication in the Official Gazette, i.e., on **7th February 2023**. This Scheme shall be applicable in respect of processing of the Equalisation Levy Statements.

Furnishing of Equalisation Levy Statement –

- (1) Every assessee or e-commerce operator shall furnish the Equalisation Levy Statement under sub-section (1) of section 167 of the Act within the time stipulated under sub-rule (2) of rule 5 of the Equalisation levy Rules, 2016.
- (2) An assessee or e-commerce operator may furnish an Equalisation Levy Statement or a revised Equalisation Levy Statement, as the case may be, under sub-section (2) of section 167 of the Act at any time before the expiry of two years from the end of the financial year in which the specified services was provided or e-commerce supply or services was made or provided or facilitated.
- (3) An assessee or e-commerce operator may furnish a Equalisation Levy Statement in response to notice sent by the Assessing Officer under sub-section (3) of section 167 of the Act in accordance with rule 6 of the Equalisation levy Rules, 2016.

Invalid Equalisation Levy Statement - The Commissioner may declare an Equalisation Levy Statement, invalid -

- (i) for non-compliance of procedure for using any software not validated and approved by the Director General.
- (ii) on account of incomplete information in the Equalisation Levy Statement.

Service of notice or communication - For the purposes of this Scheme -

- (a) every intimation, notice or any other communication under this Scheme from the Centre to the assessee or ecommerce operator or its authorised representative shall be made by –
 - (i) delivering or transmitting its copy thereof, electronically to the person sent by the Centre’s e-mail.
 - (ii) placing its copy in the registered electronic account of the person on the designated portal.

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(iii) any of the modes mentioned in sub-section (1) of section 282 of the Income-tax Act,1961.

(b) The intimation, orders and notices shall be computer generated and need not carry physical signature of the person signing it.

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MUNICIPAL CORPORATION, SOLAN OUTDOOR ADVERTISEMENT BYE-LAWS 2022

The byelaws are made by Municipal Corporation of Solan under the provisions of the Himachal Pradesh Municipal Corporation Act 1994. These byelaws are called Municipal Corporation, Solan Outdoor Advertisement Bye-laws 2022.

Under the definitions clause –

Advertisement Regulation Committee means Committee consisting of

- a) Addl. Commissioner/Joint Commissioner, Municipal Corporation, Solan.
- b) Two Municipal Councillors nominated by the General House of SMC.
- c) Executive Engineer/Assistant Engineer Municipal Corporation, Solan.
- d) Town Planner/Municipal Town Planner, Municipal Corporation, Solan.
- e) Executive Engineer (PWD), Solan.
- f) Branch in-charge Advertisement, Municipal Corporation, Solan.
- g) Representative of concerned Highway Authority.

Functions of the Advertisement Regulation Committee -

- a) The advertisement Regulation Committee shall identify the area of special control and prepare advertisement / zoning plans indicating the categories of advertisement devices permissible in different areas of Special Control.
- b) In case any practical difficulty arises with respect to implementation of these byelaws of the zoning plans, the matter shall be referred to advertisement regulation committee who shall on reference consider and make suitable recommendations to the Commissioner for the decision.

Advertisement Zoning Plan means the numbered plan signed by the Commissioner and kept in this office defining the areas of special control and restrictions regarding the advertisement applicable to such areas.

Regulation 3 (A) states that no advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, boarding, frame, post or structure or place within the City without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

List of Negative advertisements under Regulation 6 are –

- Nudity

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- Racial advertisements or advertisements propagating caste, community or ethnic differences
- Advertisement promoting drugs, alcohol, cigarette or tobacco items
- Advertisements propagating exploitation of women or child
- Advertisement having sexual overtone
- Advertisement depicting cruelty to animals
- Advertisement depicting any nation or institution in poor light
- Advertisement casting aspersion of any brand or person
- Advertisement banned by any law enacted by the Government of India.
- Advertisement glorifying violence Advertisement that exploits the national emblem, or any part of Constitution of India, or the person or personality of a national leader or a state dignitary.
- Destructive devices and explosives depicting items.
- Any psychedelic, laser or moving displays
- Advertisement of Weapons and related items (such as firearms, firearm parts and magazines, ammunition etc.)
- Advertisements which may be defamatory, trade libellous, unlawfully threatening or unlawfully harassing
- Advertisements which may be obscene or contain pornography or contain an "indecent representation of women" within the meaning of the Indecent Representation of Women (Prohibition) Act, 1986.
- Advertisement linked directly or indirectly to or include description of items, goods or services that are prohibited under any applicable law for the time being in force, including but not limited to the Drugs and Cosmetics Act, 1940, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Indian Penal Code, 1860
- Any other items considered inappropriate by the municipal bodies.

Regulation 13 - Limitation for Disposal of Applications - Every application received as per provision of these byelaws shall be acknowledged and the decision on it shall be taken within 30 working days from the date of receipt. If the decision is not taken within the prescribed period, it will be presumed that the required permission is granted subject to payment of due advertisement tax and license fee of the land use charges, wherever applicable and compliance of other clauses of Byelaws.

Regulation 14 - Procedure to grant permission

All advertisements, over the size of 50 sq. feet, permitted over the Municipal land / building shall be through tenders. The tenders can be of single or more hoardings. The tender shall be invited by a committee to be headed by

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Commissioner or by his representative or in the exceptional circumstances by private experts. The committee shall fix the following minimum things before the tender

- (a) reserve price
- (b) location of the site/sites
- (c) size of advertisement
- (d) past revenue collection
- (e) number of sites
- (f) period of tender.

The advertisement right shall be given for a period of 3 years or as may be decided by the Solan Municipal Corporation. It shall be terminable at one-month notice without assigning any reason. In the event of default of any terms, the same shall be terminable forthwith without any notice. The tender bid will include the advertisement tax and rent for use of Municipal Corporation Land/Property. However, payment of service tax or any other State/Central tax will be borne by the tendering agency / individual.

Regulation 15 - Procedure for obtaining permission - For grant of permission in respect of advertisement of private property:

The application for permission from the Commissioner shall be accompanied with the following documents -

1. Written no objection certificate from the landowner of the person, legally authorized to accord such NOC.
2. Three copies of plan showing the location, norms and size of the advertisement / hoarding etc. and a copy of the advertisement to be displayed.
3. The design and the structure shall be certified by an experienced and practicing Structural Engineer who shall certify the safety aspect from the point of view of its foundations which can bear extreme wind conditions, earthquakes, soil bearing capacity and shall comply with relevant India structural design standards policy and guidelines framed from time to time.

Regulation 16 - Fees on Advertisements - The advertisement fee shall be payable in advance annually / quarterly / monthly basis as the case may be fixed by the Corporation from time to time provided that if the rate of fee is chargeable on annually, quarterly or monthly basis, the fractions thereof shall be construed accordingly.

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Calculation of fees - The advertisement fees should be calculated on the basis of the following factors:

- (a) Category of the advertisement
- (b) Size of the advertisement
- (c) Location of the advertisement

Regulation 18 - Penalties - Whoever contravenes any of these bye-laws Shall be punishable with time which may extend to Ten Thousand Rupees and when the contravention is continuing one, with further time which may extend to Rupees 500/- for every day, after the first day during which such contravention continues.

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JUDICIAL INSIGHT



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RESOLUTION PROFESSIONAL CANNOT DEAL WITH ASSETS OF SUBSIDIARY COMPANY DURING THE CIRP OF PARENT-HOLDING COMPANY

FACTS

On 19.03.2010 Greater Noida Industrial Development Authority (“GNIDA”) allotted Group Housing Plot No.GH-04 situated in Sector 01, Greater NOIDA (“Land”) to a Consortium consisting of –

- (i) M/s Earth Infrastructures Limited (“Corporate Debtor”);
- (ii) Raus Infrass Ltd.
- (iii) M/s. Shalini Holdings Limited.

The Consortium formed a Special Purpose Company (SPC) named M/s Earth Towne Infrastructures Pvt. Ltd. (“Earth Towne”) for the purpose of lease of the allotted Land. The SPC Earth Towne consisted of the Corporate Debtor as a Lead Member and M/s Raus Infrastructure and M/s Shalini Holdings Ltd. as Members.

Accordingly, Lease Deed dated 01.09.2010 was executed by GNIDA in favour of Earth Towne for development and marketing of the Project on the Land. Subsequently on 09.09.2010 the development rights of the Land were given to the Corporate Debtor through an unregistered Development Agreement. Three projects commenced on the Land namely – “Earth Towne Project”, “Earth Techone” and “Earth Sapphire Court”.

On 06.06.2018 Corporate Debtor was admitted into Corporate Insolvency Resolution Process (“CIRP”) and a Resolution Professional was appointed. GNIDA addressed a letter dated 18.09.2019 to the Resolution Professional, claiming dues on the subsidiary of the Corporate Debtor, namely Earth Towne, for an amount of Rs.148,37,46,148/-, arising out of the Lease Deed dated 01.09.2010.

Roma Unicon Designex Consortium submitted a Resolution Plan for the Earth Towne Project. The Resolution Plan was approved by the Committee of Creditors (“CoC”) with 100% voting share and subsequently by the Adjudicating Authority on 05.04.2021.

Alpha Corp Development Pvt. Ltd. also submitted a Resolution Plan, which was approved by the CoC and by the Adjudicating Authority on 08.06.2021 for two projects namely Earth Sapphire Court and Earth Techone.

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The Resolution Plan proposed to transfer the development rights as well as the title of the Land to the Successful Resolution Applicant, without payment of dues of GNIDA or seeking its approval.

The Adjudicating Authority passed an order dated 07.12.2021 for implementation of the resolution plan. GNIDA filed appeals before the NCLAT against the orders dated 05.04.2021, 08.06.2021 and 07.12.2021.

Arguments by the Appellant

GNIDA argued that the Resolution Plan does not take any liability of GNIDA despite noticing its dues. The Land leased by GNIDA to Earth Towne could not be considered in CIRP of its Holding Company, the Corporate Debtor, since the latter is neither the Lease Holder nor has any right, title, or interest in the said Land. It was contended that the CoC is not competent to consider and vote on the property which does not belong to the Corporate Debtor, specially without seeking the Lessor's consent.

Issue

Whether assets of the subsidiary companies can be dealt with in the CIRP of holding Company?

HELD

The Bench observed that the explanation to Section 18(1)(f) of Insolvency and Bankruptcy Code 2016 contemplates that assets of subsidiary company are entirely different from assets of the holding company.

Reliance was further placed on NCLAT judgment in Bhavik Bhimjyani vs. Uday Vinodchandra Shat, Company Appeal (AT) (Insolvency) No. 182 of 2018, wherein it has been reiterated that Resolution Professional has no jurisdiction to take over any assets of the subsidiary Company of the Corporate Debtor.

The Bench observed that when the Information Memorandum did not include the Project Land as the asset of the Corporate Debtor, there was no occasion to include the Project land in the Resolution Plan.

"51. The Resolution Plan does not confine itself to the development rights, which were granted by the land owning company in favour of the Corporate Debtor on an unregistered Agreement, but also contemplates transfer of title of land in favour of Successful Resolution Applicant/ Special Purpose Company as contemplated in the Resolution Plan, which is an impermissible. The

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Development Agreement, which was unregistered document, could not have dealt with any right in the Project land and the lease hold right as per Development Agreement continued with the Lessee. Hence, the Resolution Plan could not have provided for transfer of the lease land in favour of Successful Resolution Applicant/ Special Purpose Company.”

The Bench held that assets of a Subsidiary Company cannot be dealt with in the CIRP of Holding Company, without the permission of the Lessor.

Further, Resolution Plan submitted by Roma Unicon Designex consortium and Alpha Corp Development Pvt. Ltd. could not have dealt with the Project Land, which was leased out by GNIDA in favour of the Corporate Debtor’s subsidiary.

The Bench set aside the Impugned Orders whereby resolution plans were approved. The Resolution Professional has been directed publish a fresh Form-G, containing a condition that Resolution Plans received shall be placed for consideration after receiving prior approval of the GNIDA for transfer of land in favour of the proposed resolution applicant, subject to arrangement for payment of dues of GNIDA.

The appeal has been disposed off.

Case Name: Greater Noida Industrial Development Authority (GNIDA) v. Roma Unicon Designex Consortium (Company Appeal (AT) (Insolvency) No. 180 of 2022) judgement dated 30th January 2023

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RIGHT TO CARRY TRADE AND COMMERCE CANNOT BE DENIED UNDER THE PROVISIONS OF GST ACT

FACTS

The petitioner is a proprietary firm engaged in the business of fabrication work whereas he failed to file GST return from August 2021. The State Tax Officer, Aurangabad issued a showcause notice dated 28-02-2022 calling upon the petitioner to furnish his explanation within a period of 7 working days. The notice stipulated that the registration of the petitioner stood suspended. The petitioner replied the show cause notice on 03-03-2022. Citing the reason of the financial crunch, he requested for revocation of the notice. However, the State Tax Officer vide order dated 14-03-2022 cancelled the registration with effect from 21-08-2021.

The petitioner requested for revocation of the cancellation of registration. In response, the State Tax Officer issued show cause notice for rejection of the application. The petitioner was called upon to furnish the reply within 7 days along with supporting documents like bank statement till the date of the notice, challan of tax, interest and late filing penalty. The matter was taken up for hearing on 25-04-2022. Finally, the State Tax Officer rejected the application of petitioner seeking revocation of cancellation vide order dated 17-05-2022.

The petitioner filed appeal under section 107 of the Maharashtra Goods and Service Tax Act, 2017 challenging cancellation of registration. It was registered as Appeal No. DCST/Apl./E-001/GST-Revocation/2022- 2023/B-619. The Dy. Commissioner/State Tax (Appeal), Aurangabad Division rejected the appeal on the ground of limitation that the appeal has been submitted beyond the prescribed period provided under section 107 (1) and 107 (4) of the MGST Act, 2017.

Arguments by Petitioner

Mr Alok Sharma, learned advocate appearing for the petitioner submits that the petitioner is the vendor of the Bajaj Auto Limited and earns his livelihood through fabrication business. Due to pandemic situation, the business activities of the petitioner were hampered causing huge financial loss. The petitioner was also unwell. In August 2021, he underwent angioplasty. Mr Sharma would further submit that petitioner could not submit his GST returns during the relevant period and suffered cancellation of the registration. He would submit that the petitioner had approached the appellate authority challenging cancellation of the registration. However, his appeal came to be rejected on

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technical grounds as it was time barred. The appellate authority is not vested with the powers to condone delay of more than 30 days as per section 107 of the GST Act. The petitioner would not be in a position to continue his business in absence of registration and would face starvation. He would urge this Court to exercise jurisdiction under Art. 226 of the Constitution of India to protect the fundamental right guaranteed under Art. 19 and 21 of the Constitution of India in favour of the petitioner.

Arguments by Respondent

Mr A.S. Shinde, learned AGP supports the impugned order. He would submit that the petitioner was given reasonable opportunity before cancellation of the registration. The show cause notice was issued to him on 28-02-2022 along with order of suspension of registration. The petitioner was further given opportunity to furnish the documents while dealing with his application for revocation of cancellation of registration. The petitioner failed to avail the opportunity, consequently suffered the order of rejection of the application for revocation of cancellation of registration. He would further point out that petitioner failed to file appeal within prescribed period of limitation under section 107(4) of the GST Act, 2017. The appellate authority has rightly dismissed the appeal which was apparently barred by limitation. The petitioner has already availed statutory remedy. Hence, he is not entitled to invoke extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India.

HELD

The provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1)(g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.

The Court relied on *Mafatlal Industries Ltd. vs Union of India* reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. True

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that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India.

The Court allowed the Writ Petition and the order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No. DC/APP/E-001/ABAD/GST/323/2022-2023 are quashed and set aside.

The Court directed the petitioner to file up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MGST Rules, 2017.

Case Name: Rohit Enterprises vs The Commissioner State GST Bhavan (Writ Petition no. 11833 of 2022, High Court of Judicature at Bombay Bench at Aurangabad) dated 16.02.2023

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