

**ricago**  
**GRC Bulletin**  
March 2021

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## About

**Clonect Solutions** 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** is a dynamic platform focusing on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The suite of products Compliance Management System (CMS), Insider Trading Policy Management System (ITPMS), Contracts and Obligations Management System (COMS) enables firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

**ricago GST** is a comprehensive GST solution developed by Clonect Solutions, ricago GST is Easy to use, Quick and Reliable and caters to the GST needs of businesses, professionals and large organizations. Our GST Services include GST ITC Reconciliation, Return Filing and Vendor Followup

# CORPORATE LAWS



## SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (AMENDMENT) REGULATIONS, 2021

On 4<sup>th</sup> February 2021, the Securities and Exchange Board of India (SEBI) has issued the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2021 to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996. These shall come into force on the 30th day from the date of their publication in the Official Gazette. Important amendments are:

### Regulation 2

Regulation 2 shall be numbered as sub-regulation (1) of regulation 2 Clause (d) shall be substituted with the following clause, namely, - “(d) “asset management company” means a company formed and registered under the Companies Act 1956 (1 of 1956) or Companies Act, 2013 (18 of 2013) and approved by the Board under sub regulation (2) of regulation 21;”

After clause (j) and before clause (k), the following clauses shall be inserted, namely, - “(ja)“equity related instruments” include convertible debentures, convertible preference shares, warrants carrying the right to obtain equity shares, equity derivatives and such other instrument as may be specified by the Board from time to time; (jb) “exchange traded fund” means a mutual fund scheme that invests in securities in the same proportion as an index of securities and the units of exchange traded fund are mandatorily listed and traded on exchange platform;”

Clause (q) shall be substituted with the following clause, namely, - “(q) “mutual fund” means a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money market instruments, gold or gold related instruments, real estate assets and such other assets and instruments as may be specified by the Board from time to time:”

Clause (w) shall be substituted with the following clause, namely, - “(w) “securities laws” means the Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Depositories Act, 1996 (22 of 1996), the provision of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;”

In clause (y), the following explanation shall be inserted, namely, - “Explanation: In the event the trusteeship of the mutual fund is with a trustee company, wherever the context requires applicability of provisions for individual trustees,

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the term “trustees” under these regulations shall be deemed to mean the directors of board of the trustee company.”

After sub-regulation (1), the following shall be inserted, namely, - “(2) the words and expressions used and not defined in these regulations but defined in the Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Companies Act, 2013 (18 of 2013), the Depositories Act, 1996 (22 of 1996), or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.”

## Regulation 7

Part (iii) of Explanation to clause (a) shall be substituted with the following, namely, “(iii)ensure that the net worth is more than the proposed capital contribution of the sponsor in the asset management company and ensure that in case of change in control of the existing asset management company due to acquisition of shares, the net worth of the sponsor is more than the aggregate par value or market value of the shares so acquired, whichever is higher; and”

After part (iv) of Explanation to clause (a), the following proviso shall be inserted, namely, - “Provided that the applicant shall have a net worth not less than rupees one hundred crore in case the aforementioned requirement is not fulfilled.”

## Regulation 18

Regulation 18, which specifies that the net worth shall be reviewed on a quarterly basis, has been substituted, namely: “The trustees shall on a quarterly basis review the net-worth of the asset management company to ensure compliance with the threshold provided in clause (f) of sub-regulation (1) of regulation 21 on a continuous basis.”

### In sub-regulation (1) of regulation 21

Clause (f) shall be substituted with the following, namely, - “(f) the asset management company has a net worth of not less than rupees fifty crore: Provided that where the sponsor does not fulfil the requirements provided in part (iv) of the Explanation to clause (a) of regulation 7 at the time of making application, the asset management company shall be required to have a net worth of not less than rupees one hundred crore and the asset management company shall maintain such net worth till it has profits for five consecutive years: Provided further that an asset management company of a mutual fund eligible to launch

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only infrastructure debt fund schemes, shall have a net worth of not less than rupees ten crore. Explanation: Loans and advances given by asset management company to either sponsor, associates or group company of sponsor and associates or group company of asset management company shall be excluded while computing the net worth of the asset management company.”

## **In regulation 36**

Sub-regulation (1) and provisos shall be substituted with the following, namely,-  
“(1) An applicant in a scheme whose application has been accepted shall have the option either to receive the statement of accounts or to hold the units in dematerialised form and the asset management company shall issue to such applicant, a statement of accounts specifying the number of units allotted to the applicant or issue units in the dematerialized form as soon as possible but not later than five working days from the date of closure of the initial subscription list or from the date of receipt of the application.”

## **In regulation 49**

Sub-regulation (3) and provisos shall be substituted with the following, namely, -  
“(3) While determining the price of the units, the mutual fund shall ensure that the repurchase price of an open ended scheme is not lower than 95 per cent of the Net Asset Value.”

## **In regulation 53**

Clause (a) shall be substituted with the following clause, namely, - “(a) despatch to the unitholders the dividend payments within 15 days from the record date.”

## **In the Fifth Schedule**

In clause (3), the word “affiliates” shall be substituted with the word “associates”.  
ii. clause (5) shall be substituted with the following clause, namely, - “(5) Trustees and asset management companies shall ensure that the assets and liabilities of each scheme are segregated and ring-fenced from other schemes of the mutual fund; and bank accounts and securities accounts of each scheme are segregated and ring-fenced.”

## **In the Seventh Schedule**

The third proviso to clause (1) shall be substituted with the following, namely, -  
“Provided further that such limit shall not be applicable for investments in case of

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debt exchange traded funds or such other funds as may be specified by the Board from time to time.”

## Omitted

Clause (j) of PART A of Ninth Schedule, Tenth Schedule and Clause 2(a)(xi) of Eleventh Schedule shall be omitted

Source: [Click here for more details](#)

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## RESERVE BANK OF INDIA (DIGITAL PAYMENT SECURITY CONTROLS) DIRECTIONS, 2021

RBI Notification dated 18th Feb, 2021 on Reserve Bank of India (Digital Payment Security Controls) directions, 2021 has notified as follows:

### Applicability:

The provisions of these directions shall apply to the following Regulated Entities (REs):

- a. Scheduled Commercial Banks (excluding Regional Rural Banks);
- b. Small Finance Banks;
- c. Payments Banks; and
- d. Credit card issuing NBFCs.

### Governance and Management of Security Risks

REs shall formulate a policy for digital payment products and services with the approval of their Board. The Board and Senior Management shall be responsible for implementation of this policy. The Board/ Senior Management of REs shall have appropriate performance monitoring systems/ key performance indicators for assessing whether the product or service offered through digital payment channels meet operational and security norms.

REs shall have trained resources with necessary expertise to manage the digital payment infrastructure. Wherever the REs are dependent on third party service providers, adequate oversight and controls for monitoring the activities of the third party personnel, in line with RBI guidelines on outsourcing, shall be put in place.

REs shall conduct risk assessments with regard to the safety and security of digital payment products and associated processes and services as well as suitability and appropriateness of the same vis-a-vis the target users, both prior to establishing the service(s) and regularly thereafter.

### Other Generic Security Controls

An appropriate level of encryption and security shall be implemented in the digital payment ecosystem.



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Web applications providing the digital payment products and services should not store sensitive information in HTML hidden fields, cookies, or any other client-side storage to avoid any compromise in the integrity of the data.

REs shall implement Web Application Firewall (WAF) solution and DDoS mitigation techniques to secure the digital payment products and services offered over Internet.

The key length (for symmetric/ asymmetric encryption, hashing), algorithms (for encryption, signing, exchange of keys, creation of message digest, random number generators), cipher suites, digital certificates and applicable protocols used in transmission channels, processing of data, authentication purpose, shall be strong, adopting internationally accepted and published standards that are not deprecated/ demonstrated to be insecure/ vulnerable and the configurations involved in implementing such controls are in general, compliant with extant instructions and the law of the land.

REs shall renew their digital certificates used in digital payment ecosystem well in time.

The mobile application and internet banking application should have effective logging and monitoring capabilities to track user activity, security changes and identify anomalous behaviour and transactions.

## **Reconciliation Mechanism**

A real time/ near-real time (not later than 24 hours from the time of receipt of settlement file(s)) reconciliation framework for all digital payment transactions between RE and all other stakeholders such as payment system operators, business correspondents, card networks, payment system processors, payment aggregators, payment gateways, third party technology service providers, other participants, etc., shall be put in place for better detection and prevention of suspicious transactions. A mechanism shall be introduced to monitor the implementation and effectiveness of such framework.

## **Customer Protection, Awareness and Grievance Redressal Mechanism**

REs shall make it mandatory (i.e. not providing any option to circumvent/ avoid the material) for the consumer to go through secure usage guidelines (even in the consumer's preferred language) while obtaining and recording confirmation during the on-boarding procedure in the first instance and first use after each

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update of the digital payment application or after major updates to secure and safe usage guidelines.

REs shall mention/incorporate a section on the digital payment application clearly specifying the process and procedure (with forms/ contact information, etc.) to lodge consumer grievances. The reporting facility on the application shall provide an option for registering a grievance. Customer dispute handling, reporting and resolution procedures, including the expected timelines for the RE's response should be clearly defined.

REs shall educate customers about the need to maintain the physical and logical security of their devices accessing digital payment products and services including recommending secure/ regular installation of operating system and application updates, downloading applications only from authorised sources, having anti-malware/ anti-virus applications on devices, etc.

Customers shall also be informed the risks, benefits and liabilities of using digital payment products and its related services before they subscribe to them and their rights, obligations and responsibilities on matters relating to digital payments, and, any problems that may arise from its service unavailability, processing errors and security breaches.

REs shall provide digital payment products and services, to a customer only at her/ his option based on specific written or authenticated electronic requisition along with a positive acknowledgement of the terms and conditions.

REs should provide a mechanism on their mobile and internet banking application for their customers to, with necessary authentication, identify/ mark a transaction as fraudulent for seamless and immediate notification to his RE. On such notification by the customer, the REs may endeavour to build the capability for seamless/ instant reporting of fraudulent transactions to the corresponding beneficiary/ counterparty's RE; vice-versa have mechanism to receive such fraudulent transactions reported from other REs. The objective of this mechanism is to accelerate early detection and enable the banking/ payment system to trace the transaction trail and mitigate the loss to the defrauded customer at the earliest possible time.

## **Internet Banking Security Controls**

REs shall implement additional levels of authentication to internet banking website such as adaptive authentication, strong CAPTCHA (preferably with anti-bot features) with server-side validation, etc., in order to plug this vulnerability

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and prevent its exploitation. An online session shall be automatically terminated after a fixed period of inactivity.

The password generated and dispatched by the RE should be valid for a limited period from the date of its creation. If the password is generated and dispatched by the RE, then, the user shall be compulsorily required to change the password, on the first login.

## MOBILE PAYMENTS APPLICATION SECURITY CONTROLS

Specific Controls for mobile applications include:

- a. Device policy enforcement (allowing app installation/ execution after baseline requirements are met);
- b. Application secure download/ install;
- c. Deactivating older application versions in a phased but time bound manner (not exceeding six months from the date of release of newer version) i.e., maintaining only one version (excluding the overlap period while phasing out older version) of the mobile application on a platform/ operating system;
- d. Storage of customer data;
- e. Device or application encryption;
- f. Ensuring minimal data collection/ app permissions;
- g. Application sandbox/ containerisation;
- h. Ability to identify remote access applications (to the extent possible) and prohibit login access to the mobile application, as a matter of precaution; and
- i. Code obfuscation.

## CARD PAYMENTS SECURITY

REs shall follow various payment card standards (over and above PCI-DSS and PA-DSS) as per Payment Card Industry (PCI) prescriptions for comprehensive payment card security as per applicability/ readiness of updated versions of the standards such as –

- a. PCI-PIN (secure management, processing, and transmission of personal identification number (PIN) data);
- b. PCI-PTS (security approval framework addresses the logical and/ or physical protection of cardholder and other sensitive data at point of interaction (POI) devices and hardware security modules (HSMs);
- c. PCI-HSM (securing cardholder-authentication applications and processes including key generation, key injection, PIN verification, secure encryption algorithm, etc.); and

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- d. PCI-P2PE (security standard that requires payment card information to be encrypted instantly upon its initial swipe and then securely transferred directly to the payment processor)

#Source: [Click here for more details](#)

# TAX LAWS



## STANDARD OPERATING PROCEDURE (SOP) FOR IMPLEMENTATION OF THE PROVISION OF SUSPENSION OF REGISTRATIONS UNDER SUB-RULE (2A) OF RULE 21A OF CGST RULES, 2017

Central Board of Indirect Taxes and Customs GST Policy Wing through the circular dated the 11th February, 2021 notified the Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017

Vide notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017. The said provision provides for immediate suspension of registration of a person.

Till the time an independent functionality for FORM REG-31 is developed on the portal, in order to ensure uniformity in the implementation of the provisions of the newly inserted rules the following guidelines for implementation of the provision of suspension of registrations under the said rule.

Till the time functionality for FORM REG-31 is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in FORM GST REG-17. The taxpayers will be able to view the notice in the “View/Notice and Order” tab post login.

The taxpayers, whose registrations are suspended under these provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled. The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in FORM GST REG-18, the intimation for suspension and notice for cancellation of registration is issued on ground of non-filing of returns, the person shall file due returns and in other scenarios as specified under FORM GST REG-31, they may meet the requirements and submit the reply.

Post issuance of FORM GST REG-31 via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States and the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions.

Upon receipt of reply or on expiry of thirty days, a task would be created in the dashboard of the concerned proper officer under “Suo moto cancellation proceeding”. After the examination of the response received from the said person the proper officer may pass an order either for dropping the proceedings for suspension/ cancellation of registration in FORM GST REG-20 or for cancellation of registration in FORM GST REG-19.

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Till the time independent functionality for FORM GST REG-31 is fully ready, it is advised that if the proper officer considers it appropriate to drop a proceeding any time after the issuance of FORM GST REG-31, he may advise the said person to furnish his reply on the common portal in FORM GST REG-18. In case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in FORM GST REG-20. The proper officer can carry out a detailed verification post such revocation, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in FORM GST REG-17.

Source: [Click here for more details](#)

# TAX LAWS



## FACELESS ASSESSMENT (1ST AMENDMENT) SCHEME, 2021

The Ministry of Finance through a notification dated 17th February, 2021 introduced a Scheme called the Faceless Assessment (1st Amendment) Scheme, 2021. This was introduced in order to bring the provisions of Faceless Assessment Scheme, 2019 at par with provisions of Section 144B of the Income-tax Act, 1961.

### Service of Notice by National e-Assessment Centre

The assessee shall be served a notice by the National e-Assessment Centre under sub-section (2) of section 143 of the Income-tax Act, 1961. Within fifteen days from the date of receipt of notice the assessee has to file his response to the National e-Assessment Centre.

### Regional e-Assessment Centre

Through National automated allocation system, the e-Assessment Centre shall assign the case selected for the purposes of e-assessment under this Scheme. Where a case is assigned to the assessment unit, it may make a request to the National e-Assessment Centre for obtaining such further information, documents or evidence from the assessee or any other person; conducting of certain enquiry or verification by verification unit, and seeking technical assistance from the technical unit.

### Issue notice to assessee for obtaining information, document or evidence

Where a request for obtaining further information, document or evidence from the assessee or any other person has been made by the assessment unit, the National e-Assessment Centre shall issue appropriate notice or requisition to such assessee or person, specifying a time therein, for submitting such information, documents or evidence. The assessee or any other person, as the case may be, shall file his response to the notice within the time specified therein or such extended time as may be allowed on the basis of an application in this regard, to the National e-Assessment Centre.

### Automated allocation system

Where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National e-Assessment Centre to a technical unit in any one Regional e-Assessment Centre through an automated allocation system.

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## **Failure of assessee to comply with the notice to produce documents, etc.**

National e-Assessment Centre shall serve upon such assessee a notice under section 144 of the Act giving him an opportunity to show-cause if the assessee fails to comply with the notice or with a direction issued under sub-section (2A), of section 142 of the Act. The National e-Assessment Centre shall intimate such failure to the assessment unit if the assessee again fails to file a response to the notice within the time specified or within the extended time.

## **Assessee files his objections with Dispute Resolution Panel**

Where the eligible assessee files his objections with the Dispute Resolution Panel, the National e-Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C of the Act, forward such directions to the concerned assessment unit. The assessment unit shall in conformity with the directions issued by the Dispute Resolution panel under sub-section (5) of section 144C of the Act prepare a draft assessment order in accordance with subsection (13) of section 144C of the Act and send a copy of such order to the National e-Assessment Centre.

## **Duty of the National e-Assessment Centre**

The National e-Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment.

The National e-Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

#Source: [Click here for more details](#)



## OTHER LAWS



### **BOILER OPERATION ENGINEERS' RULES, 2021**

The Ministry of Commerce and Industry through a notification dated 16th February, 2021 notified the Boiler Operation Engineers' Rules, 2021.

Supervision of operation of boiler.— The owner of a single boiler or two or more boilers connected in a battery or of many separate individual boilers situated within a radius of fifty meters having a total heating surface exceeding one thousand square meters in any of the cases shall not use the same or permit the same to be used unless the boiler or boilers are placed in direct charge of a competent person specified in rule 4 in addition to such number of boiler attendants as specified in these rules.

Any person, who does not possess a certificate of proficiency as a Boiler Operation Engineer under these rules, shall not be deemed to be a fit and proper person to hold the charge of any boiler.

A Boiler Operation Engineer holding a certificate of proficiency under these rules and is bound to produce such certificate when called upon to do so.

The owner of a boiler who engages any person to be in charge shall within seven days of such engagement furnish to the Chief Inspector or Director of Boilers the full particulars of such person including the serial number, date and place of issue of his certificate. In the event of such person leaving his employment or in the event of the death of such person, report that fact within seven days to the Chief Inspector or Director of Boilers, as the case may be.

A boiler shall be deemed to be in use for the purpose of these rules when there is fire in the furnace fire box or fire place for the purpose of heating the water in the boiler or under banked fire condition.

#### **COMMITTEE OF EXAMINERS**

A Committee of Examiners shall be constituted by the Government for the State or Union territory consisting of the Chief Inspector or Director of Boilers, a Deputy Chief Inspector or Inspector or equivalent as nominated by the Chief Inspector or Director of Boilers, and not less than three other members having academic and practical knowledge of prime movers and modern boiler practices to be appointed by that Government from time to time.

The term of office of each of the members other than the ex-officio members of the Committee shall be three years.

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The Committee of Examiners shall – (i) conduct examinations and practical tests of candidates for the grant of certificates of proficiency as a Boiler Operation Engineer by itself or through any agency authorised by it in this behalf; (ii) have the power to appoint any person as a question paper setter or examiner in any examination; (iii) grant certificate of proficiency to a successful candidate as a Boiler Operation Engineer; and (iv) consider the reports of enquiries received under rule 45.

Each member of the Committee of Examiners appointed under rule 9 except Chairman and Secretary and examiners and invigilators shall be entitled to receive fees for examining candidates under these rules and the rate of fees shall be as follows: – (a) sitting fee for Committee meeting (for non-official Committee members) – Rs. 1000/- (b) for setting question paper – Rs. 3500/- (c) for valuation of answer paper – Rs. 50/- (per answer paper) (d) for examining a candidate – Rs. 150/- (per candidate) (e) invigilation fee – (per invigilator) (i) Rs. 600/- (if examination exceeds three hours) (ii) Rs. 300/- (if examination does not exceed three hours)

### EXAMINATION

Examination for the grant of certificates of proficiency as a Boiler Operation Engineer shall be conducted by the Committee or any agency authorised by it in this behalf at such places and on such dates as decided by the Committee from time to time. When a date fixed for the examination is declared as a gazetted holiday or when for any unforeseen reason the examination cannot be held on the date fixed, the Chairman may fix some other date for holding the examination.

### CERTIFICATE

The certificate of proficiency as a Boiler Operation Engineer shall qualify the holder thereof to be in charge of a boiler or boilers of any type and size. The holder of a certificate of proficiency as a Boiler Operation Engineer shall for all intents and purposes be deemed to have fulfilled the requirements of the Boilers Attendants' Rules, 2011. A certificate of proficiency as a Boiler Operation Engineer granted to a candidate by any Committee shall be valid all over the India.

### APPLICATION FOR EXAMINATION

Every application for examination shall be in form 'A'.

Candidate has to produce satisfactory testimonials in order to admitted to an examination.

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## ELIGIBILITY CRITERIA

A candidate for a certificate of proficiency as a Boiler Operation Engineer shall not be admitted to the examination unless he–

- a) has completed the age of twenty-three years;
- b) possesses a degree or diploma in Mechanical or Electrical or Chemical or Power Plant or Production or Instrumentation Engineering from a recognised university or Institution;
- c) has served for not less than two years in case of degree holders and for five years in case of diploma holders in the operation or maintenance of a boiler of not less than one thousand square meters heating surface or a Battery of boilers of not less than one thousand square meters heating surface in aggregate out of which at least one boiler of not less than five hundred square meters heating surface:

In case of a degree holder or post graduate diploma holder from a National Power Training Institute, the requirement of minimum working experience shall be one year.

## GRANT OF CERTIFICATES

Details of candidates who pass the examination shall be notified by the Committee and candidates shall be granted certificate of proficiency after declaration of result.

#Source: [Click here for more details](#)

## OTHER LAWS



### INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

Ministry of Electronics and Information Technology through its notification dated 25/02/2021 introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules will suppress the Information Technology (Intermediaries Guidelines) Rules, 2011.

#### DUE DILIGENCE BY INTERMEDIARIES AND GRIEVANCE REDRESSAL MECHANISM

##### Due diligence by an intermediary:

The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person; the rules and regulations, privacy policy or user agreement of the intermediary shall inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that,— (i) belongs to another person and to which the user does not have any right; (ii) is defamatory, obscene, pornographic, paedophilic, invasive of another’s privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force; (iii) is harmful to child; (iv) infringes any patent, trademark, copyright or other proprietary rights; (v) violates any law for the time being in force; (vi) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact; (vii) impersonates another person; (viii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation; (ix) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource; (x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;

an intermediary shall periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer

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resource immediately or remove non-compliant information or both, as the case may be;

an intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force

### **Grievance redressal mechanism of intermediary**

The intermediary shall prominently publish the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint

Grievance Officer shall acknowledge the complaint within twenty-four hours and dispose off such complaint within a period of fifteen days. The intermediary shall, within twenty-four hours from the receipt of a complaint.

### **Additional due diligence to be observed by significant social media intermediary**

Significant social media intermediary shall observe the following additional due diligence while discharging its duties, namely: — (a) appoint a Chief Compliance Officer (b) appoint a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder. (c) appoint a Resident Grievance Officer (d) publish periodic compliance report every month.

A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009, which shall be supported with a copy of such information in electronic form. And shall endeavour to deploy technology-based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form

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depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information.

Where an intermediary fails to observe these rules, the provisions of sub-section (1) of section 79 of the Act shall not be applicable to such intermediary and the intermediary shall be liable for punishment under any law for the time being in force including the provisions of the Act and the Indian Penal Code.

### **CODE OF ETHICS AND PROCEDURE AND SAFEGUARDS IN RELATION TO DIGITAL MEDIA**

Part III is applicable to — (a) publishers of news and current affairs content; (b) publishers of online curated content. For ensuring observance and adherence to the Code of Ethics by publishers operating in the territory of India, and for addressing the grievances made in relation to publishers under this Part, there shall be a three-tier structure as under— (a) Level I - Self-regulation by the publishers; (b) Level II – Self-regulation by the self-regulating bodies of the publishers; (c) Level III - Oversight mechanism by the Central Government.

#### **SELF REGULATING MECHANISM - LEVEL I**

A publisher shall—

- a) establish a grievance redressal mechanism and shall appoint a Grievance Officer based in India, who shall be responsible for the redressal of grievances received by him;
- b) display the contact details related to its grievance redressal mechanism and the name and contact details of its Grievance Officer at an appropriate place on its website or interface, as the case may be;
- c) ensure that the Grievance Officer takes a decision on every grievance received by it within fifteen days, and communicate the same to the complainant within the specified time:
- d) be a member of a self-regulating body as referred to in rule 12 and abide by its terms and conditions.

#### **SELF REGULATING MECHANISM – LEVEL II**

There may be one or more self-regulatory bodies of publishers, being an independent body constituted by publishers or their associations. The self-regulatory body shall be headed by a retired judge of the Supreme Court, a High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights or such other relevant field, and have

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other members, not exceeding six, being experts from the field of media, broadcasting, entertainment, child rights, human rights and such other relevant fields.

The self-regulating body shall perform the following functions, namely:— (a) oversee and ensure the alignment and adherence by the publisher to the Code of Ethics; (b) provide guidance to publishers on various aspects of the Code of Ethics; (c) address grievances which have not been resolved by publishers within the specified period of fifteen days; (d) hear appeals filed by the complainant against the decision of publishers; (e) issue such guidance or advisories to such publishers as specified in sub-rule (5) for ensuring compliance to the Code of Ethics.

### **OVERSIGHT MECHANISM - LEVEL III**

The Ministry shall co-ordinate and facilitate the adherence to the Code of Ethics by publishers and self-regulating bodies, develop an Oversight Mechanism, and perform the following functions, namely:— (a) publish a charter for self-regulating bodies, including Codes of Practices for such bodies; (b) establish an Inter-Departmental Committee for hearing grievances; (c) refer to the Inter-Departmental Committee grievances arising out of the decision of the self-regulating body under rule 12, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics as it may consider necessary; (d) issue appropriate guidance and advisories to publishers; (e) issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.

#### **Blocking of information in case of emergency**

In case of emergency nature, the Secretary, Ministry of Information and Broadcasting may, if he is satisfied that it is necessary or expedient and justifiable for blocking for public access of any information or part thereof through any computer resource and after recording reasons in writing, as an interim measure issue such directions as he may consider necessary to such identified or identifiable persons, publishers or intermediary in control of such computer resource hosting such information or part thereof without giving him an opportunity of hearing.

#### **Disclosure of Information**

A publisher and a self-regulating body, shall make true and full disclosure of all grievances received by it, the manner in which the grievances are disposed of, the action taken on the grievance, the reply sent to the complainant, the orders or

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directions received by it under these rules and action taken on such orders or directions.

Subject to any law for the time being in force, the publisher shall preserve records of content transmitted by it for a minimum period of sixty days and make it available to the self-regulating body or the Central Government, or any other Government agency, as may be requisitioned by them for implementation of these rules.

#Source: [Click here for more details](#)



# JUDICIAL INSIGHT



## JUDICIAL INSIGHT

### **'DECREE HOLDER' CANNOT BE EXCLUDED TO FILE AN APPLICATION UNDER THE CODE MERELY BECAUSE THE DEFINITION OF 'CREDITOR' INCLUDES 'FINANCIAL CREDITOR' AND 'OPERATIONAL CREDITOR'**

The Appellant has focused the instant appeal being dissatisfied with the order passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in dismissing the application filed by the Appellant/Petitioner/Operational Creditor (under Section 9 of The Insolvency and Bankruptcy Code, 2016. It was held that "Financial Creditor" and "operational creditor" do not include "decree holder" to initiate CIRP in Part II. As the applicant is not an 'Operational Creditor' the court dismissed the application.

Appellant is a proprietor and that the Appellant/Operational Creditor is engaged in many other things, in the business of procuring and selling of Goods/Materials/operational supplies, industrial etc., to increase their profit by payment aggregation and providing goods material at competition price by directly buying from large manufacturers and enabling its customers to increase business efficiencies against cash payment or on credit basis.

Respondent/Corporate Debtor had approached the Appellant/Operational Creditor and represented that it was in requirement of Goods/Material manufactured/supplied by the appellant and requested the Appellant/company to supply the same to it. Accordingly, the Respondent/Corporate Debtor placed the 'Purchase Order' dated 17.2.2011 and the Corporate Debtor through its purchase orders offered to make payment within a period of 45 to 60 days but the payment was agreed to be made within 30 days from the date of invoices.

Appellant/Operational Creditor supplied the chemicals/materials to the Respondent/Corporate Debtor through its 'Purchase Orders' against which necessary 'Invoices' were raised. Respondent/Corporate Debtor had failed to make the balance payment, which was duly agreed up and therefore, the Appellant/Operational Creditor had approached the Respondent/Corporate Debtor on numerous occasions demanding balance payment

The Learned Counsel for the Appellant/Operational Creditor brings to the notice of this Tribunal that there is an admitted 'Debt' of Rs.7,50,000/- (Rupees Seven Lakhs Fifty thousand only) towards Principal amount, in respect of Goods received by the Respondent/Corporate Debtor admitted to be paid in the 'Settlement Agreement' dated 16.8.2018. According to the Appellant, a Civil Suit in

## JUDICIAL INSIGHT



C.S.No.6912 of 2016 was filed by the appellant against the Respondent/Corporate Debtor and Another and during the pendency of the said suit, the 'Settlement Agreement' dated 16.8.2018 was entered into and executed between the Respondent/Corporate Debtor and the Appellant/Operational Creditor and further that the 'Corporate Debtor' had promised and assured to pay the whole sum.

Despite notice having been served upon the Respondent/Corporate Debtor failed to pay the balance amount and also not responded to the notice. Therefore, the Appellant/Operational Creditor was per forced to file the Company Petition before the Adjudicating Authority.

Tribunal relevantly points out the definition under Section 3(10) of the Code which speaks of 'Financial Creditor' meaning in person to whom a debt is owed and includes a 'Financial Creditor', 'Operational Creditor', 'Secured Creditor', 'Unsecured Creditor' and a 'Decree-Holder

The Tribunal observed that Insolvency Proceedings can be ignited against the Corporate Debtor, if a default is committed in payment of the debt that is due and becomes payable by the Corporate Debtor.

It was held that, in the light of detailed qualitative and quantitative discussions and also this Tribunal keeping in mind the entire conspectus of the attendant facts and circumstances of the instant case in a holistic fashion comes to a resultant conclusion that the impugned order passed by the National Company Law Tribunal, New Delhi Bench dated 8.6.2020 as an incorrect and invalid one in the eye of law.

**Source:** COMPANY APPEAL (AT)(Insolvency) No.608 of 2020, decided on 5<sup>th</sup> February, 2021

*Ashok Agarwal Proprietor of M/s Shree Marketing Versus Amitex Polymers Private Limited*

## JUDICIAL INSIGHT



### THE PROVISION OF THE CODE CANNOT BE INVOKED FOR RECOVERY OF OUTSTANDING AMOUNT AS WELL AS IT CANNOT BE MISUSED TO DROP THE CURTAIN ON A HEALTHY ORGANIZATION

The present Appeal has been filed by the Appellant, under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the Impugned order dated 18.06.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru Bench) in CP(IB) No. 34(BB) of 2020.

The Adjudicating Authority has decided the case on the reason that the Company Petition has been filed with an intention to recover the disputed outstanding amount in question & Arbitration Application bearing A.A No. 25025 of 2019 is pending before the XXVIII Additional City Civil Sessions Judge, Mayo Hall Unit (CCH-29), Mayo Hall, Bengaluru.

The Appellant has submitted that it is the Corporate Debtor which approached the Appellant for supply of Ready-Mix Concrete (RMC), Tyles, UPVS and Blocks (Materials) in 2014 onwards and under the arrangement between the parties the Corporate Debtor (Respondent) i.e. SJR Prime Corporation Private Limited would raise purchase orders upon the Appellant and the Appellant would supply the specified quantity of the desired material along with invoices. It was clear that Invoice submitted by the Appellant from 16.04.2018 to 23.02.2019 has been defaulted by the Respondent. Default period is varying from over 200 days to approximately 500 days.

The Appellant auditor vide their letter dated 22nd March, 2019 asked for confirmation of balance from Respondent & that on 28<sup>th</sup> March, 2019 the confirmation of balance as per Books of Corporate Debtor of Rs. 5,86,75,288/- and Rs.29,34,864/- towards RMC and Tyles respectively were received from the Corporate Debtor. The said balance confirmation was revoked by Corporate Debtor on 3<sup>rd</sup> May, 2019 due to some accounting issues and the Corporate Debtor assured to provide a new balance confirmation upon reconciliation. The Corporate Debtor assured to pay the outstanding operational dues in tranches vide their letter dated 10th April, 2019 and paid only Rs.2.10 crore (Approx.) by September, 2019 to the Appellant and again revised balance confirmation was received by the Corporate Debtor in September, 2019 for a total sum of Rs. 6.80 Crore (Approx.). The Appellant repeated request failed to get the payments of the pending invoices and as a result of which the Appellant has issued a Demand Notice on 18th November, 2019 under Section 8 of the Code on the Corporate Debtor by email and on 21st November, 2019 via speed post.

## JUDICIAL INSIGHT



On 13th December, 2019 the Corporate Debtor filed the Application under Section 9 of the code before the Adjudicating Authority. On 13th December, 2019 the Appellant has received the reply of Demand Notice and also the information that a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed against the Appellant on 03rd December, 2019.

The Appellant has raised the issue of initiation of unlawful Arbitration including unlawful issuance of notice under Section 21 of the Arbitration and Conciliation Act, 1996. The Appellant has also raised the issue of unrelated FIR filed on 12th September, 2018 as the name of the Appellant is not in the FIR and allegation is of manipulation of accounts department. They have also raised the issue of consideration of economic distress due to pandemic having been considered by the Adjudicating Authority which is against their powers.

Hon'ble NCLAT has held that in the present there is existence of dispute prior to the filing of Petition under Section 433(e) and section 343(1) of companies Act, 1956 and therefore the application under section 9 of the code was not maintainable. Since, the Corporate Debtor had raised objections with regard to non-completion of project within time and defects in work done in haste.

Hon'ble NCLAT in the present judgment had set aside the judgment passed by the Id. Adjudicating Authority wherein the CIRP was initiated against the Corporate Debtor. Hon'ble NCLAT held that the operational Creditor failed to submit any documents to prove the existence of the operational debt and the amount in default. Furthermore, the operational creditor had also failed to submit the copies of the invoice, copy of bank statement and relevant documents. The Operational Creditor had issued a notice for payment of due, failing which the dispute shall be referred to arbitration.

The Respondent has alleged that Appellant have manipulated some of the officers working the Respondent's Account Department and obtained confirmation letter dated 22nd March, 2019 which was withdrawn by the Respondent on 03rd May, 2019 and in the Process the Respondent has also to file FIR against the Deputy General Manager for issuing such balance confirmation certificate. The Respondent has also alleged that vide A.A No. 25025 of 2019 has filed dated 03.12.2019 before the XXVIII Additional City Civil Sessions Judge, Mayo Hall Unit (CCH-29), Mayo Hall, Bengaluru under Section 9 of the Arbitration and Conciliation Act, 1996, directing the Respondent to deposit a sum of Rs. 66 Crore Approx. As far as Demand Notice is concerned, the Respondent has raised that there was no provision to pay interest at the rate of 24 % per annum as per the terms of the purchase order. But the amount reflected in the invoice is not tallying to the accepted confirmation of balances.

## JUDICIAL INSIGHT



The Appellant has also produced the ICICI Bank Letter but the same is unable to confirm how much money is received from the Corporate Debtor. They have also alleged that the Appellant claim that they sent a notice as well as an email dated 18/11/2019. The said email was not produced along with the Petition before the Adjudicating Authority. They have also disputed charging of interest at the rate of 24 % p.a, which, nowhere was existing in the purchase orders and has claimed an amount of Rs. 9 Crore to be recovered from the appellant towards defective goods supplied to the Respondent and has resorted to Arbitration Proceedings in line with the purchase orders terms and conditions.

The Court observed that as far as initiation of proceedings by Operational Creditor against the Corporate Debtor is concerned, we are very much clear that the following facts are proved beyond doubt which has been complied with in accordance with the Hon'ble Apex Court Judgments and provisions of the Code. The debt became "due" from July 2018, the question is whether it became "payable" by the Corporate Debtor under the law, the answer is in "negative" because there were quality & other issues raised by the Corporate Debtor.

The Operational Creditor has issued a Demand Notice dated 18.11.2019 received on 06.12.2019 by the Corporate Debtor and within the stipulated period, the Corporate Debtor vide its letter dated 09.12.2019 has replied and proved beyond doubt that there is an existence of dispute particular the cracks in the projects sites, reduced quality of goods supplied, short supply of concrete multiple snags in windows and doors etc & also raising issue to initiate arbitration proceedings for excess sum of over Rs.9.51 Crore paid to the Appellant etc.

It was observed that, the provision of the Code cannot be invoked for recovery of outstanding amount as well as it cannot be misused to drop the curtain on a healthy organization. The Objective of the Code is to consolidate and amend the laws relating to reorganization and Insolvency Resolution of Corporate Persons. Using the platform of the Code, threatening the vendor to release even disputed amount is not fair and equitable.

The court did not find any merit in the appeal and the Adjudicating Authority rightly rejected the Application under Section 9 of the Code.

*Source: Company Appeal (AT) (Insolvency) No. 632 of 2020, decided on 15<sup>th</sup> February, 2021*

*Aparna Enterprise Ltd. Vs. SJR Prime Corporation Pvt Ltd.*

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