

**ricago**  
**GRC Bulletin**  
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**Clonect Solutions Private Limited.**

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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



## MASTER CIRCULAR ON SURVEILLANCE OF SECURITIES MARKET

On 1<sup>st</sup> March, 2021 the Securities and Exchange Board of India (SEBI) issued a Master Circular on Surveillance of Securities Market in order to enable the users to have an access to all the applicable circulars at one place.

### Trading Rules and shareholding in dematerialized mode

- In order to moderate sharp and destabilizing price movements in shares of companies, to encourage better price discovery and to increase transparency in securities market, SEBI in consultation with Stock Exchanges has decided to adopt following measures: -
- The securities of all companies shall be traded in the normal segment of the exchange if and only if, the company has achieved at least 50% of non-promoters holding in dematerialized form by 31<sup>st</sup> October, 2010.
- The securities of companies shall be traded in the normal segment of the exchange if and only if, the company has achieved 100% of promoter's and promoter group's shareholding in dematerialized form latest by the quarter ended December 2013 as reported to the stock exchanges.
- Exemptions shall be taken into consideration while arriving at compliance with 100% promoter(s) holding in demat form. Such exemption shall be applicable in cases where: -
  1. Promoter(s) have sold their shares in physical mode and such shares have not been lodged for transfer with the company; or
  2. Matters concerning part/entire shareholding of promoters/promoter group are sub judice before any Court/Tribunal; or
  3. Shares cannot be converted into demat form due to death of any promoter(s); or
  4. Shares allotted to promoter(s) that await final approval for listing from stock exchange and such pendency is less than 30 days or shares that upon receipt of final listing approval from stock exchange are pending conversion to demat and such pendency is less than 15 days.

### Unauthenticated news circulated by SEBI Registered Market Intermediaries through various modes of communication.

SEBI Registered Market Intermediaries are directed that:

- Proper internal code of conduct and controls should be put in place.

# CORPORATE LAWS



- Employees/temporary staff/voluntary workers etc. employed/working in the Offices of market intermediaries do not encourage or circulate rumours or unverified information obtained from client, industry, any trade or any other sources without verification.
- Access to Blogs/Chat forums/Messenger sites etc. should either be restricted under supervision or access should not be allowed.
- Logs for any usage of such Blogs/Chat forums/Messenger sites (called by any nomenclature) shall be treated as records and the same should be maintained as specified by the respective Regulations which govern the concerned intermediary.
- Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for action. The Compliance Officer shall also be held liable for breach of duty in this regard.

## SEBI (Prohibition of Insider Trading) Regulations, 2015

- With reference to the requirements of Regulation 8 (Code of Fair Disclosure) and Regulation 9 (Code of Conduct) of the Regulations, the companies shall also ensure that:
  1. Formulated and published (on its official website), code of practices and procedures for fair disclosure of Unpublished Price Sensitive Information (UPSI), is confirmed to the stock exchanges, immediately.
  2. Formulated code of conduct is confirmed to the stock exchanges, immediately.
  3. A company deals with only such market intermediary / every other person, who is required to handle UPSI, who have formulated a code of conduct as per the requirements of the Regulations.
- In addition to the transactions mentioned in Clause 4 (3) (b) of Schedule B read with Regulation 9 of PIT Regulations, trading window restrictions shall now not apply in respect of OFS and RE transactions carried out in accordance with the framework specified by the Board from time to time.
- The listed companies, intermediaries and fiduciaries shall promptly inform the Stock Exchange(s) where the concerned securities are traded, regarding violations relating to Code of Conduct under PIT Regulations in such form and manner as may be specified by the Board from time to time.

# CORPORATE LAWS



- It has now been decided to implement the system driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company under Regulation 7(2) of PIT Regulations.

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

# CORPORATE LAWS



## STREAMLINING THE PROCESS OF IPOs WITH UPI IN ASBA AND REDRESSAL OF INVESTOR GRIEVANCES

SEBI vide circular, dated 16<sup>th</sup> March 2021, has put measures in place to streamline the reconciliation process among intermediaries/SCSBs.

Earlier SEBI had introduced the use of Unified Payment Interface as an additional payment mechanism with Application Supported by Blocked Amount (ASBA) for Retail Individual Investors along with timelines for listing within six days of closure of issue (T+6). While it was operational in Phase 1, UPI was mandated for applications by Retail Individual Investors submitted through Intermediaries.

There was a need to put measures in place to have a uniform policy and to further streamline the reconciliation process among intermediaries/SCSBs. This circular also provides a mechanism for compensation to investors.

### Streamlining the IPO Process

Lead Manager is the nodal entity for any issues arising out of a public issuance process. The timelines, processes and compensation policy defined in this circular shall form a part of the agreement(s) that shall be signed among the intermediaries. Lead Managers shall ensure the adherence of timelines, processes, and compensation policy by intermediaries.

In order to ensure timely response with regard to the IPO process, SCSBs shall identify the nodal officer for IPO applications processed through UPI as a payment mechanism and submit the details as prescribed. For ensuring timely information to investors, SCSBs shall send SMS alerts for mandate block and unblock.

### Reinitiations of UPI Bids

To avoid duplication, the facility of re-initiation provided to Syndicate Members shall preferably be allowed only once per bid/batch and as deemed fit by the concerned Stock Exchange, after bid closure time.

### Cancelled/Withdrawn/Deleted applications

Registrars to an Issue (RTI) shall submit the details of cancelled/withdrawn/deleted applications to SCSB's on daily basis within 60 minutes of bid closure time from the issue opening date till issue closing date (T) by obtaining the same from Stock Exchanges(SE). SCSB's shall unblock such applications by the closing hours of the bank in a day and submit the confirmation to Lead Managers and RTA on daily basis, as per the format prescribed.

# CORPORATE LAWS



## Unblocking of UPI Mandates

The following process shall be implemented by intermediaries.

- Sponsor Banks shall execute the online mandate revoke file for Non-Allottees /Partial Allottees on BOA+1. Subsequently, any pending applications for unblock shall be submitted to RTA, not later than 12:30 PM on BOA+1.
- Subsequently, RTI shall submit the bank-wise pending UPI applications for unblock to SCSB's along with the allotment file, not later than 02:00 PM on BOA+1. The allotment file shall include all applications pertaining to full-allotment/partial-allotment/non-allotment /cancelled/ withdrawn/ deleted applications etc.
- SCSB's shall ensure that the unblock for non-allotted/partial-allotted applications is completed by the closing hours of bank in a day on BOA+1. SCSB's shall submit the confirmation on the same, to lead managers and RTA, not later than BOA+1. Such report shall be submitted as per the format prescribed

SCSBs failing to provide the details to Lead Managers/RTI, not later than BOA+1 shall be liable to face appropriate action under Securities Laws. In order to provide an efficient redressal mechanism for complaints from investors pertaining to Block/Unblock of funds, to protect the interests of investors and to avoid any opportunity loss. SCSBs shall compensate the investor, immediately on the date of receipt of complaint from the investor.

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



# TAX LAWS



## THE INCOME-TAX (3RD AMENDMENT) RULES, 2021 AND THE INCOME-TAX (4TH AMENDMENT) RULES, 2021

Ministry of Finance issued a notification dated 11th March, 2021 to further amend the Income-tax Rules, 1962. They introduced the Income-tax (3rd Amendment) Rules, 2021 which shall come into force on the 1st day of April, 2021. Form 12BA was modified.

[Click here to know more](#)

Through a notification dated 12th March, 2021 the Ministry of Finance introduced the Income-tax (4th Amendment) Rules, 2021. According to which, after sub-rule (5) of rule 114E, the following has been included as (5)A:

—(5A) For the purposes of pre-filing the return of income, a statement of financial transaction under sub-section (1) of section 285BA of the Act containing information related to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income mentioned in column (2) of Table below shall be furnished by the persons mentioned in column (3) of the said Table in such form, at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems), as the case may be, with the approval of the Board, namely:

Sr. No.	Nature of transaction	Class of person (reporting person)
(1)	(2)	(3)
1.	Capital gains on transfer of listed securities or units of Mutual Funds	(i) Recognized Stock Exchange; (ii) Depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); (iii) Recognized Clearing Corporation; (iv) Registrar to an issue and share transfer agent registered under sub-section (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
2.	Dividend income	A company

# TAX LAWS



3.	Interest income	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).</p> <p>(iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public.</p>
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**#Source:** [Click here to know more](#)

## OTHER LAWS



### **ELECTRONICS AND INFORMATION TECHNOLOGY GOODS (REQUIREMENT OF COMPULSORY REGISTRATION) ORDER, 2021**

Ministry of Electronics and Information Technology made an order 18<sup>th</sup> March, 2021 and it is called —Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021.

#### **Compulsory use of standard mark: -**

Goods or articles specified as per the order shall conform to the corresponding Indian Standard given and shall bear the Standard Mark under a license, provided that nothing in the Order shall apply in relation to goods or articles meant for export which conform to the specification required by the foreign buyer and to goods or articles, for which the Central Government has issued specific exemption letter based on reasons to be recorded in writing.

#### **Timeline:**

The Order shall be applicable after expiry of six months of publication in official Gazette.

#### **Concurrent Running with Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012: -**

This Order shall not affect goods or articles which are having valid registration number as per the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 but the registration would be renewed under the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021.

**#Source:** [Click here to know more](#)

## OTHER LAWS



### SUGAR DEVELOPMENT FUND (AMENDMENT) RULES, 2021

The Ministry of Consumer Affairs, Food and Public Distribution vide notification dated 24th March, 2021 notified the Sugar Development Fund (Amendment) Rules, 2021

#### Loans for Potentially sugar undertaking

A potentially viable sick sugar undertaking shall be eligible for a loan for the modernization or rehabilitation of plant and machinery or for production of anhydrous alcohol or ethanol from alcohol or molasses or sugarcane juice or for bagasse-based co-generation power project: Provided that the loan from the Fund has been recommended in the rehabilitation scheme for the potentially viable sick sugar undertaking by the Committee for rehabilitation: Provided further that the scheme or project for such modernization or rehabilitation of its plant and machinery or for production of anhydrous alcohol or ethanol from alcohol or molasses or sugarcane juice or for bagasse-based co-generation power project is approved for financial assistance by a financial institution or a scheduled bank under its relevant scheme: Provided also that a sugar undertaking shall not be eligible for a loan under this rule if more than one loan under rule 16 or rule 22 or rule 23 remains to be fully repaid “Provided that a loan from the Fund has been recommended in the rehabilitation scheme for the potentially viable sick sugar undertaking by the Committee for rehabilitation.

#### Proceedings under the Provisions of the Insolvency in case of Default

In case of two consecutive defaults in repayment of the Sugar Development Fund loan or instalment thereof, the Central Government may initiate proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016.

#### Restructuring the loan and interest rate in certain cases

Central Government may, after taking into consideration the scheme of rehabilitation recommended by the Committee for rehabilitation and any other relevant factor, restructure the loan, interest or additional interest on account of default thereof of a potentially viable sick sugar undertaking-: Provided that while so restructuring, no portion of the outstanding principal or simple interest at applicable rates at the relevant time shall be waived off: Provided further that the Central Government may, at its discretion, waive additional interest in full or in part, for reasons to be recorded in writing.

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# OTHER LAWS

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Provided that the restructuring has been recommended by the Committee for rehabilitation in the scheme for rehabilitation for sugar undertakings in accordance with the guidelines as may be decided by the Government:

## **Form No. XI**

The Sugar Development Fund (Amendment) Rules, 2021 has also substituted Form No. XI

**#Source:** [Click here to read more](#)

# JUDICIAL INSIGHT



## JUDICIAL INSIGHT

### THE COMPANY TRIBUNAL IS NOT A LABOUR COURT OR AN ADMINISTRATIVE TRIBUNAL TO FOCUS ENTIRELY ON THE MANNER OF REMOVAL OF A PERSON FROM DIRECTORSHIP

The Appellant in this matter is a Suspended Director of the Corporate Debtor who has filed the present Appeal assailing the Impugned Order dated August 31, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench admitting the Application filed by the Respondent 'Operational Creditor' under Section 9 of the Insolvency and Bankruptcy Code, 2016. The tribunal held that two essential requirements, i.e., existence of 'debt' and 'default', for admission of a petition under Section 9 of the I&B Code, has been met in this case.

Tata Sons (Private) Limited has come up with two appeals in Civil Appeal Nos.13-14 of 2020, challenging a final order dated December 18, 2019 passed by the National Company Law Appellate Tribunal (i) holding as illegal, the proceedings of the sixth meeting of the Board of Directors of TATA Sons Limited held on October 24, 2016 in so far as it relates to the removal of Shri Cyrus Pallonji Mistry (ii) restoring the position of Cyrus Pallonji Mistry as the Executive Chairman of Tata Sons Limited and consequently as a Director of the Tata Companies for the rest of the tenure; (iii) declaring as illegal the appointment of someone else in the place of Cyrus Pallonji Mistry as Executive Chairman; (iv) restraining Shri Ratan N. Tata and the nominees of Tata Trust from taking any decision in advance; (v) restraining the Company, its Board of Directors and Shareholders from exercising the power under Article 75 of the Articles of Association against the minority members except in exceptional circumstances and in the interest of the Company; and (vi) declaring as illegal, the decision of the Registrar of Companies for changing the status of Tata Sons Limited from being a public company into a private company.

#### Question of Law

The first question of law arising for consideration is whether the formation of opinion by the Appellate Tribunal that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground, is in tune with the well settled principles and parameters, especially in the light of the fact that the findings of NCLT on facts were not individually and specifically overturned by the Appellate Tribunal ?

#### Observation

## JUDICIAL INSIGHT



An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.

There may be cases where the removal of a Director might have been carried out perfectly in accordance with law and yet may be part of a larger design to oppress or prejudice the interests of some members. It is only in such cases that the Tribunal can grant a relief under Section 242. The Company Tribunal is not a labour Court or an administrative Tribunal to focus entirely on the manner of removal of a person from Directorship. Therefore, the accolades received by Cyrus Pallonji Mistry from the Nomination and Remuneration Committee or the Board of Directors on June 29, 2016, cannot advance his case.

In any event the removal of a person from the post of Executive Chairman cannot be termed as oppressive or prejudicial. The original cause of action for the complainant companies to approach NCLT was the removal of Cyrus Pallonji Mistry from the post of Executive Chairman. Though the complainant companies padded up their actual grievance with various historical facts to make a deceptive appearance, the *causa proxima* for the complaint was the removal of Cyrus Pallonji Mistry from the office of Executive Chairman. His removal from Directorship happened subsequent to the filing of the original complaint and that too for valid and justifiable reasons and hence NCLAT could not have laboured so much on the removal of CPM, for granting relief under Sections 241 and 242.

### Held

NCLAT should have raised the most fundamental question whether it would be equitable to wind up the company and thereby starve to death those charitable trusts, especially on the basis of un-charitable allegations of oppressive and prejudicial conduct. Therefore, the finding of NCLAT that the facts otherwise justify the winding up of the company under the just and equitable clause, is completely flawed.

**Source:** SC CIVIL APPEAL NOs.440441 OF 2020, decided on March 26, 2021  
*Tata Consultancy Services Pvt Ltd v Cyrus Investments Pvt Ltd and Others (LL 2021 SC 184)*

## JUDICIAL INSIGHT



### DEMAND NOTICE UNDER SECTION 8 ADDRESSED PROPERLY AND ONCE SERVED AT THE REGISTERED ADDRESS IS SUFFICIENT IRRESPECTIVE OF WHO RECEIVES IT

The Appellant in this matter is a Suspended Director of the Corporate Debtor who has filed the present Appeal assailing the Impugned Order dated August 31, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench admitting the Application filed by the Respondent 'Operational Creditor' under Section 9 of the Insolvency and Bankruptcy Code, 2016. The tribunal held that two essential requirements, i.e., the existence of 'debt' and 'default', for admission of a petition under Section 9 of the I&B Code, have been met in this case.

#### Submissions Made by the Appellant:

Learned Counsel for the Appellant submitted that Section 9(3)(a) mandatorily requires that the Application should be accompanied with a copy of the Demand Notice delivered by the Operational Creditor to the Corporate Debtor; that Sections 8 & 9 of the code should be conjointly read with Rules 5 & 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which provide for the mode of service of the Demand Notice on the Corporate Debtor, a sine qua for maintaining an Application under Section 9 of the IBC.

He submitted that the notice sent to the Appellant/Mr. Abhinandan Jain was returned to the Operational Creditor with an endorsement 'closed in the period 2017-2018'. Likewise, the notice sent to Priya Arhant Jain, Mr. Arihant Jain, and Mr. Shital Rikhabchand Multha were also returned with an endorsement 'closed for a period 2017-2018'

Regarding the service of notice on the Corporate Debtor, Learned Counsel for the Appellant argued that the stamp on the acknowledgment card is that of 'Brahmecha Modi, Chartered Accountants' who has nothing to do with the Corporate Debtor.

The main submissions of the Learned Counsel for the Appellant are threefold: (a) Notice mandated under Section 8 of the IBC, 2016 was never served upon them. (b) That the Application arises out of 'time-barred claims'(c) That there is a "Pre-Existing Dispute" prior to the filing of the Application under Section 9 of the IBC.

#### Observation:

1. The Tribunal observed that if the contentions of Learned Counsel for the Appellant that served on the Corporate Debtor was 'insufficient' on the ground that, it was received by somebody else, though admittedly addressed



# JUDICIAL INSIGHT



to the Registered Address, was accepted then such an observation would be ultra vires to what has been provided for in Rule 5 of the 'IBC' 2016 and in the Statutory Provisions of Section 8 of the 'IBC'. As long as it has been addressed properly and once served at the Registered Address, it is not the concern of the Applicant as to who receives it.

2. The Appellant himself had admitted that 90 days' time was given for the amounts to be paid. The last payment made by the Corporate Debtor was Rs. 30,30,000/- (Rs. 10,15,000/-, Rs. 10,00,000/- & Rs. 10,15,000/-) on September 22, 2016. The court considered the contention of the Learned Counsel for the Respondent that the amount became 'due and payable' on September 22, 2016 when only a partial payment was made. Section 3(11) defines "debt" as a liability or Application in respect of a claim which is due from any person and includes Financial Debt and Operational Debt. Section 3(12) defines "default" as non-payment of debt when whole or any part or instalment of the amount of debt has become 'due and payable' and is not paid by the Debtor or the Corporate Debtor as the case may be. In the instant case part or instalment of the amount of debt has become 'due and payable' as of September 22, 2016. It being a running account, considering the manner in which such businesses are conducted and accounts are kept, it would be material to see when the parties concerned treat the debt to be in 'default'. It is pertinent to mention that the date of default mentioned in Form V of the Application is September 22, 2016 and the Application was filed in October 2018, keeping in view the ratio laid down by the aforementioned Judgements, specifically regarding the date of default, is squarely applicable to the facts of this case. Hence, we are of the considered view that the Application was filed well within the period of limitation.
3. The contention of the Learned Counsel for the Appellant that there were transactions between one Mr. Puneet Shiv Kumar Agarwal and the Operational Creditor through various group of Companies cannot fall within the definition of dispute relevant to the subject matter of the instant case, in the absence of any communication filed evidencing any 'Pre-Existing Dispute', prior to the filing of the Section 9 Application.

### Held

The Tribunal held that no illegality or infirmity was found in the Impugned Order passed by the Ld. Adjudicating Authority. Hence, this appeal is dismissed accordingly.

*Source: COMPANY APPEAL (AT) (Insolvency) No. 1017 of 2020, decided on 22nd March 2021. Abhinandan Jain, Representing the suspended management of RISA INTERNATIONAL LTDVs. Tanaya Enterprises Pvt. Ltd.*

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