

ricago
GRC Bulletin
June 2021

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About

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CORPORATE LAWS



ADDENDUM TO SEBI CIRCULAR “RELAXATION IN ADHERENCE TO PRESCRIBED TIMELINES ISSUED BY SEBI DUE TO COVID 19”

SEBI has issued a Circular dated 29th April 2020 that is an Addendum to SEBI Circular “Relaxation in adherence to prescribed timelines issued by SEBI due to Covid 19”. It was addressed to all Listed Companies (through Stock Exchanges), All Recognized Stock Exchanges, All Registrars to an Issue & Share Transfer Agents (RTA), and All Depositories

SEBI had issued a Circular dated 13th April 2020 wherein "Relaxations in adherence to prescribed timelines" for carrying out various shareholder requests and for other regulatory filings were granted to RTAs given the Covid-19 pandemic. The Annexure to the aforementioned Circular listed out 12 specific items wherein such relaxation in prescribed timelines were granted. It has been now decided to add, 'Processing of the Demat requests', to this list, and accordingly the list of 13 items that are eligible for relief stand revised as follows;

1. Processing of the Demat requests
2. Processing of Transmission Requests
3. Processing of request for Issue of Duplicate Share Certificates
4. Processing of Requests for Name Deletion / Name Change / Transposition / Pending Share Transfers (Re-lodgement cases in the case of share transfers)
5. Processing of Requests for Consolidation / Split / Replacement of Share Certificates / Amalgamation of Folios
6. Handling Investor Correspondence / Grievances / SCORES complaint
7. Submission of Half Yearly Report to SEBI according to Circular No. CIR/MIRSD/7/2012 dated 5th July 2012
8. Compulsory Internal Audit of RTAs by CA / CS / CMA holding Certificate of Practice and Certified Information Systems Auditor (CISA) / Diploma Information Systems Auditor (DISA) according to Circular dated 20th April 2018, issued by SEBI
9. Submission of Audit Report by CISA / CISM qualified or equivalent auditor by QRTAs to SEBI along with comments of the Board according to Circular dated 8th September 2017 issued by SEBI on Cyber Security and Cyber Security Resilience framework for QRTAs
10. Submission of Compliance Report by QRTAs duly reviewed by the Board of Directors of the QRTA to SEBI on Enhanced monitoring of QRTAs according to Circular dated 10th August 2018 issued by SEBI

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11. Regulation 74(5) of the SEBI (D & P) Regulations, 2018 w.r.t verification, and mutilation of share certificate
12. Regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 w.r.t. audit of reconciliation of share capital
13. Processing of the Demat requests.

Relaxation is hereby being given to intermediaries/ market participants w.r.t. compliance with the prescribed timelines which has been extended to 31st July 2021 given the Covid-19 situation.

The timeline of 15th May 2021 for submission of IAR by RTAs for the half-year ended 31st March 2021 has been extended to 31st July 2021 given the Covid-19 situation.

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

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INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (INSURANCE ADVERTISEMENTS AND DISCLOSURE) REGULATIONS, 2021

Insurance Regulatory and Development Authority of India through its notification dated 7th April 2021 issued the Insurance Regulatory and Development Authority of India (Insurance Advertisements and Disclosure) Regulations, 2021.

Object and Applicability

These Regulations ensure honest and transparent practices while issuing advertisements and avoid practices that impair the confidence of the public and apply to all insurers, intermediaries, and insurance intermediaries registered with the Authority except those engaged exclusively in the reinsurance business. The Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000 shall be repealed from the date these Regulations come into force.

Compliance and control:

Every insurer, intermediary, or insurance intermediary shall —

- (i) have a compliance officer who shall be responsible to oversee the advertising program.
- (ii) establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its policies or products.
- (iii) maintain an advertising register at its corporate office
- (iv) maintain a specimen of all advertisements for a period of three years.
- (v) file a copy of each advertisement with the Authority within 7 days of its release, together with all the required information
- (vi) file a certificate of compliance stating that, to the best of its knowledge, advertisements disseminated during the preceding year have complied with the provisions of these regulations and the advertisement code.

The advertisement register shall be subject to inspection and review and no person shall publish any unfair or misleading advertisement.

Changes in advertisements:

Any change in an advertisement would be considered a new advertisement except, for changes in contact number, toll-free number, image and for those cases where the advertisement is issued in other languages and other formats,

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with no change in content, design to that of the base version of English and/or Hindi.

The Authority shall be informed at the time of filing the advertisement of the extent of change in the original advertisement.

Clarity in Advertisements

Every insurer, intermediary, or insurance intermediary shall

- 1) prominently disclose in the advertisement, its registered name, and not merely any trade name or monogram or logo.
- 2) ensure that in all advertisements:
 - (a) communications are clear, fair, and not misleading; use material and design to present the information legibly and in an accessible manner.
 - (b) the mandatory disclosures shall also be in the same language as that of the whole advertisement.

- 3) Ensure that

The names of the product and benefits shall be as per the product filed with the Authority. Sales material and advertisements shall be comprehensible. It must prominently state the availability of underlying elements of insurance coverage to identify the product as an insurance product.

Advertisements by Insurance Agents

Any advertisement by an agent must be approved by its issuer and the issuer must make sure that the advertisement complies with all the regulations.

Advertisements by insurance intermediaries

Intermediaries or insurance intermediaries authorized to solicit insurance businesses like insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors, etc may advertise or solicit insurance through advertisements.

Advertising on the internet or through electronic media

Website or portal of every insurer, intermediary, or insurance intermediary shall

- (i) contain disclosure statements which outline the website's specific policies vis-à-vis the privacy of personal information for the protection of both their businesses and the consumers they serve.
- (ii) display their registration numbers on their websites.

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Full text of the relevant key features, coverage, and exclusions; relevant terms and conditions; any other applicable risk information shall be made visible to the viewer or the recipients. In the case of e-mail communications, there should be a provision to unsubscribe from the mailing list.

"Every Insurer, Intermediary or Insurance Intermediary shall

- i) ensure that the static or interactive content posted by them on a social media platform or page satisfies the provisions of these regulations
- ii) monitor the interactive content posted on their platform/page by a third party for compliance with the applicable legal framework.

Violation of regulatory provisions

Violation of regulations or any failure on the part of the insurer, intermediary, or insurance intermediary to comply with the directions of the Authority may entail the Authority to take such action as deemed necessary including levy of penalty.

Adherence to Advertisement code:

Every insurer, intermediary, or insurance intermediary shall follow recognized standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) and discharge its functions in the interest of the policyholders.

Statutory warning

Every proposal form for an insurance product shall carry the following stipulation, as prescribed in section 41 of the Insurance Act, 1938:— "No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed following the published prospectuses or tables of the insurer."

Power to interpret and issue clarifications

The Chairperson of the Authority may issue appropriate circulars, clarifications, or guidelines, as and when required.

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

TAX LAWS



INCOME-TAX (12TH AMENDMENT) RULES, 2021

Ministry of Finance through its notification dated 30th April 2021 has made Income-tax (12th Amendment) Rules, 2021.

A new rule has been inserted after Rule 44D namely: —

"44DA. Exercise of option under sub-section (1) of section 245M and intimation thereof: (1) The exercise of an option by an assessee to withdraw his pending application under sub-section (1) of section 245M shall be in Form No. 34BB.

(2) Form No. 34BB shall be verified by the person who is authorized to verify the return of income of the assessee under Section 140.

(3) Form No. 34BB shall be furnished electronically following the procedures, formats, and standards specified by the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, and thereafter signed printout of the said form shall be uploaded in the manner specified by the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, under sub-rule (4).

(4) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, shall specify the procedures, formats, and standards for furnishing and verification and manner of uploading of Form No. 34BB."

#source: [Click here to read more](#)

TAX LAWS



INCOME-TAX (14TH AMENDMENT) RULES, 2021

In the Income-tax Rules, 1962 in rule 114AAB,— (I) after sub-rule (2), the following sub-rules shall be inserted, namely:— "(2A) The provisions of section 139A shall not apply to a non-resident, being an eligible foreign investor, who has made transaction only in a capital asset referred to in clause (vii ab) of section 47 which are listed on a recognized stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency, if the following conditions are fulfilled, namely:— (i) the eligible foreign investor does not earn any income in India, other than the income from transfer of a capital asset referred to in clause (vii ab) of section 47; (ii) the eligible foreign investor furnishes the following details and documents to the stock broker through which the transaction is made namely:— (a) name, e-mail id, contact number; (b) address in the country or specified territory outside India of which he is a resident; (c) a declaration that he is a resident of a country or specified territory outside India; and (d) Tax Identification Number in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the non-resident is identified by the Government of that country or the specified territory of which he claims to be a resident.

(2B) The stockbroker shall furnish a quarterly statement for the quarter of the financial year, in which the details and documents referred to in sub-rule (2A) are received by it, in Form No.49BA to the Principal Director General of Income-tax (Systems) or the Director-General of Income-tax (Systems) or the person authorized by him, electronically and upload the declaration referred to in sub-clause (c) of clause (ii) of sub-rule (2A) within fifteen days from the end of the quarter of the financial year to which such statement relates following the procedures, formats, and standards specified by the Principal Director General of Income-tax (Systems) or the Director-General of Income-tax (Systems) under sub-rule (3)."

In sub-rule (3), for the words, brackets and figure "in accordance with the provisions of sub rule (2)" the words, brackets, figures and letter " in accordance with the provisions of sub-rule (2) or sub-rule (2B)" shall be substituted; (III) in the Explanation,— (A) for clause (a), the following clause shall be substituted, namely :— '(a) "specified fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made

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under the Securities and Exchange Board of India Act, 1992 or International Financial Services Centers Authority Act, 2019 and which is located in any International Financial Services Centre or a specified fund referred to in sub-clause (i) of clause (c) of Explanation to clause (4D) of section 10;'; (B) after clause (b) the following clauses shall be inserted, namely:— '(c) "eligible foreign investor" means a non-resident who operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017; (d) "stock broker" means a person having trading rights in a recognized stock exchange located in any International Financial Services Centre and the member of such exchange.'

In the principal rules, in Appendix II, for Form No. 49BA is substituted.

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

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THE RETURNS TO BE SUBMITTED BY HOUSING FINANCE COMPANIES (HFCS)

The National Housing Bank vide its circular dated 13th April, 2021, issued a Master Circular addressed to all registered Housing Finance Companies regarding the Returns to be submitted by Housing Finance Companies (HFCs). This Master Circular consolidates all important instructions on the subject, issued by NHB, till 31st March, 2021.

S No	Periodicity	Name of the Return	Reference Date	Due Date	Applicability as per the audited balance sheet as of March 31st
1	Annually	Schedule I	31st March	30th June	All HFCs
2	Half -yearly	Schedule II	31st March / 30th September	12th May / 11th November	All HFCs
3	Quarterly	Schedule III	31st March / 30th June / 30th September / 31st December	15th April / 15th July / 15th October / 15th January	HFCs accepting/holding public deposits OR having asset size of Rs. 100 Crore or more (irrespective of accepting / holding public deposits).
4	Quarterly	Statement of Short-Term Dynamic Liquidity (ALM)	31st March / 30th June / 30th September / 31st December	10th April / 10th July / 10th October / 10th January	HFCs having asset size of Rs.100 Crore (irrespective of accepting / holding public deposits) OR holding public deposits of 2Rs.0 Crore or more (irrespective of their asset size)
5	Half -Yearly	Statement of Structural Liquidity & Interest Rate	31st March / 30th September	20th April / 20th October	HFCs having asset size of Rs.100 Crore (whether accepting / holding public deposits or not) or holding public deposits of Rs.20 Crore

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		Sensitivity (ALM)			or more (irrespective of their asset size)
6	Quarterly	Quarterly return on Liabilities and Assets of Large Housing Finance Companies/ Broad Liquidity	31st March/ 30th June/ 30th September/ 31st December	10th April/ 10th July/ 10th October 10th January	HFCs having outstanding public deposits of Rs.20 Crore or more (irrespective of their asset size)
7	Quarterly	Quarterly Return on 10 major exposures to Corporate s/ Companies/ Builders/ Other entities etc.	31st March/ 30th June/ 30th September/ 31 December	15th April/ 15 July 15 October 15 January	All HFCs
8	Quarterly	Return on Loans SARFAESI Act, 2002	31 March/ 30 June/ 30 September/ 31 December	5th April/ 5 July/ 5 October/ 5th January	All HFCs Notified under SARFAESI Act, 2000
9	Monthly	New Monthly Return	end of every month	15th of next month	All HFCs
10	Annually	Details of Key Officials	31st March	30th April	All HFCs

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

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CONSUMER PROTECTION (E-COMMERCE) (AMENDMENT) RULES, 2021

Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs through its NOTIFICATION dated 17th May, 2021. These rules may be called the Consumer Protection (E-Commerce) (Amendment) Rules, 2021.

In the Consumer Protection (E-Commerce) Rules, 2020, in rule 4, for sub-rule (1), the following sub-rule shall be substituted, namely: --

“(1) where an e-commerce entity is a company incorporated under the Companies Act, 1956 or under the Companies Act, 2013 or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iv) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999, it shall appoint a nodal officer or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder.”

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

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (PENSION FUND) (FIFTH AMENDMENT) REGULATIONS, 2021

Pension Fund Regulatory and Development Authority through the notification dated 25th May, 2021 notified the Pension Fund Regulatory and Development Authority (Pension Fund) (Fifth Amendment) Regulations, 2021.

In the Pension Fund Regulatory and Development Authority (Pension Fund) Regulations, 2015: -

In regulation 8, in sub-regulation (1), clause (d) shall be substituted as below

“(d) the sponsors, individually or jointly, shall have a positive tangible net worth of at least fifty

crore rupees on the last day of each of the preceding five financial years and at least twenty-five crore rupees should be the paid up equity capital on the date of making application as sponsor;”

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

JUDICIAL INSIGHT



JUDICIAL INSIGHT

RESOLUTION APPLICANT CANNOT BE FACED WITH THE 'UNDECIDED' CLAIMS AFTER THE 'RESOLUTION PLAN' IS APPROVED

The Appellant/Successful Resolution Applicant has filed the 'Instant Appeal' being aggrieved with the Order dated 24.12.2020 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in a Company Petition filed by the Resolution Professional of the 1st Respondent) under Section 30(6) of the I & B Code R/W Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The National Company Law Tribunal Hyderabad Bench, Hyderabad while passing the Impugned Order dated 24.12.2020 directed that in terms of Section 79(2)(c) of the Income Tax Act, 1961, assessed tax losses of the Corporate Debtor shall be allowed to be carried forward as per provisions of law and that the approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and shall be dealt by the appropriate Authorities as per relevant Laws and believed that if any waiver is sought in the Resolution Plan the same shall be subject to approval by the concerned Authorities.

Appellant's Submissions:

The Appellant contended that the 'Impugned Order' of the 'Adjudicating Authority' to the extent that it refuses and denies allowing and granting the necessary and critical conditions for the implementation of the 'Resolution Plan' and waiver thereof, contrary to the Provisions of the I & B Code.

It was further contended that 'Adjudicating Authority had committed an error in appreciating that the 'Resolution Plan' was approved by the 'Committee of Creditors' with the majority of 80.64% thereby meaning that the 'Committee of Creditors' in its 'Commercial Wisdom' approved the conditions imposed by the 'Appellant' for the implementation of the 'Resolution Plan'

The grievance of the Appellant is that the financial viability of the plan has been seriously affected by the opening of the plan towards 'undecided claims'. It is also represented on behalf of the Appellant that the 'Appellant' does not have a finality towards the liabilities of the 'Corporate Debtor'.

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Respondent's Contentions:

The first Respondent contended that the 'Adjudicating Authority had recorded the memo filed by the 1st Respondent. Further, after recording the contents of the Memo and the Notice issued by the 1st Respondent to the Income Tax authorities, the 'Adjudicating Authority had granted relief under Section 79(2)(c) of the Income Tax Act, 1961. Moreover, the 'Adjudicating Authority had observed that the 'Resolution Plan' shall not consider any 'Waiver' to any 'Statutory Obligations/ Liabilities' arising out of the approved 'Resolution Plan' and has followed the whole that the same shall be subject to the approval to be granted by the 'Authority.1st Respondent points out that concerning the reliefs claimed by the 'Resolution Applicant' under Section 28(iv) 41(1), 56, 115(j)(b) and 170 of the Income Tax Act, the department had raised their objections.

Held

'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad), in the 'Impugned Order' dated 24.12.2020 has travelled beyond the purview of its Jurisdiction while imposing an additional condition to the effect that *"However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt by the appropriate Authorities as per relevant Laws. This Adjudicating Authority is of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities..."* and therefore, the same is to be set aside.

The Tribunal also came to a resultant conclusion that the said 'Observations' are not in the form of 'imposition of an additional condition' thereby opening up the plan concerning the 'undecided claims', because of the reason that the 'Adjudicating Authority is within its limits to express its views/opinion(s).

#Source: Company Appeal (AT) (CH) (Ins) No.07 of 2021, 17.05.2021.

Antanium Holdings Pte. Ltd., Versus M/s.Sujana Universal Industries Limited.

JUDICIAL INSIGHT



'COMMITTEE OF CREDITORS' TAKES A PIVOTAL SEAT BASED ON 'COMMERCIAL WISDOM'

The Appellant was the Chairman and Managing Director of the Corporate Debtor viz. Thiru Arooran Sugars Ltd. (before the suspension of the Board upon initiation of CIRP) and that the 'Corporate Debtor'/Thiru Arooran Sugars Ltd. was admitted into CIRP as per Order of the 'Adjudicating Authority' and that the Respondent was appointed as an Interim Resolution Professional' and later confirmed as the 'Resolution Professional' by the 'Committee of Creditors'.

The appeal is preferred by the 'Appellant' being aggrieved against the Order passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-II, Chennai Bench) in 'Liquidation Application'- filed by the Respondent/Resolution Professional under Section 33 of the I & B Code, 2016) whereby and whereunder the 'Liquidation of the Corporate Debtor Was ordered resulting in the appointment of Mr.Ramakrishnan Sadasivan, as the 'Liquidator' of the 'Corporate Debtor' to carry out the Liquidation Process subject to the issuance of necessary directions therein.

Contentions

Appellant contended that the 'Impugned Order' dated by this 'Tribunal' because the Respondent/'Resolution Professional' had failed to bring on record before the 'Adjudicating Authority that during the CIRP, after three rounds of invitation between December 2019 and July 2020 for 'Expression of Interest (EOI) and submission of 'Resolution Plans' by interested parties, only one Applicant in the final round projected a 'Resolution Plan' with a 'Final Plan Value' which was around 17% lower than the Resolution Professional's assessed 'Liquidation Value' of Rs.217 Crores. after consideration of the 'Committee of Creditors' the 'Resolution Plan' was taken up for 'voting' and rejected. Meanwhile, the Promoters submitted an offer for 'One Time Settlement of dues to the 'Secured Creditors. 'Promoters' submitted a fresh offer for Compromise Settlement of dues to all Creditors, on a reduced scale, and without Provision for any additional upfront payment until after approval of the 'Adjudicating Authority'. Further, in the 'Committee of Creditors' Meetings, the Promoter was requested to improve the CS Offer and the revised CS Offer of Rs.243 Crores for all Creditors was 12% higher than the Liquidation Value of Rs.217 Crores, and works out to 42.03% of the aggregate claims admitted by the 'Resolution Professional'.

Before the 'Adjudicating Authority,' the Respondent/Resolution Professional sought for an order of 'Liquidation of the Corporate Debtor' and it was informed that the 'Committee of Creditors' with 76.02% voting share, voted against the plan

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and as such, deemed to have voted for the 'Liquidation' of the 'Corporate Debtor' in terms of the 'Resolution'

Observations of the Tribunal:

The 'Tribunal' relied on the judgment made in Kalpraj Dharamshi & Anr v Kotak Investment Advisors wherein it was observed that the commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I & B Code.

The Tribunal noted that in the present case the claim of the 'Resolution Applicant' was rejected by 76.02% of voting share by the 'Financial Creditors', in the 'Committee of Creditors' meeting.

Held

'Tribunal' keeping in mind of a primordial fact that the decision of the 'Committee of Creditors' takes a pivotal seat based on 'Commercial Wisdom', taking note of the fact that the 'Committee of Creditors Members' with 76.02% voting share had voted against the 'Resolution Plan' and in the teeth of ingredients of 33(2) of the Insolvency and Bankruptcy Code, 2016, comes to an irresistible conclusion that the 'impugned order of Liquidation' in respect of the 'Corporate Debtor' passed by the 'Adjudicating Authority is free from legal infirmities. Resultantly, the appeal fails.

Source: Company Appeal (AT) (CH) (INS) No.59 of 2021, 19.05.2021.

R.V. Tyagarajan Versus R. Raghavendran

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