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GRC Bulletin
July 2021

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About

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CORPORATE LAWS



RESERVE BANK OF INDIA (CERTIFICATE OF DEPOSIT) DIRECTIONS, 2021

Reserve Bank of India through its notification dated June 4, 2021, issued a master direction on Reserve Bank of India (Certificate of Deposit) Directions, 2021.

Eligible issuers

Certificate of Deposits (CDs) issued by the All India Financial Institution shall be guided by the Directions contained in Master Circular No. FID.FIC.1/01.02.00/2015-16 issued by the Reserve Bank on Resource Raising Norms for Financial Institutions dated July 01, 2015, as amended from time to time.

Eligible investors

CDs may be issued to all persons' resident in India.

General guidelines

- a) Primary issuance
 - (i) CDs shall be issued only in dematerialised form and held with a depository registered with the Securities and Exchange Board of India.
 - (ii) CDs shall be issued in a minimum denomination of ₹5 lakh and multiples of ₹5 lakh thereafter.
 - (iii) The tenor of a CD at issuance shall not be less than seven days and shall not exceed one year.
 - (iv) CDs shall be issued on a T+1 basis where T represents the date of closure of the offer period for issuance of the CDs.
- b) Discount/coupon rate CDs may be issued at a discount to the face value. CDs may also be issued on a fixed/floating rate basis provided the interest rate on the floating rate CD is reset at periodic rests agreed to at the time of issue and is linked to a benchmark published by a Financial Benchmark Administrator or approved by the Fixed Income Money Market and Derivatives Association of India (FIMMDA) for this purpose.
- c) Secondary market - trading venues and settlement
 - (i) CDs shall be traded either in Over-the-Counter (OTC) markets, including on Electronic Trading Platforms, or on recognised stock exchanges with the approval of the Reserve Bank.
 - (ii) The settlement cycle for OTC trades in CDs shall be T+0 or T+1.

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- (iii) All secondary market transactions in CDs shall be settled on a DvP basis through the clearing corporation of any recognized stock exchange or any other mechanism approved by the Reserve Bank.
- d) Loans against CDs - Banks are not allowed to grant loans against CDs unless specifically permitted by the Reserve Bank.
- e) Buyback of CDs - Issuing banks are permitted to buy back CDs before maturity. Buy back of CDs shall be subject to the conditions
- f) Market timings primary issuance and secondary market trading hours shall be between 9:00 AM and 5:00 PM on a business day or as specified by the Reserve Bank from time to time.
- g) There will be no grace period for the repayment of CDs.
- h) Market practices and documentation Eligible participants and agencies in the CD market shall follow the standardised procedures and documentation which may be prescribed by FIMMDA, in consultation with the Reserve Bank, for operational flexibility and smooth functioning of the markets.
- i) Reserve requirements in respect of the CDs issued by banks shall be governed by relevant regulations of the Reserve Bank.
- j) Accounting for CD transactions shall be as per the applicable accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI) or other standard-setting organisations or as specified by the relevant regulations of the Reserve Bank.

Reporting requirements

- (a) Primary issuance Details of primary issuance of a CD shall be reported by the issuer to the Trade Repository by 5.30 PM on the day of issuance or as decided by the Reserve Bank from time to time.
- (b) Secondary market transactions All secondary market transactions executed in the OTC market and/or on the recognised stock exchanges in CDs shall be reported, with a timestamp, within 15 minutes of execution.
- (c) Buyback transactions - Details of the buyback of a CD shall be reported by the issuer on the F-TRAC platform by 5.30 PM on the day of buyback.
- (d) Reporting by depositories - The depositories shall report to the Reserve Bank, the details of the CDs held with them in the dematerialised form, in the prescribed format at fortnightly intervals (on the 15th day and on the last day of the month).

Obligation to provide the information sought by the Reserve Bank

The Reserve Bank may call for any information or statement or seek any clarification from persons or agencies dealing in the CDs, including eligible issuers/

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investors and such persons, agencies and participants shall furnish the information, statement or clarification.

Violation of Directions

In the event of any person or agency violating any provision of these Directions or the provisions of any other applicable law, the Reserve Bank may, in addition to taking any penal or regulatory action in accordance with the law, disallow that person or agency from dealing in the CD market for a period not exceeding one month at a time.

Applicability of other laws, directions, regulations or guidelines

Participants in the CD market shall abide by the provisions of any directions, regulations or guidelines issued by any other authority that may be applicable that do not conflict with these Directions. In case of any conflicts, the provisions of these Directions shall prevail.

Provisions of Section III of FMRD. Master Direction No. 2/2016-17 dated July 07, 2016, shall continue to be applicable to the CDs issued in accordance with the said Directions till the maturity of those CDs.

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

CORPORATE LAWS



INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2021

The Ministry of Corporate Affairs has through its notification dated 9th June, 2021 introduced the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021.

In rule 3, in sub-rule (2), after clause (f), the following shall be inserted, namely:

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions.

After rule 6, following rule 6A. shall be inserted which provides as follows

6A. Manner of transfer of shares under sub-section (9) of section 90 of the Act to the Fund. -

- (1) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of thirty days of such shares becoming due to be transferred to the Fund:
- (2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.
- (3) The company shall follow the following procedure while transferring the shares, namely: -
 - (A) where the shares are dealt with in a depository:
 - (i) the company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority,
 - (ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority;
 - (B) shares held in physical form
 - (i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;
 - (ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that “Issued in lieu of share certificate No..... for the purpose of transfer to IEPF under subsection (9) of section 90 of

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- the Act” and the same be recorded in the register maintained for the purpose;
- (iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;
 - (iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.
- (4) The company shall make such transfers through corporate action and shall preserve copies for its records.
 - (5) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken and the company shall also attach a copy of order along with a declaration that no application under sub-section (9) of section 90 of the Act has been made or is pending before the Tribunal.
 - (6) The voting rights on shares transferred to the Fund shall remain frozen.
 - (7) The company shall maintain all such statements filed along with all supporting documents and the Authority shall have the powers to inspect such records.
 - (8) All benefits accruing on such shares like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account by the company which shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action containing details of such transfer.
 - (9) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
 - (10) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund.
 - (11) Any further dividend received on such shares shall be credited to the Fund.
 - (12) Any amount required to be credited by the companies to the Fund as provided under sub-rules (9), (10) and sub-rule (11) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days from the date of remittance.
 - (13) Authority shall furnish its report to the Central Government as and when non-compliance of the rules by companies came to its knowledge.”

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

TAX LAWS



INCOME-TAX (17TH AMENDMENT) RULES, 2021

Central Board of Direct Taxes vide its notification dated 8th June, 2021 brought in the Income-tax (17th Amendment) Rules, 2021.

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in rule 31A, in sub-rule (4) —

(a) for clause '(x)' the following clause shall be substituted namely:

'(x) furnish particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under sub-section (5) of section 194A or in view of exemption provided under clause (x) of sub-section (3) of section 194A.');

(b) after clause (xiii), the following clauses shall be inserted namely: -

“(xiv) furnish particulars of amount paid or credited on which tax was not deducted in view of clause (d) of the second proviso to section 194 or in view of the notification issued under clause (e) of the second proviso to section 194;

(xv) furnish particular of amount paid or credited on which tax was not deducted in view of proviso to subsection (1A) or in view of sub-section (2) of section 196D.;

(xvi) furnish particulars of amount paid or credited on which tax was not deducted in view of sub-section (5) of section 194Q with effect from 1st day of July, 2021.”

In the principal rules, in Appendix II, in form 26Q —

(a) for the brackets, words, figures and letters “[See sections 192A, 193, 194, 194A, 194B, 194BB, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194N, 194-O, 197A and rule 31A]” the following brackets, words, figures and letters, shall be substituted namely: - “[See sections 192A, 193, 194, 194A, 194B, 194BB, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194N, 194-O, 194Q, 197A, 206AA, 206AB and rule 31A]”.

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

TAX LAWS



GUJARAT GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2021

The Government of Gujarat through its notification dated 2nd June 2021 has introduced the Gujarat Goods and Services Tax (Fourth Amendment) Rules, 2021. These rules shall be deemed to have come into force with effect from the 18th day of May 2021.

In the Gujarat Goods and Services Tax Rules, 2017,

(i) in rule 23, in sub-rule (1), after the words "date of the service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Deputy Commissioner or the Joint Commissioner, as the case may be, in the exercise of the powers provided under the proviso to subsection (1) of section 30," shall be inserted;

(ii) in rule 90, (a) in sub-rule (3), the following proviso shall be inserted, -

"Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.";

(b) after sub-rule (4), the following sub-rules shall be inserted, namely: -

"(5) The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD 01, withdraw the said application for refund by filing an application in FORM GST RFD 01W.

(6) On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing the application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made.";

(iii) in rule 92,

(a) in sub-rule (1), the proviso shall be omitted;

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(b) in sub-rule (2), -

- i. for the word and letter "Part B", the word and letter "Part A" shall be substituted;
- ii. the following proviso shall be inserted, namely:

"Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for the release of withheld refund in Part 8 of FORM GST RFD-07.";

(iv) in rule 96, -

(a) in sub-rule (6), for the word and letter "Part B", the word and letter "Part A" shall be substituted;

(b) in sub-rule (7), for the words, letters and figures, "after passing an order in FORM GST RFD-06", the words, letters and figures, "by passing an order in FORM GST RFD 06 after passing an order for the release of withheld refund in Part B of FORM GST RFD 07" shall be substituted;

(v) in FORM GST REG-21, under the sub-heading "Instructions for submission of application for revocation of cancellation of registration", in the first bullet point "after the words "date of service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Deputy Commissioner or the Joint Commissioner, as the case may be, in the exercise of the powers provided under the proviso to sub-section (1) of section 30," shall be inserted;

(vi) in rule 138E, for the words "In respect of a registered person, whether as a supplier or a recipient, who," the words "in respect of any outward movement of goods of a registered person, who," shall be substituted.

(vii) FORM GST RFD-07, has been substituted with a new form.

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

OTHER LAWS



CODE ON SOCIAL SECURITY (EMPLOYEE'S COMPENSATION) (CENTRAL) RULES, 2021

The Ministry of Labour and Employment through its notification dated 3rd June 2021 issued the Code on Social Security (Employee's Compensation) (Central) Rules, 2021.

Rate of interest to be paid by the employer under clause (a) of sub-section (3) of section 77.- If the amount of compensation payable under sub-section (3) of section 77 is not paid by the employer within the period of thirty days, the employer shall pay, from the date on which the compensation becomes payable to the date on which it is paid, simple interest at the rate of twelve per cent. per annum. time to time.

Manner of notice under sub-section (1) and the manner of transmitting money under sub-section (3), of section 92.- Money transmitted by one competent authority to another shall be transmitted either by remittance receipt or by e-transfer or by net banking or by Demand Draft, as the competent authority transmitting the money may direct.

Form, manner and fee for application for claim or settlement under sub-section (3) of section 93.-

- (1) Any application of nature referred to in section 93 may be sent to the competent authority by registered post or electronically or may be presented to him or any of his subordinates authorized by him in this behalf, and, if so sent or presented, shall, unless the competent authority otherwise directs, be made in duplicate in Form-A, if any, and shall be signed by the applicant.
- (2) There shall be appended to every such application a certificate in Form-B, which shall be signed by the applicants to the effect that the statement of facts contained in the application is to the best of his knowledge and belief, accurate.
- (3) When the application for relief is based upon a document, the document shall be appended to the application.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation under section 159.-

1. When any sum is transmitted by any authority in India to any other authority the costs of such transmission may be deducted from the sum so transmitted.

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2. When the whole or any part of a lump sum deposited with a competent authority for payment as compensation under the Code is payable to any person or persons residing or about to reside in any other country, the competent authority may order the transfer to that country of the sum so payable.
3. When the competent authority has ordered the transfer of any sum a memorandum containing a brief statement of the facts of the case, of the orders passed upon it and of the name and address of each person to whom payment is to be made shall be made.
4. If the competent authority is not himself the authorised officer he shall forward the memorandum in duplicate to the authorised officer.
5. The authorised officer, after satisfying himself that the memorandum is complete, shall forward it and remit or cause to be remitted the sum to which it relates by such means of safe transmission.
6. The authorised officer shall if he is not the competent authority with whom the matter originated, forward to such competent authority a copy of any report received in response to a request made under sub-rule (5).
 - Any sum returned in accordance with sub-rule (5) shall be disposed of in accordance with the Code.
7. The authorised officer shall be the proper authority to receive money from transferring authorities.
8. The authorised officer may himself dispose of any sum or part of any sum which he receives or of which he assumes control under sub-rule (7) or may send it or any part of it for disposal to such competent authority or competent authorities as he considers proper.
9. All sums received from a transferring authority shall be disposed of as far as possible in accordance with the provisions of the Code and the Rules.
10. The authorised officer shall forward to the transferring authority a report
 - Any competent authority, not being the authorised officer who has disposed of any part of the sum, shall make a report in duplicate as to the disposal of that part to the authorised officer, and, if the sum was received by him from another such competent authority in accordance with section 92 of the Code, shall forward his report through that competent authority.
11. Any part of the sum received from the transferring authority which shall have remained unpaid after the completion of the proceedings shall be returned to the transferring authority by, or under the direction of the authorised officer.

Venue of proceedings and transfer of matters:

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1. Processing of an application: - (a) An application under section 90 or section 93 shall be processed before or by a competent authority for the area in which—
 - (i) The accident took place which resulted in the injury; or
 - (ii) The employee or in case of his death the dependents claiming the compensation ordinarily reside; or
 - (iii) The employer has his registered office:

2. Transfer of records or money: - (a) If any matter under the Code is required to be processed before or by a competent authority other than the competent authority having jurisdiction over the area in which the accident took place the former may for the proper disposal of the matter call for in Form-D.

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

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ESIC COVID-19 RELIEF SCHEME

The Chairman of the ESIC has approved the "ESIC COVID-19 Relief Scheme" to provide help and successor to the families of the IPS who died due to COVID-19. Through a notification dated 03/06/2021 ESIC COVID-19 Relief Scheme was introduced.

SCHEME OBJECTIVE

The scheme is a welfare measure for IPS who are employees under section 2(9) of the ESI Act and it provides relief to the dependants of the IP in case of his/ her death due to COVID 19. In case of the death of IP due to COVID-19, the eligible dependant family members of IP will be paid periodic payments directly to the bank account.

ELIGIBILITY CONDITIONS

1. The IP who died due to COVID-19 disease must have been registered on the ESIC online portal at least three months before the date of diagnosis of COVID-19 disease resulting in his/her death.
2. The deceased IP must have been in employment on the date of diagnosis of COVID-19 disease and contributions for at least 70 days should have been paid or payable in respect of him/her during a period of a maximum of one year immediately preceding the diagnosis of COVID-19 disease resulting in death.

PAYMENT UNDER THE SCHEME

1. In case of death of the IP due to COVID-19, the following relatives of the IP shall be eligible to receive periodical payments under the scheme: - spouse, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter; a widowed mother.
2. In case the deceased IP does not leave a spouse or legitimate or adopted child or widowed mother then the following relatives, if wholly or in part dependant on the earnings of the Insured Person at the time of his death: -
 - a) a parent other than a widowed mother,
 - b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
 - c) a minor brother or an unmarried sister or a widowed sister if a minor,
 - d) a widowed daughter-in-law,
 - e) a minor child of a predeceased son,
 - f) a minor child of a predeceased daughter where no parent of the child is alive,
 - g) a paternal grandparent if no parent of the insured person is alive.

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90 % of the average daily wages of the deceased IP, which will be called the full rate of the relief, will be paid to the dependents of the IP who died due to COVID-19 disease in the manner as prescribed.

The minimum relief under the scheme shall be Rs 1800/- per month.

IMPLEMENTATION OF THE SCHEME

1. The claimant for the relief will be required to submit their claim for relief under the scheme in form CRS-I enclosing the COVID-19 positive report (in original or attested copy) and death certificate (in original) in nearest ESIC Branch Office.
2. Proof of the age and identity of dependants shall be given by means of Aadhar or birth certificate issued by the competent authority. For the IPS who were availing Maternity Benefit (MB) or Extended sickness benefit (ESB) or Temporary Disablement Benefit (TDB) and died due to COVID-19 and who fall short of the required 70 days of contribution due to being on MB, TDB or ESB, the number of days they were on MB, TDB or ESB during the period of one year before the diagnosis of COVID-19 will be counted for their eligibility for relief under the scheme.
3. The power to decide the case shall be with the Regional Director/ Sub-regional office incharge as the case may be.
4. There may be cases of death even after recovery from COVID-19 and discharge from the hospital. In such cases, if the death results within 30 days of recovery and discharge from the hospital, then the case shall be decided by the Regional Director/ Sub-Regional Office in charge on the recommendation of a Medical Board comprising of Medical Superintendent of nearest ESIC/ESIS Hospital, Specialist (Pulmonology/Chest diseases) and Specialist (Medicine), ESIC/ESIS hospital. In cases where the date of recovery cannot be ascertained for want of COVID-19 negative report, then Post COVID-19 death after 45 days of testing COVID-19 positive shall also be considered for relief under the scheme.
5. The spouse of the deceased IP shall be eligible for medical care as provided to the widow of a deceased IP who died due to employment injury on depositing Rs 120/- lump-sum for one year.
6. All claims will be settled within 15 days of receipt of the complete claim.

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

JUDICIAL INSIGHT



JUDICIAL INSIGHT

IF THERE IS ACKNOWLEDGEMENT OF DEBT IN THE BALANCE SHEETS OR THE OTS PROPOSAL, THE PERIOD OF LIMITATION WOULD GET EXTENDED IF THE ACKNOWLEDGMENT IS MADE BEFORE THE PERIOD OF LIMITATION EXPIRES

The Appeal has been filed against an impugned Order dated 20.04.2021 passed by Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court No. I) in C.P. (IB) No. 179/7/NCLT/AHM/2019. By the said Impugned Order, the Adjudicating Authority admitted Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) filed by the Respondent-Punjab National Bank (Hereinafter referred as Bank) against the Corporate Debtor-Telstar Industries Pvt. Ltd. Punjab National Bank claimed before the Adjudicating Authority that it had approved various financial facilities and disbursed Loan in the form of Cash/ Credit and Over Draft Facilities dated 3rd November 2010 but the Corporate Debtor did not pay the instalments as per the Agreement. The Bank had to resort to proceedings before Debts Recovery Tribunal (DRT in short). The Bank claimed that Notice under Section 13(2) of SARFAESI Act, 2002 was issued to the Corporate Debtor when the Loan Account became Non-Performing Assets. The Bank claimed that the date of default was 27th December 2014.

Before the Adjudicating Authority, the Bank claimed outstanding dues of Rs. 16,15,39,662.27 Paise. The Adjudicating Authority heard the defence raised by the Corporate Debtor and after considering the rival assertions admitted the Application under Section 7 of IBC by the Impugned Order dated 20th April 2021.

SUBMISSIONS:

The Learned Counsel submits that this OTS was entered into between the Corporate Debtor and the Bank on 29. 03.2016 and in terms of this OTS, the parties had agreed to proceed further with the Loan and the argument is that date of default if any could be only after the acceptance of this OTS which is dated 29th March 2016 and could not be 27th December 2014 which is a prior date. Thus, the Learned Counsel claimed that the Application deserved to be rejected as the date of default stated in the Format of Section 7 application was wrong.

Learned Counsel for the Bank has argued and supported the reasoning recorded by the Adjudicating Authority in the Impugned Order which has inter alia relied on Judgment in the matter of Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. (Civil Appeal No. 9198 of 2019) to find that the Application was within Limitation.

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OBSERVATION:

The Impugned order was looked into wherein it was observed that whether the period of limitation gets extended upon acknowledgement of debt or not is the point completely been answered by the Hon'ble NCLAT in the case of Kishanlal Likhmichand Bothra Vs. Canara Bank. and in para 13 it was stated as follows:

“Considering above judgment of the Hon'ble Supreme Court of India, we have no difficulty to state that Section 18 of the Limitation Act applies to proceedings under IBC and that if there is an acknowledgement of debt in the balance sheets or the OTS Proposal, the period of limitation would get extended if the acknowledgement is made before the period of limitation expires.....”

Para 17 of the impugned order:

17. The Financial Creditor established that an amount of debt of Rs. 8,39,68,045.92 is due and payable by the Corporate Debtor and the Corporate Debtor has committed default in paying the same. This application is defect filed within the limitation. Hence, we admit the Corporate Debtor in the Corporate Insolvency Resolution Process.”

HELD

The Court held that no substance was found in the Appeal and the Appeal is dismissed.

Source: *Company Appeal (AT) (Insolvency) No. 407 of 2021, Vivekanand Jha Versus Punjab National Bank and Anr. Dated 14.06.2021*

JUDICIAL INSIGHT



STATUTORY DUES, IF NOT PART OF THE RESOLUTION PLAN SHALL STAND EXTINGUISHED, IF THEY ARE NOT PART OF THE RESOLUTION PLAN

Brief Facts

This Appeal has been filed by the Appellant-The Assistant Commissioner of Central Tax, G.S.T. Division against Impugned Order dated 28th January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad).

According to the Appellant, the Appellant had filed claim with the Interim Resolution Professional on 07th August, 2019. On 16th August, 2019, the Appellant filed Application to consider Proof of claim along with condonation of delay before the Adjudicating Authority. It is argued for Appellant that the letter was acknowledged as received by the Registry of Adjudicating Authority on 23rd August, 2019. According to the Appellant, even the Resolution Professional had inspected and looked into valuation of the attached goods by the department on 06th November, 2019. The grievance of the Appellant is that when the Adjudicating Authority passed the Impugned Order it did not take into consideration and include the claim made by the department for Operational dues of Rs. 3,88,38,963/-.

The Appellate Tribunal heard the Learned Counsel for the Appellant and the Respondent No. 1-Resolution Professional. It relied on Ghanashyam Mishra Vs. Edelweiss Asset Reconstruction Company wherein it was held that that statutory dues, if not part of the Resolution Plan shall stand extinguished, if they are not part of the Resolution Plan. Thus, it is material that if Appellant wanted to claim statutory dues, it had to file claim as per procedures as laid down in IBC read with Rules and Regulations.

Resolution Professional had informed the department that there was delay in making claim with the Resolution Professional and so the department should get the delay condoned from the Adjudicating Authority so that the claim can be considered.

Appellant submitted that a letter dated 16th August, 2019 addressed to the Member Judicial, National Company Law Tribunal, Hyderabad Bench, Hyderabad was sent. With the letter there is one Form F which was addressed to the Member Judicial.

Appellant was required to file claim in terms of IBC provisions but did not follow the procedure as laid down in the IBC read with the Regulations and did not duly

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file claim in proper format within time. The department instead of resorting to Section 60 of IBC and other enabling provisions only sent a letter, further with a wrong Format, that too addressed to Adjudicating Authority.

Held:

The Appellate Tribunal could not find that there is any error in the Impugned Order which has been passed accepting the Resolution Plan. There is no substance in the Appeal. The Appeal is dismissed. No orders as to costs.

Source: Company Appeal (AT) (Insolvency) No. 56 of 2021, The Assistant Commissioner of Central Tax Vs V. Shanker Resolution Professional Dated 11.06.2021

Contact Us

Head Quarters:

#75, 3rd Cross, 17th Main,
2nd Block, Koramangala,
Bengaluru - 560034

Ph: +91 8040912427

Email: info@ricago.com

Website: www.ricago.com

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