

ricago
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About

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

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

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

CORPORATE LAWS



MASTER CIRCULAR FOR COMMODITY DERIVATIVES MARKET

Securities and Exchange Board of India (SEBI) has been issuing various Circulars/directions from time to time for commodity derivatives market and on 1st July, 2021 SEBI issued a Master circular consolidating all the Circulars.

The Circular is divided into 15 chapters and 32 annexures. All the related circulars are enlisted in the Master Circular.

Key points of each Chapter

CHAPTER 1 - TRADING

- Trading Hours and Holidays
- Spot Price Polling
- Unique Client Code (UCC) and Mandatory Requirement of Permanent Account Number
- Modification of Client Codes Post Execution of Trades
- Disclosure of Proprietary Trading by Broker to Client
- Pro account” Trading Terminals
- Sharing of Information in Case of Declaration of Member as Defaulter in case of Multiple Membership
- Liquidity Enhancement Scheme (LES), Framework for Utilization of Regulatory Fee Forgone by SEBI
- Programmes Sponsored by the Exchanges through Media Channels
- Maintenance and Preservation of Records
- Forward Segment, Disclosure Requirements for stock exchanges on their websites
- Disclosures regarding commodity risks by listed entities

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- Criteria for Eligibility, Retention and Re-introduction of Derivative Contracts on Commodities
- Role of Regulatory Oversight Committee regarding Product Design
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- Performance Review of the Commodity Derivatives Contracts

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- Position limits for Agricultural Commodity Derivatives
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- Risk Management

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- Standard Operating Procedure (SOP) and Standards
- Accreditation of Assayers
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- Policy for depositors for rejection of goods
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- Testing of software used in or related to Trading and Risk Management

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CORPORATE LAWS



COMPANIES (ACCOUNTING STANDARDS) RULES, 2021

Ministry of Corporate Affairs through its notification dated 23rd June, 2021 notified the Companies (Accounting Standards) Rules, 2021. The Central Government hereby specifies Accounting Standards 1 to 5, 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India.

Overview of the Companies (Accounting Standards) Rules, 2021 are:

1. SMCs shall follow the following instructions while complying with Accounting Standards under these rules: -

- The SMC which does not disclose certain information pursuant to the exemptions or relaxations given to it shall disclose (by way of a note to its financial statements) the fact that it is an SMC and has complied with the Accounting Standards so far as they are applicable to an SMC on the following lines: “The Company is a Small and Medium Sized Company (SMC) as defined in the Companies (Accounting Standards) Rules, 2021 notified under the Companies Act, 2013. Accordingly, the Company has complied with the Accounting Standards as applicable to a Small and Medium Sized Company.”
- Where a company, being an SMC, has qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised merely by reason of it having ceased to be an SMC. The fact that the company was an SMC in the previous period and it had availed the exemptions or relaxations available to SMCs shall be disclosed in the notes to the financial statements.
- If an SMC opts not to avail the exemptions or relaxations available to an SMC in respect of any but not all of the Accounting Standards, it shall disclose the standard(s) in respect of which it has availed the exemption or relaxation.
- If an SMC desires to disclose the information not required to be disclosed pursuant to the exemptions or relaxations available to the SMCs, it shall disclose that information in compliance with the relevant accounting standard.
- The SMC may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting Standard:

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Provided that such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.

2. Accounting Standard (AS) 1- Disclosure of Accounting Policies

- This Standard deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements

3. Accounting Standard (AS) 2 Valuation of Inventories

- Accounting Standard (AS) 2 should be applied in accounting for inventories other than: (a) work in progress arising under construction contracts, including directly related service contracts (see Accounting Standard (AS) 7, Construction Contracts); (b) work in progress arising in the ordinary course of business of service providers; (c) shares, debentures and other financial instruments held as stock-in-trade; and (d) producers' inventories of livestock, agricultural and forest products, and mineral oils, ores and gases to the extent that they are measured at net realisable value in accordance with well-established practices in those industries.

4. Accounting Standard (AS) 3 Cash Flow Statements

- An enterprise should prepare a cash flow statement and should present it for each period for which financial statements are presented

5. Accounting Standard (AS) 4 Contingencies and Events Occurring After the Balance Sheet Date

- This Standard deals with the treatment in financial statements of (a) contingencies, and (b) events occurring after the balance sheet date.

6. Accounting Standard (AS) 5 Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies

- This Standard should be applied by an enterprise in presenting profit or loss from ordinary activities, extraordinary items and prior period items in the statement of profit and loss, in accounting for changes in accounting estimates, and in disclosure of changes in accounting policies.

7. Accounting Standard (AS) 7 Construction Contracts

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- This Standard should be applied in accounting for construction contracts in the financial statements of contractors.
8. Accounting Standard (AS) 9 Revenue Recognition
- This Standard deals with the bases for recognition of revenue in the statement of profit and loss of an enterprise. The Standard is concerned with the recognition of revenue arising in the course of the ordinary activities of the enterprise from — the sale of goods, — the rendering of services, and — the use by others of enterprise resources yielding interest, royalties and dividends.
9. Accounting Standard (AS) 10 Property, Plant and Equipment
- This Standard should be applied in accounting for property, plant and equipment except when another Accounting Standard requires or permits a different accounting treatment.
10. Accounting Standard (AS) 11 The Effects of Changes in Foreign Exchange Rates
- This Standard should be applied: (a) in accounting for transactions in foreign currencies; and (b) in translating the financial statements of foreign operations.
11. Accounting Standard (AS) 12 Accounting for Government Grants
- This Standard deals with accounting for government grants. Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, etc
12. Accounting Standard (AS) 13 Accounting for Investments
- This Standard deals with accounting for investments in the financial statements of enterprises and related disclosure requirements
13. Accounting Standard (AS) 14 Accounting for Amalgamations
- This standard deals with accounting for amalgamations and the treatment of any resultant goodwill or reserves. This Standard is directed principally to companies, although some of its requirements also apply to financial statements of other enterprises.

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14. Accounting Standard (AS) 15 Employee Benefits

- This Standard should be applied by an employer in accounting for all employee benefits, except employee share-based payments.

15. Accounting Standard (AS) 16 Borrowing Costs

- This Standard should be applied in accounting for borrowing costs. This Standard does not deal with the actual or imputed cost of owners' equity, including preference share capital not classified as a liability.

16. Accounting Standard (AS) 17 Segment Reporting

- This Standard should be applied in presenting general purpose financial statements.

17. Accounting Standard (AS) 18 Related Party Disclosures

- This Standard should be applied in reporting related party relationships and transactions between a reporting enterprise and its related parties. The requirements of this Standard apply to the financial statements of each reporting enterprise as also to consolidated financial statements presented by a holding company.

18. Accounting Standard (AS) 19 Leases

- This Standard should be applied in accounting for all leases other than: (a) lease agreements to explore for or use natural resources, such as oil, gas, timber, metals and other mineral rights; and (b) licensing agreements for items such as motion picture films, video recordings, plays, manuscripts, patents and copyrights; and (c) lease agreements to use lands.

19. Accounting Standard (AS) 20 Earnings Per Share

- This Standard should be applied by all Companies. However, a Small and Medium Sized Company, as defined in the Notification, may not disclose diluted earnings per share (both including and excluding extraordinary items).

20. Accounting Standard (AS) 21 Consolidated Financial Statements

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- This Standard should be applied in the preparation and presentation of consolidated financial statements for a group of enterprises under the control of a parent.

21. Accounting Standard (AS) 22 Accounting for Taxes on Income

- This Standard should be applied in accounting for taxes on income. This includes the determination of the amount of the expense or saving related to taxes on income in respect of an accounting period and the disclosure of such an amount in the financial statements.

22. Accounting Standard (AS) 23 Accounting for Investments in Associates in Consolidated Financial Statements

- This Standard should be applied in accounting for investments in associates in the preparation and presentation of consolidated financial statements by an investor.

23. Accounting Standard (AS) 24 Discontinuing Operations

- This Standard applies to all discontinuing operations of an enterprise.

24. Accounting Standard (AS) 25 Interim Financial Reporting

- This Standard does not mandate which enterprises should be required to present interim financial reports, how frequently, or how soon after the end of an interim period. If an enterprise is required or elects to prepare and present an interim financial report, it should comply with this Standard

25. Accounting Standard (AS) 26 Intangible Assets

- This Standard should be applied by all enterprises in accounting for intangible assets, except: (a) intangible assets that are covered by another Accounting Standard; (b) financial assets; (c) mineral rights and expenditure on the exploration for, or development and extraction of, minerals, oil, natural gas and similar non-regenerative resources; and (d) intangible assets arising in insurance enterprises from contracts with policyholders. This Standard should not be applied to expenditure in respect of termination benefits also.

26. Accounting Standard (AS) 27 Financial Reporting of Interests in Joint Ventures

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- This Standard should be applied in accounting for interests in joint ventures and the reporting of joint venture assets, liabilities, income and expenses in the financial statements of venturers and investors, regardless of the structures or forms under which the joint venture activities take place

27. Accounting Standard (AS) 28 Impairment of Assets

- This Standard should be applied in accounting for the impairment of all assets, other than: (a) inventories (see AS 2, Valuation of Inventories); (b) assets arising from construction contracts (see AS 7, Construction Contracts); (c) financial assets, including investments that are included in the scope of AS 13, Accounting for Investments; and (d) deferred tax assets (see AS 22, Accounting for Taxes on Income).

28. Accounting Standard (AS) 29 Provisions, Contingent Liabilities and Contingent Assets

- This Standard should be applied in accounting for provisions and contingent liabilities and in dealing with contingent assets, except:
 - a) those resulting from financial instruments that are carried at fair value
 - b) those resulting from executory contracts, except where the contract is onerous;

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TAX LAWS



INCOME-TAX (18TH AMENDMENT) RULES, 2021

The Central Board of Direct taxes through its notification dated 2nd July, 2021 introduced the Income tax (18th Amendment), Rules, 2021.

In rule 8AA, after sub-rule (4), the following sub-rule shall be inserted, namely: -

(5). In case of the amount which is chargeable to income-tax as income of specified entity under subsection (4) of section 45 under the head —Capital gains,- (i) the amount or a part of it shall be deemed to be from transfer of short term capital asset, if it is attributed to,- (a) capital asset which is short term capital asset at the time of taxation of amount under subsection (4) of section 45; or (b) capital asset forming part of block of asset; or (c) capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of Explanation 1 to sub-section (4) of section 45; and (ii) the amount or a part of it shall be deemed to be from transfer of long term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45.

In the principal rules, after rule 8AA, a new rule shall be inserted, namely: —

“8AB. Attribution of income taxable under sub-section (4) of section 45 to the capital assets remaining with the specified entity, under section 48.-

- (1) For the purposes of clause (iii) of section 48, where the amount is chargeable to income-tax as income of specified entity under sub-section (4) of section 45, the specified entity shall attribute such amount to capital asset remaining with the specified entity in a manner provided in this rule.
- (2) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under sub-section (4) of section 45 the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.
- (3) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section

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(4) of section 45 does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

- (4) Notwithstanding anything contained in sub-rules (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.
- (5) The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.
- (6) Form No. 5C shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorized to verify the return of income of the specified entity under section 140.
- (7) Form No. 5C shall be furnished on or before the due date referred to in the Explanation 2 below subsection (1) of section 139 for the assessment year in which the amount is chargeable to tax under subsection (4) of section 45.
- (8) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall - (i) specify the procedure for filing of Form No. 5C; (ii) specify the procedure, format, data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (6), for verification of the person furnishing the said Form; and (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form No 5C so furnished.

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TAX LAWS



INCOME TAX (19TH AMENDMENT), RULES, 2021

The Ministry of Finance through its notification dated 7th July, 2021 introduced the Income tax (19th Amendment), Rules, 2021.

Rule 8AC has been inserted after rule 8AB

“8AC. Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained.

1. The written down value of the block of the asset and short term capital gains, if any, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with this rule.
2. Where the goodwill of the business or profession was the only asset or one of the assets in the block of asset “intangible” for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, the written down value of this block of asset for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with the provisions of item (ii) of sub-clause (c) of clause (6) of section 43.
3. Where the reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021, exceeds the aggregate of the following amounts, namely: -
 - the written down value of the block of assets at the beginning of the previous year relevant to the assessment year commencing on the 1st day of April, 2021 without giving effect to reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43; and
 - the actual cost of any asset falling within the block of assets “intangible”, other than goodwill, acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.
4. Without prejudice to the provisions of sub-rule (3) and section 55, where the goodwill of the business or profession was the only asset in the block of asset “intangible” for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, and the block of asset ceases to exist on account of there being no further asset acquired during the previous year relevant to the assessment year commencing on the

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AMENDMENTS TO THE “ELECTRONICS AND INFORMATION TECHNOLOGY GOODS (REQUIREMENTS FOR COMPULSORY REGISTRATION) ORDER, 2021”

Ministry of Electronics and Information Technology on 1st July, 2021 made the following amendments to the “Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021”.

After Paragraph 5, the following paragraph shall be inserted, namely: -

“6. Deferred Application of Order”- For manufacturers that are already registered under this Order, the application of the Order shall be deferred by six months for goods manufactured at any new location within the territory of India provided: (a) That the new manufacturing location is within the responsibility of the same manufacturer (b) That the specific type/model number of the goods manufactured at this new location are already covered in the scope of registration of the same manufacturer for its manufacturing unit, at any other location. During the interim period such product/products will continue to support the registration number granted to this manufacturer earlier for any other manufacturing location.

“7. Labelling at Custom ports:” For all the product categories notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021", a transition period of three months (maximum), from the date of coming into effect of the Order for the particular product category, would be available to the representative of the foreign manufacturing unit having liaison office or branch office located in India for affixing Standard Mark at the ports which are already having registration number from the Bureau for clearance of goods from customs.

“8. Exemption for Highly Specialized Equipment (HSE): HSE as per the criteria given below shall stand exempted from the application of this Order provided they are manufactured/ imported in less than 100 units per model per year. Equipment Powered by three phase power supply or b. Equipment Powered by single phase power supply with current rating exceeding 16 Ampere or c. Equipment with dimensions exceeding 1.5 m x 0.8 m or d. Equipment with weight exceeding 80 Kg.

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GOA FACTORIES (FIFTEENTH AMENDMENT) RULES, 2021

The Department of Labour issued a notification dated 12th July, 2021 wherein, the Goa Factories (Fifteenth Amendment) Rules, 2021 was introduced

Amendment of rule 2A

(i) in sub-rule (3), for the words “ten thousand rupees”, the words “twenty thousand rupees” shall be substituted;

Amendment of rule 3

(i) for clause (d), the following clause shall be substituted, namely:— “(d) Where any flammable or nonflammable or toxic or non-toxic compressed gas or petroleum product or any other inflammable substance is intended to be possessed in a cylinder or a vessel or a tank in any factory, application for permission shall also be accompanied by an approval/license, if applicable, as required under the Gas Cylinders Rules, 2016 or the Static and Mobile Pressure Vessels (Unfired) Rules, 2016 or the Petroleum Rules, 2002 or the Inflammable Substances Act, 1952 (Act No. 20 of 1952), as the case may be, as amended from time to time, from the authority concerned.”;

(ii) in clause (e), — (a) for the expression “one thousand rupees”, the expression “two thousand rupees” shall be substituted;

(b) In respect of application made through online mode, fees shall be paid through e-challan payment gateway.”.

Amendment of rule 4

After clause (c), the following clause shall be inserted, namely:— “(d) existing building/shed/structure/ work of engineering construction is in accordance with the plans approved by the Chief Inspector.”.

Amendment of rule 5

(i) after the existing proviso, the following proviso shall be inserted, namely:— “Provided further that in case the person issuing the Certificate of Stability is a Structural Engineer registered under the provisions of the Goa Land Development and Building Construction Regulations, 2010, as amended from time to time, and who has originally designed the building/ shed/structure/work of engineering construction, the Certificate of Stability issued by such person shall be considered in respect of such building/shed/structure/ work of engineering construction initially and thereafter once in a period of five years or after any re-construction, extension, alteration, etc. or wherein there is any addition or modification of machinery, plant, lifting tools or lifting machines.”;

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(ii) in the Form of Certificate of Stability, after point No. (7), the existing paragraph was substituted with a new one

Amendment of rule 6

In rule 6 sub-rule (2) has been substituted

Amendment of rule 9

(i) in sub-rule (1), after the expression “on which the license is due to expire”, the expression “and in respect of application made through online mode, fees shall be paid through e-challan payment gateway” shall be inserted;

(ii) in sub-rule (2), in second proviso, after the expression “Schedule attached to rule 6”, the expression “and in case during the period of validity of the license, there is an increase in the fees payable, the Occupier, within a period of three months from the date of publication of Notification to that effect in the Official Gazette, shall pay the difference in fees payable with effect from the date of such increase till the remainder period of validity of license.” shall be inserted.

Substitution of rule 19A

For rule 19A the following rule shall be substituted, namely, —

“19A. Medical Examination of workers. — (1) Save as otherwise provided in these Rules, the workers in a factory shall be medically examined once before employment and thereafter after every five years by the Certifying Surgeon appointed under the Act or the Medical Inspector of Factories appointed by the Government or the Factory Medical Officer or the Occupational Health Laboratory recognized under sub-rule (3) of rule 90 O or sub-rule (4) of rule 90 O.

(2) Medical certificate issued to a worker after his medical examination shall be valid for a period of five years even if the worker is employed in another factory during such period of five years provided that such worker is not engaged in dangerous operation or hazardous process in another factory.

(3) Tests/investigations to be conducted for the purpose of carrying out medical examination of a worker before employment and thereafter at specified intervals shall consist of blood investigations for hemoglobin, total WBC count, differential count, blood grouping, fasting blood sugar level, serum creatinine, blood urea, electro cardio gram, urine (routine and microscopic), audiometry, X-ray chest, eye test including colour vision, pulmonary function test and any other test(s) as may be specified by the Certifying Surgeon appointed under the Act or the Medical Inspector of Factories appointed by the Government or the Factory Medical Officer or the Occupational Health Laboratory.”.

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Amendment of rule 47

By insertion of clause (c) after clause (b) Sanitary Napkins conforming to Indian Standards and in adequate quantity shall be provided and maintained in the women's toilets for their use, and the same be replenished periodically, as and when required.

Amendment of rule 68

In sub-rule (4), for clause (b), shall be substituted

Amendment of rule 90N

in sub-rule (1), after clause (b), the following clause shall be inserted, namely:—
“(bb) The tests/investigations to be conducted for the purpose of carrying out medical examination of a worker before employment and thereafter at prescribed intervals shall consist of blood investigations for hemoglobin, total WBC count, differential count, blood grouping, fasting blood sugar level, serum creatinine, blood urea, electro cardio gram, urine (routine and microscopic), audiometry, X-ray chest, eye test including colour vision, pulmonary function test and other test(s) which the Factory Medical Officer or the Occupational Health Laboratory may specify;”.

Amendment of rule 90-O

(i) in sub-rule (4),— (a) in clause (a), for the words “ten thousand rupees”, the words “twenty thousand rupees” shall be substituted; (b) for clause (b), the following clause shall be substituted, namely:— “(b) The institution shall employ persons possessing the qualifications specified in sub-rule (2) and shall possess license/approval/permission from authorities such as Local Authority, Goa State Pollution Control Board, Directorate of Health Services and shall have facilities and equipments at the disposal as set out herein below.”.

Substitution of rule 90S

For rule 90S, the following rule shall be substituted, namely:— “90S. Qualifications, etc., of supervisors.— (1) All persons who are required to supervise the handling of hazardous substances shall possess the following qualifications and experience.— (a) (i) a degree in any branch of engineering or technology or a masters degree in Science (Physics or Chemistry) or a masters degree in Pharmacy, from recognized institution, with two years of experience of working in a factory involved in hazardous process; or (ii) a degree in Science (Physics or Chemistry) or a degree in Pharmacy or a diploma in any branch of engineering or technology, from a recognized institution, with five years of experience of working in a factory involved in hazardous process.”;

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Insertion of new rule 90X

“90X. Personal Protective Equipments.

(1) All workers shall be mandatorily provided with Personal Protective Equipments (PPEs) as required under any of the provisions of the Act or the Rules and such PPEs shall conform to the relevant National Standard. The occupiers shall require the worker to use such PPEs and the same shall be maintained in proper working conditions by the occupier. No charges whatsoever shall be charged by the occupier from the workers for provision of such PPEs.

(2) Without prejudice to the generality of the provisions of sub-rule (1), the various types of PPEs to which this rule shall extend for use in factories shall be as specified herein below.

- (i) Safety Helmet
- (ii) Protective Footwear
- (iii) Safety Goggles and Spectacles
- (iv) Equipment for eye and face protection during welding
- (v) Gloves and Protective Clothing
- (vi) Ear protection when exposed to noise
- (vii) Respiratory Protection
- (viii) Other Protective Equipment

Amendment of rule 131

after sub-rule (6), the following sub-rule shall be inserted, namely: —

“(7) Other tests/investigations to be conducted for the purpose of carrying out medical examination of a worker before employment and thereafter at specified intervals shall consist of blood investigations for hemoglobin, total WBC count, differential count, blood grouping, fasting blood sugar level, serum creatinine, blood urea, electro cardio gram, urine (routine and microscopic), audiometry, X-ray chest, eye test including colour vision, pulmonary function test and any other test(s) which the Certifying Surgeon may specify.

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

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ADJUDICATING AUTHORITY INVOKED INHERENT JURISDICTION RULE 11 WHERE EITHER THE INGREDIENTS OF SECTION 22 & 27 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 ('I&B CODE') WAS MADE OUT: ORDER UPHeld BY THE APPELLATE TRIBUNAL

The Instant Appeal has been filed on behalf of the Appellant- the Ex. Interim Resolution Professional (RP) of M/s. KSL & Industries Limited, Gurgaon, Haryana being aggrieved and dissatisfied with the Order dated 28.07.2020 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (in short "IB Code") the Learned Tribunal has appointed a new Interim Resolution Professional, replacing the Appellant herein. The Bench while exercising its power under 'Rule 11' of NCLT Rule, 2016 allowed in Interlocutory Application and appointed Mr. Kiran Shah as a new IRP/ RP in the CIRP proceedings

Submissions on behalf of the Appellants

Only one point has been raised by the Learned Counsel for the Appellant during the oral arguments is that whether inherent powers prescribed under 'Rule 11' of NCLT Rule 2016 can be invoked to bypass the provisions of Section 22 and 27 of Insolvency & Bankruptcy Code, 2016 (I&B Code) and whether the Order passed by the Adjudicating Authority can be sustained in law.

Further, it was submitted that none of the powers under Section 22 & 27 were exercised rather the Adjudicating Authority had passed the Impugned Order invoking power under 'Rule 11' of the NCLT. So, the Impugned Order passed by the Hon'ble Adjudicating Authority cannot be sustained by law and fit to be set aside.

Submissions on behalf of the Respondent

Learned Counsel for Respondent No. 1 further submitted that from the perusal of the Impugned Order it transpires that the matter was listed before the NCLT 14 times since the first date of hearing i.e. on 15.11.2019 and finally was reserved on 20.03.2020 and the Impugned Order was delivered on 10.07.2020. Learned Adjudicating Authority has taken note of the fact that CP (IB) No. 397 of 2018 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IB Code") by M/s. Abhinandan Multitrade Pvt. Ltd. & Anr. Which was admitted on 06.09.2019 whereby the Applicant was appointed as IRP.

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as the timeline for completion of CIRP proceedings was reaching fast and given the stalemate between the Secured and Unsecured Creditors the CoC Meeting could not be held and there is the likelihood that CIRP proceeding will expire without holding a Meeting of CoC. that having no option, the Respondent No. 1 had filed an Application before the Adjudication Authority with a prayer to remove the Appellant and to appoint a fresh IRP/RP.

The Learned Adjudicating Authority after hearing the parties and facts in this case invoked under 'Rule 11' and passed the Impugned Order removing the Appellant and appointed Mr. Kiran Shah as new IRP/RP and there is no illegality in the Order.

Held

So far statutory provision as contained in Section 22 of the I&B Code which contemplates appointment of Resolution Professional and further replacement is concerned and provision of Section 27 of 'IB Code' contemplates with the Replacement of Resolution Professional by CoC. In the facts of this case neither the ingredients of Section 22 & 27 of the Insolvency & Bankruptcy Code, 2016 ('I&B Code') is made out.

So, the Learned Adjudicating Authority to shape the CIRP proceedings on an application under Rule 11 filed by Respondent No. 1/ Allahabad Bank, taking note of the fact that there is a conflict between the Secured and Unsecured Creditors and no commencement reached by the majority of voting share to appoint the Appellant herein as IRP/RP invoked thereunder part in Rule 11 and rightly have passed the Impugned order.

So, the Learned Adjudicating Authority has rightly invoked inherent jurisdiction in the fact of this case and passed the Impugned Order

The appeal is dismissed without costs.

Source: COMPANY APPEAL (AT) (Insolvency) No. 786of 2020, Anil Kumar VS Allahabad Bank. 20thJuly, 2021

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NCLAT REFUSES TO CONDONE THE DELAY IN THE ABSENCE OF ANY SUFFICIENT CAUSE AND SUBSTANTIAL REASONS

Aggrieved by the Orders dated 05.11.2019 and 09.01.2020 passed by the NCLT (National Company Law Tribunal, Guwahati Bench, Guwahati), the Appellants preferred this Appeal under Section 421 of the Companies Act, 2013 (hereinafter referred to as the 'Act').

The Tribunal has sanctioned the Scheme of Amalgamation of M/s. Complete Medical Care & Research Institute Private Limited (the first Respondent) and M/s. Nemcare Hospitals Private Limited (the second Respondent) vide an Order dated 05.11.2019. Subsequently, the Tribunal had rectified certain typographical errors that had crept in the Order and pronounced the rectified Order on 09.01.2020. The first and second Appellants are Directors and Shareholders of the second Respondent, 'Transferee Company', and the 3rd & 4th Appellants are also Shareholders of the 'Transferee Company'

Submissions on behalf of Learned Counsel for the Appellant on Limitation

It is submitted that the Appellants first came to know about the Impugned Orders dated 05.11.2019 and 09.01.2020 only on 27.06.2020 when the Board Meeting of the 'Transferee Company' was held; that it was only at this meeting that the 3rd Respondent for the first time instructed the Company Secretary to take steps for giving

Before the Board Meeting dated 27.06.2020, there were five Board Meetings of the 'Transferee Company' that were held on 10.01.2020, 06.05.2020, 15.05.2020, 20.05.2020, and 04.06.2020, but the Impugned Orders were never placed in these previous five Meetings for the perusal of the Members. On account of the lockdown in Assam, the certified copy was applied for only on 08.08.2020 and received on 12.08.2020 and therefore the Appeal was filed on 06.11.2020 which is within 90 days from the date of receipt of the certified copy of the Order.

That the first Appellant was infected with Covid and was admitted to the hospital from 01.09.2020 to 20.09.2020.

Submission of the Learned Senior Counsel for the Appellants on merits of the case

That the first Appellant was present at the Board Meeting dated 10.01.2020, which is one day immediately after the date of the rectified Impugned Order dated

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09.01.2020, the same was discussed in the Board Meeting held on 10.01.2020 and the Minutes thereof were circulated in the email dated 18.01.2020.

The first and second Appellants are Directors in the second Respondent Company and it's their averment that they were present at the Shareholder Meetings directed to be held by NCLT, for considering the scheme of Amalgamation which was held on 14.05.2019 under the chairmanship of the Advocate appointed by the Hon'ble Tribunal.

Learned Counsel relied on the Judgements of the Hon'ble Supreme Court in 'S.P. Chengalvaraya Naidu' Vs. 'Jagannath' (1994 SCC Vol. I Page 1) and in 'Kuldip Gandotra' Vs. 'Union of India' 136 (2007) DLT 44 (DB) in support of his argument that 'fraud or justice do not dwell together and that the Appellants herein have indulged in a fraudulent exercise concealing material facts regarding the knowledge of the Impugned Orders and hence this Tribunal ought to dismiss the Application as it is not only devoid of merit but also barred by Limitation.

Held

(a) the Scheme of the Amalgamation was discussed and approved on 02.01.2018, had taken effect on 31.03.2018 and the said Scheme was approved by NCLT way back vide Impugned Order dated 05.11.2019 and that this Appeal was filed on 06.11.2020,

(b) a perusal of the Minutes of the Meetings of the Board Meetings filed before the Appellate Adjudicating Authority do not evidence any objections raised by the Appellants at that point of time i.e. when the Scheme of Amalgamation was approved and

(c) the period of limitation prescribed under Section 421(3) of the Act has lapsed on 24.02.2020 much before the lockdown period/pandemic situation and hence having regard to the facts and circumstances of the attendant case, we do not see it as a fit case, in the interest of Justice to exercise any discretion empowered under proviso of Section 421(3) and condone the delay in the absence of any 'sufficient cause' and 'substantial reasons

As the result, this appeal is dismissed accordingly.

Source: COMPANY APPEAL (AT) No. 213-214 of 2020, Dr. Apurba Kumar Sarma & Ors VS M/s Complete Medical Care & Research Institute Pvt Ltd & Ors, 20th July, 2021

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