

**ricago**  
**GRC Bulletin**  
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## About

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# CORPORATE LAWS



## SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (3RD AMENDMENT) REGULATIONS, 2021

Securities and Exchange Board of India introduced Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 through its notification dated 3rd August, 2021.

The definition of independent director has been amended by amending sub clause (iv), (v) and (vi) in regulation 16, in sub-regulation (1), in sub-clause (v) the words and symbols “has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year” shall be substituted with the following namely:

“—(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;

(B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;

(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or

(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:

Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross

# CORPORATE LAWS



turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.”

In regulation 17, after sub-regulation (1B), a new sub-regulation (1C) shall be inserted which reads as:

“(1C). The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.”

In regulation 19, in sub-regulation (1), in clause (c), —

- a. the words “fifty percent” shall be substituted by the words “two-thirds”.
- b. the symbols and words “[and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors]” shall be omitted.

In regulation 23, under sub-regulation (2), a new proviso shall be inserted namely: “Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.”

In regulation 25, —

- a) after sub-regulation (2), a new sub-regulation (2A) shall be inserted namely:—

“(2A). The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.”

- b) in sub-regulation (6), —
  - i. the words “the immediate next meeting of the board of directors or” appearing after the words “later than the” and before the words “three months” shall be omitted.
  - ii. the symbol and words “, whichever is later” appearing after the words “such vacancy” and before the proviso shall be omitted.
- c) in sub-regulation (10), the word, numbers and symbol “October 1, 2018” shall be substituted with the word, numbers and symbol “January 1, 2022” and the number “500” shall be substituted with the number “1000”.
- d) after sub-regulation (10), a new sub-regulation (11) shall be inserted namely: —

“(11). No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director.”

# CORPORATE LAWS



In regulation 36, in sub-regulation (3), —

Clause (d) is amended and after clause (e), a new clause (f) shall be inserted namely: —

“(f). In case of independent directors, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements.”

In Schedule II, in Part D, in Para A, after clause (1), a new sub-clause (1A) shall be inserted namely:

“(1A). For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

- a. use the services of an external agencies, if required;
- b. consider candidates from a wide range of backgrounds, having due regard to diversity; and
- c. consider the time commitments of the candidates.”

In Schedule III, in Part A, in Para A, in clause (7B), —

- a. in sub-clause (i), —
  - I. the words “The letter of resignation along with” shall be inserted before the words “detailed reasons”.
  - II. the words “of independent directors” appearing after the word “resignation” and before the words “as given” shall be omitted.
  - III. the words “shall be disclosed by the listed entities to the stock exchanges” appearing after the word “director” shall be omitted.
- b. after sub-clause (i), a new sub-clause (ia) shall be inserted namely: —
 

“(ia). Names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any.”
- c. in sub-clause (iii), —
  - i. the words “detailed reasons” appearing after the words “along with the” shall be substituted by the word “disclosures”.
  - ii. after the words and symbols “sub-clause (i)” and before the word “above”, the word and symbols “and (ii)” shall be inserted.

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

# CORPORATE LAWS



## SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (SECOND AMENDMENT) REGULATIONS, 2021

Amendments in the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 includes –

(1) in regulation 7D, -

a) in sub-regulation (1), -

- i. the words —Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, shall be substituted.
- ii. in the first proviso, - (A) the words —collected or recovered|| shall be omitted; (B) the words —one crore|| shall be substituted with the words —ten crores||;
- iii. the second proviso shall be omitted;

b) after sub-regulation (1), a new sub-regulation (1A) shall be inserted, namely, -

(1A) If the total reward payable is less than or equal to Rupees One Crore, the Board may grant the said reward upon the issuance of the final order by the Board: Provided that in case the total reward payable is more than Rupees One Crore, the Board may grant an interim reward not exceeding Rupees One Crore upon the issuance of the final order by the Board and the remaining reward amount shall be paid only upon collection or recovery of the monetary sanctions amounting to at least twice the balance reward amount payable.||

c) in sub-regulation (3) the words —The reward|| shall be substituted with the words —Any reward, whether interim or otherwise.

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

# TAX LAWS



## INCOME-TAX (21ST AMENDMENT) RULES, 2021

Central Board of Direct Taxes through the notification dated 29th July, 2021 brought rules to amend the Income-tax Rules, 1962. It shall be called as Income-tax (21st Amendment) Rules, 2021.

Rule 130. Omission of certain rules and Forms and savings. -

(1) Rules 5A, 5AB, 6ABB, 12B, 12BA, 16D, 16DD, 16E, 16F, 18B, 18BB, 18BBA, 18DD, 18DDA, 20AB, 29AA, 29D, 37, 37E, 37F, 44A, 48, 123 and rule 124 shall be omitted.

(2) In Appendix II, Forms ITR-8, 2B, 2C, 2E, 3AA, 3AAA, 3BA, 4, 5, 5A, 10AA, 10C, 10CC, 10CCA, 10CCAA, 10CCAB, 10CCABA, 10CCAC, 10CCAD, 10CCAE, 10CCAF, 10CCAG, 10CCAH, 10CCAI, 10CCBA, 10CCBB, 10CCBBA, 10CCBC, 10CCBD, 10DB, 10DC, 10G, 10HA, 11, 11A, 12, 12A, 15I, 15J, 16AA, 22, 24, 26, 27E, 30, 34A, 34B, 34BA, 37, 37EE, 37F, 37G, 37H, 37-I, 54, 55, 56A, 56AA, 56B, 56BA, 56C, 56CA, 56E, 56F, 56FF, 56G, 56H, 58A, 58B, 63, 63A and Form 63AA shall be omitted.

(3) Notwithstanding such omission, on and from the date of commencement of this rule—

- i. any proceeding pending before any income-tax authority, any Appellate Tribunal or any court, by way of appeal, reference or revision, shall be continued and disposed of as if rules and forms mentioned in sub-rule (1) and sub-rule (2) have not been omitted;
- ii. any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification or order issued under the rules and Forms mentioned in sub-rule (1) and sub-rule (2) shall be deemed to continue in force as if rules and forms mentioned in sub-rule (1) and sub-rule (2) have not been omitted.

Rule 131. Electronic furnishing of Forms, Returns, Statements, Reports, orders etc.-

(1) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, may with the approval of the Board specify that any of the Forms, returns, statements, reports, orders, by whatever name called, prescribed in Appendix II, shall be furnished electronically—

- (i) under digital signature, if the return of income is required to be furnished under digital signature; or
- (ii) through electronic verification code in a case not covered under clause (i).

# TAX LAWS



(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

(i) with the approval of the Board specify the Forms, returns, statements, reports, orders, referred to in sub-rule (1), which are to be furnished electronically;

(ii) lay down the data structure, standards and procedure of furnishing and verification of such Forms, returns, statements, reports, orders, including modification in format, if required, to make it compatible for furnishing electronically; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said Forms, returns, statements, reports, orders.

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

# TAX LAWS



## CENTRAL GOODS AND SERVICES TAX (SIXTH AMENDMENT) RULES, 2021

Central Board of Indirect Taxes and Customs through its notification dated 30th July, 2021 introduced the Central Goods and Services Tax (Sixth Amendment) Rules, 2021 which shall come into force from the 1st day of August, 2021.

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for rule 80, the following rule shall be substituted, namely: -

“80. Annual return.- (1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner: Provided that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR - 9B.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”.

In the said rules, in FORM GSTR-9, in the instructions after the word, letters and figures “or FY 2019-20”, the word, letters and figures “or FY 2020-21” shall be inserted or substituted as provided by the notification.

FORM GSTR-9C has been amended by inserting a new serial number “K-1” in Sl no 9 after the entry relating to serial number K.

# TAX LAWS



In Sl no 11, after entry relating to “0.10%” a new column entry named “Others” shall be added

against Pt. V, - (I) in the heading, for the words “Auditor’s recommendation on additional Liability due to non-reconciliation”, the words “Additional Liability due to non-reconciliation” shall be substituted; (II) after entry relating to “0.10%”, the following entry shall be inserted, namely: -

“Others, after the table, for the portion beginning with “Verification:” and ending with “and balance sheet etc.”, the following shall be substituted, namely: - “Verification of registered person: I hereby solemnly affirm and declare that the information given herein above is true and correct and nothing has been concealed there from. I am uploading this self-certified reconciliation statement in FORM GSTR-9C. I am also uploading other statements, as applicable, including financial statement, profit and loss account and balance sheet, etc.”;

In the instructions, for paragraph 7, the following paragraph shall be substituted, namely, - “7. Part V consists of the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demand which is to be settled by the taxpayer shall be declared in this Table.”;

Part B Certification shall be omitted.

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

## OTHER LAWS



### THE FACTORING REGULATION (AMENDMENT) ACT, 2021

Ministry of Law and Justice through its notification dated 7th August, 2021 introduced the Factoring Regulation Act, 2011 (hereinafter referred to as the principal Act).

In section 2 of the Factoring Regulation Act, 2011 (hereinafter referred to as the principal Act), — (i) in clause (a), for the words commencing with "transfer by agreement" and ending with "outside India", the words "transfer by agreement to a factor of an undivided interest, in whole or in part, in the receivables of an assignor due from a debtor and includes such transfer where either the assignor or the debtor is situated or established outside India" shall be substituted;

(ii) in clause (j), —

(A) in the opening portion, for the words commencing with "acquisition of receivables" and ending with "any receivables but", the words "acquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment, but" shall be substituted;

(B) in sub-clause (i), after the word "bank", the words "or a non-banking financial company" shall be inserted; (iii) for clause (p), the following clauses shall be substituted, namely: — '

(p) "receivables" means the money owed by a debtor and not yet paid to the assignor for goods or services and includes payment of any sum, by whatever name called, required to be paid for the toll or for the use of any infrastructure facility or services;

(pa) "regulations" means regulations made by the Reserve Bank under this Act;

After clause (s), the following clause shall be inserted, namely: — '

(sa) "Trade Receivables Discounting System" means a payment system authorised by the Reserve Bank under section 7 of the Payment and Settlement Systems Act, 2007 for the purpose of facilitating financing of trade receivables;

The Reserve Bank may grant the certificate of registration in such manner as may be specified by regulations.

In section 19 of the principal Act, —

(i) for sub-section (1), the following sub-section shall be substituted, namely:

## OTHER LAWS



"(1) Every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within such time from the date of such assignment, in such manner and subject to payment of such fee, as may be prescribed.";

- (ii) after sub-section (1), the following sub-section shall be inserted, namely:
- "(1A) Where any trade receivables are financed through a Trade Receivables Discounting System, the particulars specified in sub-section (1) and sub-section (3) shall be filed with the Central Registry on behalf of the factor by the Trade Receivables Discounting System concerned, in such manner as may be specified by regulations."

After section 31 of the principal Act, the following section shall be inserted, namely: —

"31A. (1) The Reserve Bank may, by notification, make regulations consistent with this Act to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —

- (a) the manner of granting certificate of registration under sub-section (4) of section 3;
- (b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors under sub-section (1A) of section 19;
- (c) any other matter which is required to be, or may be, specified by regulations.

(3) Every regulation shall, as soon as may be after it is made by the Reserve Bank, be forwarded to the Central Government and that Central Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

## OTHER LAWS



In section 32 of the principal Act, in sub-section (2), in clause (a), for the words "the form and manner", the words "the time within which, the form and manner" shall be substituted.

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

## OTHER LAWS



### PLASTIC WASTE MANAGEMENT (AMENDMENT) RULES, 2021

Through the notification dated 12th August, 2021 the Ministry of Environment, Forest and Climate Change introduced the Plastic Waste Management (Amendment) Rules, 2021.

Major Amendments brought by the Plastic Waste Management (Amendment) Rules, 2021

In rule 3, (i) after clause (n), the following clause shall be inserted, namely: -

(na) “Non-woven plastic bag” means Non-woven plastic bag made up of plastic sheet or web structured fabric of entangled plastic fibers or filaments (and by perforating films) bonded together by mechanical or thermal or chemical means, and the “non-woven fabric” means a flat or tufted porous sheet that is made directly from plastic fibres, molten plastic or plastic films;” (ii) after clause (q), the following clause shall be inserted, namely: - „(qa) “Plastic waste processing” means any process by which plastic waste is handled for the purpose of reuse, recycling, co-processing or transformation into new products;” (iii) after clause (v), the following clauses shall be inserted, namely: - „(va) “Single-use plastic commodity” mean a plastic item intended to be used once for the same purpose before being disposed of or recycled;” „(vb) “Thermoset plastic” means a plastic which becomes irreversibly rigid when heated and hence cannot be remoulded into desired shape;” „(vc) “Thermoplastic” means a plastic which softens on heating and can be moulded into desired shape;”.

In rule 4, -

(a) in sub-rule (1), -

- i. for the words “importer stocking”, the words “import, stocking” shall be substituted;
- ii. in clause (c), for the words “fifty microns in thickness”, the words, figures, letters and brackets “seventy-five microns in thickness with effect from the 30th September, 2021 and one hundred and twenty (120) microns in thickness with effect from the 31st December, 2022” shall be substituted;
- iii. in clause (h), after the words, “carry bags”, the words “and commodities” shall be inserted;
- iv. in clause (h), after the words, “compostable plastic carry bags”, the words “or commodities or both” shall be inserted;

## OTHER LAWS



v. after clause (i), following clause shall be inserted, namely: - “(j) non-woven plastic carry bag shall not be less than 60 Gram Per Square Meter (GSM) with effect from the 30th September, 2021.”;

(b) after sub-rule (1), the following sub-rules shall be inserted, namely: -

“(2) The manufacture, import, stocking, distribution, sale and use of following singleuse plastic, including polystyrene and expanded polystyrene, commodities shall be prohibited with effect from the 1st July, 2022: -

(a) ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene [Thermocol] for decoration;

(b) plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 microns, stirrers.

(3) The provisions of sub-rule (2) (b) shall not apply to commodities made of compostable plastic.

(4) Any notification prohibiting the manufacture, import, stocking, distribution, sale and use of carry bags, plastic sheets or like, or cover made of plastic sheets and multilayered packaging and single-use plastic, including polystyrene and expanded polystyrene, commodities, issued after this notification, shall come into force after the expiry of ten years, from the date of its publication”.

In in rule 6, in sub-rule (2), after clause (a), following clause shall be inserted, namely: -

“(aa) ensuring that the provisions of these rules, as amended, are adhered to;”

In rule 6, in sub-rule (2), after clause (a), following clause shall be inserted, namely:

- “(aa) ensuring that the provisions of these rules, as amended, are adhered to;”

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

# JUDICIAL INSIGHT



## JUDICIAL INSIGHT

### DELAY IN IMPLEMENTATION OF RESOLUTION PLAN CANNOT BE CONSIDERED THE SAME AS FAILURE IN IMPLEMENTING THE PLAN

#### Brief Facts

The Appellant in making various grievances to claim that the Respondent No.3 in the matter of 'Allied Strips Limited' and in another matter relating to 'Tirupati Infrastructure Private Limited' where the Respondent No.3 was Successful Resolution Applicant has delayed the Resolutions by seeking time for implementation. Appellant is claiming that the Respondent No.3 was ineligible and the Resolution Plan of Respondent No.3 could not have been placed before the CoC

The Corporate Debtor 'G P T Steel Ltd' has been admitted into Corporate Insolvency Resolution Process vide order dated 2nd May 2019. The Respondent No.1 is the Resolution Professional (RP) for the Company/Corporate Debtor. Respondent No. 2 is the Committee of Creditors (COC) for the Corporate Debtor represented through the lead member. The Respondent No. 3 and the Appellant are both the Resolution Applicant's in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor

#### Appellants Contention

The Appellant alleges that Respondent No. 3's Resolution Plan was approved by the COC without considering the final revised Resolution Plan Submitted by the Appellant. As a result, Respondent No. 3 was declared the highest bidder (H-1 bidder). The Appellant contends that Respondent No. 3 has suppressed material facts concerning its performance in other Resolution Plans and has given a false undertaking to the COC. The Appellant contends that the Adjudicating Authority has made observations that the Application is premature as of 4th February 2020. However, the fact that negotiations were going on 4th February 2020 means that the Appellant's Plan could be considered at that stage. Thus, Respondent No. 3 could be disqualified as Resolution Applicant for a series of defaults.

The Appellant further contends that CIRP has expired on 18th February 2020. Therefore, unless appropriate orders are passed, the Appellant will be deprived of its remedy in law and a chance for the COC to consider its Resolution Plan, pending adjudication before the Adjudicating Authority.

# JUDICIAL INSIGHT



## **Respondent No 1's contention**

Respondent No. 1/Resolution Professional submits that the Appellant was already informed that the Resolution Plan submitted on 21st October 2019 was non-compliant with the Insolvency and Bankruptcy Code 2016 as it was conditional/contingent.

The Applicant/Appellant submitted the revised Resolution Plan during the 16th COC meetings held on 29th January 2020, i.e. almost three months after submitting the 1st Resolution Plan. Till the 16th COC meeting, the Appellant had submitted seven Resolution Plans, but all were non-compliant and conditional, and the Resolution Applicant was asked to remove the deficiency. The COC members also requested the Appellant to submit an enhanced proposal compliant with the Code and Regulations. Therefore, an unconditional Resolution Plan would be acceptable to the COC in terms of the bid document. This fact is reflected in almost all the minutes of the COC meetings starting from the 10th COC.

Lastly, the Appellant submitted a Resolution Plan on 29th January 2020 that was conditional and contingent. The Applicant had indicated 'about exit midway' in the Resolution Plan, even if the Applicant would have been declared Successful Resolution Applicant. This apart in 16th COC meetings, the prospective Resolution Applicants were allowed to increase their bids at the request of COC. After that, the highest bidder was declared. The Applicant was informed that it was not the highest bidder and was offered the chance to improve its Bid. However, the Applicant/Appellant reported to the members of the COC that its Bid is final and it is not inclined to revise their offer any further.

## **Respondent No 3's contention**

Respondent No. 3 has filed its reply and submitted that the Application is devoid of any substance and is made with mala fide intention, and was premature on filing. It is further submitted by Respondent No. 3 that he has not failed in the implementation of the Resolution Plan in "Allied Strips Ltd" as alleged, and it has made the payment in entirety (₹ 70.25 crores) from its resources. The remaining amount was to be paid by the Bank of Baroda. The Adjudicating Authority/Principal Bench, New Delhi, records the said fact; vide its order dated 8th August 2019. Thus, the allegations made by the Appellant are incorrect, and there is no violation of Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for the Corporate Persons) Regulations 2016.

**Held**

## JUDICIAL INSIGHT



It is pertinent to mention that delay in implementation of Resolution Plan cannot be considered the same as failure in implementing the Plan. The ineligibility as specified under Regulation 38 (1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 establishes the ineligibility in clear terms by stating that "the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past."

it is clear that the COC deliberated Respondent No. 3's eligibility and thereafter, considering the statement of Respondent No. 3, took a conscious commercial decision in accepting its Resolution Plan. Moreover, judicial notice may be taken of the prevailing situation the entire world is facing on account of the Covid 19 pandemic. Therefore, if there is some delay in implementing the Plan, it cannot be considered a failure in implementing the Resolution Plan, thereby making the Resolution Applicant ineligible for submission of the Resolution Plan under Regulation 38 (1B) of the CIRP Regulations.

The Appeal is dismissed.

***Source : Company Appeal (AT) (Insolvency) No. 642 of 2020, Panch Tatva Promoters Pvt. Ltd.***

***VS GPT Steel Industries LTD & Ors 18th August 2021***

## JUDICIAL INSIGHT



### OFFER OF OTS CAN BE RELIED ON FOR THE PURPOSE OF CONSIDERING ACKNOWLEDGEMENT UNDER SECTION 18 OF LIMITATION ACT

This Appeal has been filed by the Appellant who claims to be shareholder of the Corporate Debtor – 'M/s Mackeil Ispat & Forging Limited' against impugned order dated 3rd February, 2020 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata.

#### Brief facts

In the present Appeal, the Appellant claimed that the debt of the Corporate Debtor was declared NPA on 31st March, 2013 and the Application under Section 7 was filed on 1st February, 2019 and thus the claim was time barred. The Appellant claims that the Adjudicating Authority did not considered judgments of the Hon'ble Supreme Court in the matter of "Jignesh Shah and another vs. Union of India and another – (2019) 10 SCC 750" and "Gaurav Hargovindbhai Dave vs. Asset Reconstructions Company (India) Limited and another – (2019) 10 SCC 572". The Appeal claims that the One Time Settlement (OTS) letters relied on by the Respondent – State Bank of India could not be treated as acknowledgments. It is also claimed that the Corporate Debtor was protected under Section 23 of the Indian Evidence Act, 1872 in so far as the OTS letters were concerned.

Against this, the Respondent No. 2 - State Bank of India has filed reply and it is claimed that the default of the Corporate Debtor for which application under Section 7 was filed was in respect of consortium of Banks comprising Indian Overseas Bank, erstwhile State Bank of Travancore, State Bank of India – Financial Creditor, Allahabad Bank, erstwhile State Bank of Patiala, erstwhile Andhra Bank and City Union Bank

The Respondent Bank claims that after declaration of account as NPA, the Banks had proceeded under Section 13(2) of SARFAESI Act and the Corporate Debtor had continuously acknowledged debt due and liability and given OTS offers to the Banks.

The Learned Senior Counsel for the Appellant at the time of arguments made submissions on the basis of the Appeal and submitted that the question is whether proposal made in OTS can be considered to be acknowledgement. The Learned Counsel submits that in view of Section 23 of the Indian Evidence Act, any admission given in the OTS proposal could not be used in Court of Law

# JUDICIAL INSIGHT



With regard to the payments made while giving the OTS offers, the Learned Counsel submitted that the payments were made so that the OTS proposal would get considered by the Bank and for such payment Section 19 of the Limitation Act cannot be relied on.

## **Held**

The Appellate Authority relied on the judgment in the matter of "Dena Bank vs. C. Shivakumar Reddy & Anr.", Civil Appeal No. 1650 of 2020 dated 04.08.2021 and concluded that It is clear that offer of OTS can be relied on for the purpose of considering acknowledgement under Section 18 of Limitation Act. Issue of Recovery Certificate by DRT also is relevant for the purpose of calculating limitation. Respondent Bank claims Corporate Debtor made various repayments in 2018 while making OTS offers. Repayments were made is not disputed by Appellant but argued that payments were made so that OTS proposals should be accepted. Applicability of Section 19 of the Limitation Act is not affected.

There is no substance in the Appeal. The Appeal is dismissed.

***Source: Company Appeal (AT) (Insolvency) No. 282 of 2021, Panch Tatva Promoters Pvt. Ltd.***

***VS GPT Steel Industries LTD & Ors dated 18.08.2021.***

## Contact Us

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Head Quarters:

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

Ph: +91 8040912427

Email: [info@ricago.com](mailto:info@ricago.com)

Website: [www.ricago.com](http://www.ricago.com)

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