

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

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# CORPORATE LAWS



## SEBI NOTIFIES THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2021

The Securities and Exchange Board of India Board through its notification dated 13th August, 2021 notifies the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021.

Following are the amendments made:

### In regulation 2-

in sub-regulation (1), in clause (pp), under sub-clause (iii), the point (C) has been omitted.

### In regulation 16, -

- i. in sub-regulation (1), in clause (a), the words “three years from the date of commencement of commercial production or date of allotment in the initial public offer, whichever is later”, has been substituted with the words “eighteen months from the date of allotment in the initial public offer”.
- ii. in sub-regulation (1), after clause (a), the following proviso has been inserted, namely, - “Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.”
- iii. in sub-regulation (1), in clause (b), the words “one year” has been substituted with the words “six months”.
- iv. in sub-regulation (1), after clause (b), the following proviso has been inserted, namely, - “Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.”
- v. in sub-regulation (1), after clause (b), the existing Explanation has been substituted with the following, namely, - “Explanation: For the purpose of this sub-regulation, “capital expenditure” shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.”

### In regulation 17, -

the words “one year” has been substituted with the words “six months”. in the proviso under clause (c), the words “one year” has been substituted with the words “six months”.

# CORPORATE LAWS



## In regulation 115, -

- i. in clause (a), the words “three years from the date of commencement of commercial production or from the date of allotment in further public offer, whichever is later;” has been substituted with the words “eighteen months from the date of allotment of the further public offer:”.
- ii. after clause (a), the following proviso has been inserted, namely, - “Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.”
- iii. in clause (b), the words “one year” has been substituted with the words “six months”.
- iv. after clause (b), the following proviso has been inserted, namely, - “Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.”
- v. after clause (c), the existing Explanation has been substituted with the following, namely, - “Explanation: For the purpose of this regulation, “capital expenditure” shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.”

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

# CORPORATE LAWS



## MINISTRY OF LAW AND JUSTICE NOTIFIES THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2021

The Insolvency and Bankruptcy Code (Amendment) Act, 2021 was introduced through a notification dated 11th August, 2021 by the Ministry of law and Justice

**Some Important Amendments are as follows:**

- 1) In section 5 of the principal Act,—
  - (i) after clause (2), the following clause shall be inserted, namely:— '(2A) "base resolution plan" means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A;';
  - (ii) in clause (5), in sub-clause (b), after the words "corporate insolvency resolution process", the words "or the pre-packaged insolvency resolution process, as the case may be," shall be inserted;
  - (iii) in clause (11), after the words "corporate insolvency resolution process", the words "or pre-packaged insolvency resolution process, as the case may be" shall be inserted;
  - (iv) in clause (15), after the words "process period", the words "or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be" shall be inserted;
  - (v) in clause (19), after the words "for the purposes of", the words and figures "Chapter VI and" shall be inserted;
  - (vi) after clause (23), the following clauses shall be inserted, namely:—

(23A) "preliminary information memorandum" means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B) "pre-packaged insolvency commencement date" means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

(23C) "pre-packaged insolvency resolution process costs" means—

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F;

# CORPORATE LAWS



- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;
- (d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and
- (e) any other costs as may be specified;

(23D) "pre-packaged insolvency resolution process period" means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;'

(vii) in clause (25), after the words, brackets and figures "of sub-section (2) of section 25", the words, figures and letter "or pursuant to section 54K, as the case may be" shall be inserted;

(viii) in clause (27), after the words "corporate insolvency resolution process", the words "or the pre-packaged insolvency resolution process, as the case may be," shall be inserted.

2) In section 11 of the principal Act,—

- (i) in clause (a), after the words "corporate insolvency resolution process", the words "or a pre-packaged insolvency resolution process" shall be inserted;
- (ii) after clause (a), the following clause shall be inserted, namely:— "(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or";
- (iii) after clause (b), the following clause shall be inserted, namely:— "(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or".

3) Insertion of Section 11A: After section 11\_of the principal Act, the following section shall be inserted, namely:—

11A.

(1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

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(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under section 7 or section 9 or section 10.

(4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2021."

- 4) In section 34 of the principal Act, in sub-section (1), after the words and figures "under Chapter II", the words, figures and letter "or for the pre-packaged insolvency resolution process under Chapter III-A" shall be inserted.
- 5) After Chapter III of the principal Act, the following Chapter shall be inserted, namely:— 'CHAPTER III-A
- 6) In section 61 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:— "(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order. (5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order."
- 7) In section 65 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— "(3) If any person initiates the pre-packaged insolvency resolution process— (a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or (b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."
- 8) After section 67 of the principal Act, the following section shall be inserted, namely:— "67A. On and after the pre-packaged insolvency commencement date, where an officer of the corporate debtor manages its affairs with the intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may, on an application by the resolution



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professional, pass an order imposing upon any such officer, a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.".

9) In section 77 of the principal Act, the Explanation shall be omitted.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 is hereby repealed.

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

# TAX LAWS



## CBDT NOTIFIES THE INCOME-TAX (24TH AMENDMENT) RULES, 2021

The Central Board of Direct Taxes through its notification dated 18th August, 2021 notifies the Income-tax (24th Amendment) Rules, 2021

Following are the amendments brought in:

After rule 12A the following rule has been inserted, namely:–

Rule “12AA”. Prescribed person for the purposes of clause (c) and clause (cd) of section 140: For the purpose of clause (c) or clause (cd), as the case may be, of section 140, any other person shall be the person, appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the rules and regulations made thereunder. Explanation.— For the purposes of this rule, “Adjudicating Authority” shall have the same meaning as assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”

After rule 51A, the following rule has been inserted, namely:–

Rule “51B”. Appearance by Authorised Representative in certain cases: For the purposes of clause (viii) of sub-section (2) of section 288, any other person, in respect of a company or a limited liability partnership, as the case may be, shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the rules and regulations made thereunder. Explanation.— For the purposes of this rule “Adjudicating Authority” shall have the same meaning as assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”.

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

# TAX LAWS



## CBIT NOTIFIES THE CGST (SEVENTH AMENDMENT) RULES, 2021

The Central Board of Indirect Taxes and Customs through its notification dated 29th August, 2021 notified the Central Goods and Services Tax (Seventh Amendment) Rules, 2021

Following are the amendments brought in:

In the Central Goods and Services Tax Rules, 2017

- (i) in sub-rule (1) of rule 26, -
  - (a) in the fourth proviso, for the figures, letters and words “31st day of August, 2021”, the figures, letters and words “31st day of October, 2021” shall be substituted;
  - (b) with effect from the 1st day of November, 2021, all the provisos shall be omitted;
- (ii) with effect from the 1st day of May, 2021, in rule 138E, after the fourth proviso, the following proviso shall be inserted, namely: -  
 “Provided also that the said restriction shall not apply during the period from the 1 st day of May, 2021 till the 18th day of August, 2021, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March, 2021 to May, 2021.”;
- (iii) in FORM GST ASMT-14, - (a) after the words, “with effect from -----”, the words, “vide Order Reference No. -----, dated -----” shall be inserted; (b) the words, “for conducting business without registration despite being liable for registration” shall be omitted; (c) at the end after “Designation”, the word “Address” shall be inserted.

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

## OTHER LAWS



### MINISTRY OF LAW AND JUSTICE NOTIFIES THE DEPOSIT INSURANCE AND CREDIT GUARANTEE CORPORATION (AMENDMENT) ACT, 2021

The Ministry of Law and Justice through its notification dated 13th August, 2021 notified the Deposit Insurance and Credit Guarantee Corporation (Amendment) Act, 2021 and amended the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

Following are the amendments made:

#### Amendment of Section 15:

In section 15 in sub-section (1), in second proviso, for the words "Provided further that", the following words shall be substituted, namely:— "Provided further that the Corporation may, having regard to its financial position and to the interests of the banking system of the country as a whole, and with previous approval of the Reserve Bank of India, from time to time, raise the aforesaid limit of fifteen paise per annum for every hundred rupees of the total amount of the deposits in that bank: Provided also that".

#### Insertion of new Section 18A:

After Section 18 of the principal Act, the following section shall be inserted namely:

18A.

(1) Where, in respect of an insured bank,—

- (i) any direction is issued or any prohibition or order or scheme is made under any of the provisions of the Banking Regulation Act, 1949; and
- (ii) such direction, prohibition, order or scheme provides for restrictions on depositors of such bank from accessing their deposits, then, without prejudice to the provisions of sections 16 to 18, the Corporation shall, on the date on which such direction, prohibition, order or scheme takes effect, become liable to pay to every such depositor an amount equivalent to the amount payable by the Corporation to the depositor under section 16.

(2) A list showing the outstanding deposits of each depositor of the insured bank, as on the date on which the direction, prohibition, order or scheme referred to in sub-section (1) takes effect, shall be furnished by such insured bank within forty-five days of such date of effect, in such form and manner as may be specified by the Corporation and certified to be correct by the chief executive officer of the insured bank.

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- (3) The Corporation shall, within thirty days of the date of receipt of the list under sub-section (2), verify, through an online platform, to the extent possible, or in accordance with such procedure, as may be prescribed, the genuineness and authenticity of the claims made therein, and ascertain the willingness of each depositor to receive the amount due to him out of his deposit in the insured bank.
- (4) Subject to the provisions of sub-section (7), the Corporation shall, before the expiry of fifteen days from the date of completion of the verification under sub-section (3), pay to the depositors who have affirmed their willingness thereunder, the amount payable under sub-section (1) either directly, or get it credited in the account of the depositors through the insured bank: Provided that the total period of time between the date when the Corporation becomes liable to pay to the depositor and the date of payment to the depositor shall not, subject to the provisions of sub-section (7), exceed ninety days: Provided further that any amount paid by the insured bank to the depositor during the period between the date on which the direction, prohibition, order or scheme referred to in sub-section (1) takes effect and the date of payment to the depositor, shall be appropriately reckoned by the insured bank before crediting such amount in depositor's account.
- (5) Any amount paid by the Corporation under sub-section (4) in respect of a deposit shall, to the extent of the amount so paid, discharge the insured bank from its liability to the depositor in respect of that deposit, but the insured bank shall become liable to the Corporation in respect of the amount paid by the Corporation.
- (6) Where, in respect of an insured bank,— (i) any direction, prohibition, order or scheme under any of the provisions of the Banking Regulation Act, 1949 providing for suspension of business of the insured bank is already in force as on the date of commencement of the Deposit Insurance and Credit Guarantee Corporation (Amendment) Act, 2021; and (ii) such direction, prohibition, order or scheme provides for restrictions on the amounts to be paid by the insured bank to each of its depositors, then, notwithstanding anything contained in any other law for the time being in force, the Corporation shall, on and from the date of commencement of the Deposit Insurance and Credit Guarantee Corporation (Amendment) Act, 2021, become liable to pay to each depositor of such insured bank, an amount equivalent to the amount payable by the Corporation to the depositor under sub-section (1) of section 16, and the time

## OTHER LAWS



limit specified in subsections (2) to (4) herein for such payment shall be computed from that date.

- (7) Notwithstanding anything contained in sub-sections (1) to (6), in cases where,— (a) the Reserve Bank finds it expedient in the interest of finalising a scheme of amalgamation of the insured bank with other banking institution or a scheme of compromise or arrangement or of reconstruction in respect of such insured bank, and communicates to the Corporation accordingly, the date on which the Corporation shall become liable to pay every depositor of such insured bank may further be extended by a period not exceeding ninety days; (b) the restrictions on payment to depositors are removed by the Reserve Bank at any time before payment to depositors by the Corporation under sub-section (4), and the insured bank or the transferee bank is in a position to make payments to its depositors on demand without any restrictions, the Corporation shall not be liable to make payment to the depositors of such insured bank.

### Amendment of Section 21

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—  
 "(3) The Corporation may defer or vary the time limit for receipt of repayments due to it from the insured bank or the transferee bank, as the case may be, for such period and upon such terms, as may be decided by the Board in accordance with the regulations made in this behalf: Provided that such regulations shall also provide for prudential principles to assess the capability of the bank to make repayment to the Corporation and for prohibition of specified other classes of liabilities from being discharged by the insured bank or the transferee bank till such time as repayment is made to the Corporation. (4) In case of any delay in repayment to the Corporation beyond the time period prescribed under sub-section (2) or extended under sub-section (3), the Corporation may charge penal interest at a maximum rate of two per cent. above the repo rate per annum for the amount to be repaid to the Corporation and such penal interest shall rank equally for priority with the amount to be repaid under sub-section (2)."

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

## OTHER LAWS



### MINISTRY OF COMMERCE AND INDUSTRY NOTIFIES THE STATIC AND MOBILE PRESSURE VESSELS (UNFIRED) (AMENDMENT) RULES, 2021

The Ministry of Commerce and Industry through its notification dated 31<sup>st</sup> August, 2021 notified the Static and Mobile Pressure Vessels (Unfired) (Amendment) Rules, 2021.

Following are the amendments brought in:

In rule 2, for sub- rule (viii), the following shall be substituted, namely:- —

(viii) competent person' means a person recognised by the Chief Controller, for such gases and vessels and for such period as may be specified by him as competent, for carrying out tests, examinations, certification for installations and transport vehicles as stipulated in these rules, if the person possess the qualifications and experience and other requirements as set out in Appendix IIA to these rules and the recognition is granted as per procedure laid down in Rule 12: Provided that the Chief Controller may relax the requirements of qualifications in respect of a competent person if such person is exceptionally experienced and knowledgeable but not the requirements in respect of the facilities at his command.

In rule 2 after sub- rule (xxix), the following sub-rule shall be inserted, namely:-

(xxix) 'ISO Tank Container' means a tank container which includes two basic elements, the vessel and the framework, suitable for the carriage of compressed gas for conveyance by road, rail and sea, including interchange between these forms of transport and complies with requirements of ISO 1496.

In rule 2, after sub-rule (xl), the following shall be inserted, namely:- —

(xla) 'Third Party Inspection Agency' means a professional organisation recognised by Chief Controller to carry out inspection, certifications, testing including safety audit of major accident hazards premises as defined under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, and having persons with qualifications and experience as applicable to the competent persons.

In the rule 47, for sub- rule (7) the following sub-rule shall be substituted, namely:-

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(7) The District authority shall grant no objection certificate or convey his refusal for granting no objection certificate with reasons thereof in writing to the applicants as expeditiously as possible but not later than two months from the date of receipt of application from the applicant and if he fails to do so in stipulated time no objection certificate shall be considered deemed to be issued: Provided that in case the District Authority conveys his refusal or objections for granting no objection certificate, the license granted under these rules stands cancelled with immediate effect||.

In rule 50, after sub- rule (c), the following shall be inserted, namely:-

In Form AS-4, if the application is in respect of permission to transport compressed gas in ISO Tank Container within the Indian territory or to grant permission for Import and Transport of Compressed Gas in ISO Tank Container.

In rule 61, the following rule shall be substituted, namely:

61. Loss of licence: When a licence granted under these rules is lost or accidentally destroyed, system generated copy may be downloaded by the licensee from online portal of Petroleum and Explosive Safety Organisation.

Forms:

After Form AS-3, the Form AS-4 shall be inserted

After the Form LS-2, the Form-LS-2A shall be inserted

Form LS-2B shall be inserted

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## JUDICIAL INSIGHT



### JUDICIAL INSIGHT

#### ACCEPTANCE OF PLAN HAS TO BE CONVEYED WITHIN RESOLUTION PLAN WITHIN THE CIRP PERIOD

The Appellant is the Director of the Suspended Board of Directors of M/s Best Foods Ltd. (the 'Corporate Debtor'/ Company), engaged in the business of manufacturing and exporting food grains. Application/ Petition was filed by M/s Hajura Singh Bhim Singh 'Operational Creditor' (under Section 9 of the 'I&B' Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy Application to Adjudicating Authority) Rules, 2016 against the 'Corporate Debtor' and the said Application was admitted on 02.02.2018 for initiating the 'Corporate Insolvency Resolution Process' (CIRP) of the 'Corporate Debtor' etc. Also that Mr. Atul Kumar Kansal was appointed as the 'Interim Resolution Professional' for the 'Corporate Debtor'

The 'Resolution Applicant' (Maritime Trade Corporation) submitted its 'Resolution Plan' in respect of the 'Corporate Debtor' in terms of Section 30 of the 'I&B' Code, 2016 to the 'Resolution Professional', on 04.10.2018. As a matter of fact, consequent to the review of the 'Resolution Plan' (submitted by the 'Maritime Trade Corporation') by the 'Resolution Professional' and the 'Committee of Creditors' of the 'Corporate Debtor' a revised 'Resolution Plan' was submitted by the 'Resolution Applicant' on 19.10.2018

It is brought to the fore that in the 7th meeting of the 'Committee of Creditors' of the 'Corporate Debtor' dated 25.10.2018, the 'Resolution Plan' submitted by the 'Maritime Trade Corporation' / 'Resolution Applicant' was discussed by the 'Committee of Creditors' of the 'Corporate Debtor'. Indeed, the Respondent ('Resolution Professional') through mail dated 26.10.2018 had informed the 'Resolution Applicant' / MTC about the decision of the 'Committee of Creditors' not to consider the 'Resolution Plan' of the 'Resolution Applicant', since the same was not in consonance with the provisions of the 'I&B' Code.

The stand of the Appellant is that the 'Resolution Plan' of the 'Resolution Applicant' - 'Maritime Trade Corporation' was not put before the 'Committee of Creditors' of the 'Corporate Debtor' although inconsistencies in the Resolution in regard to the non-compliance of the provisions of the Code were also removed and that the 'Revised Resolution Plan' dated 28.10.2018 was found to be in agreement with particular rule(s) by the 'Resolution Professional' / Respondent, as stated by him in the email dated 29.10.2018 to the 'Committee of Creditors' of the 'Corporate Debtor'. Being dissatisfied with the action of the 'Committee of Creditors' in not considering the 'Resolution Plan' Resolution Applicant/ 'Maritime

## JUDICIAL INSIGHT



Trade Corporation' projected an Application in CA NO.203 of 2018 before the 'Adjudicating Authority' questioning the arbitrary and illegal decisions of the 'Committee of Creditors' on 25.10.2018, whereby a decision was taken not to pursue the 'Resolution Plan' submitted by the Resolution Applicant/ 'Maritime Trade Corporation' and the illegal and arbitrary decision of the 'Committee of Creditors' on 29.10.2018 not to consider the 'Revised Plan' furnished by the 'Resolution Applicant'/ 'Maritime Trade Corporation' despite the 'Resolution Plan' was found to be 'in order' by the 'Resolution Professional'

Based on the order dated 31.10.2019 passed by the 'Adjudicating Authority' the 'Resolution Plan' furnished by the Resolution Applicant/ 'Maritime Trade Corporation' was evaluated by the 'Committee of Creditors' in the ninth meeting of the 'Committee of Creditors' dated 15.11.2019. In reality, the other members of the 'Committee of Creditors' with a voting share of 42.54% voted in favour of the 'Resolution Plan'. One of the members of the 'Committee of Creditors' i.e. the State Bank of India, having vote share of 53.87% abstain from voting because of the 'pending approvals' from its 'higher ups' for 'voting' on the 'Resolution Plan' and the voting of 'State Bank of India' 'Resolution Plan' was deferred. In fact, the Resolution on the liquidation of the 'Corporate Debtor' was rejected by the Committee of Members by the requisite majority. Neither any resolution for approval/ rejection of 'Resolution Plan' nor any resolution for liquidation of the 'Corporate Debtor' was passed at the meeting of the 'Committee of Creditors' dated 15.11.2019.

The State Bank of India (one of the 'Financial Creditors' of the 'Corporate Debtor') with a voting share of 53.87% through email dated 07.02.2020 had informed the 'Resolution Professional'/ Respondent that the proposal for approval of the 'Resolution Plan' was approved by the State Bank of India. In this connection it is pertinently pointed out that on 13.02.2020, during the hearing of CA 1077 of 2020 in CP (IB) No.117/Chd/CHD/2017 the 'Resolution Professional'/ Respondent while informing the 'Adjudicating Authority' about the approval of the State Bank of India to the 'Resolution Plan' of the Resolution Applicant/ 'Maritime Trade Corporation' prayed for issuance of a direction from the 'Adjudicating Authority' for convening one more meeting of the 'Committee of Creditors' to consider the 'Resolution Plan' of the Resolution Applicant/ 'Maritime Trade Corporation' for passing appropriate Resolution and also for granting extension for further necessary period for this purpose.

When CA No.1077/2019 in CP (IB) No.117/Chd/CHD/2017 was subjudice and pending before the 'Adjudicating Authority' the Resolution Applicant/ 'Maritime

# JUDICIAL INSIGHT



Trade Corporation' through email dated 19.03.2020 addressed to the 'Resolution Professional' unlawfully withdrew its 'Resolution Plan' which was approved by the 'Committee of Creditors' with requisite majority in effect in view of the approval communicated by the State Bank of India as per email dated 13.02.2020.

On 01.03.2021, the 'Adjudicating Authority' in I.A. 412 of 2020 passed an order for 'Liquidation' of the 'Corporate Debtor' in directing the Liquidator to take steps for liquidation of the 'Corporate Debtor' as per Regulation 32(A) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 (Liquidation Regulations).

It is the plea of the Appellant that the 'Adjudicating Authority' had committed an error in directing the Liquidator to take steps as per Regulation 32(A) of the Liquidation Resolutions without directing the Liquidator to take appropriate steps as per Regulation 2B and the judgment of this Tribunal in Y. Sivaram Prasad vs. S. Dhanapal & Ors. Vide Co. Appl (AT) (Ins) No.224 of 2018 in which the Liquidator is directed to first call for schemes of compromise and arrangement under Section 230 of the Companies Act, 2013 at the stage of liquidation proceedings of the 'Corporate Debtor' before the sale of 'Assets' of the 'Corporate Debtor' 'collectively' or on a standalone basis in order to keep the 'Corporate Debtor' as a 'going concern' even during the period when the 'Corporate Debtor' is undergoing liquidation proceedings.

## **Appellant's Submissions**

The Learned Counsel for the Appellant points out that the approval of the 'Resolution Plan' (conveyed by the State Bank of India - having 53.87% voting share) through email dated 07.02.2020 was to be taken into account as per the judgment dated 19.03.2019 of this Tribunal in the matter of 'Apollo Jyoti LIC and Ors. vs. Jyoti Structures Ltd. – Sharad Sanghi vs. Vandana Garg & Ors. – vide Company Appeal (AT) (Ins.) 461/2018 and etc. wherein it was held that if once voting on a 'Resolution Plan' by the 'Committee of Creditors' was over then the members of the 'Committee of Creditors', who had earlier either voted against the Plan or abstained on the voting on the Plan can subsequently change their opinion in favour of the Plan, provided that the change of happened within the 270 days of the CIRP process.

## **Respondent's Contentions**

According to the Learned Counsel for the Respondent, the 'State Bank of India' requested the 'Resolution Applicant' to make further amendments / changes to

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the 'Resolution Plan' and directed the Respondent to inform the same to the 'Resolution Applicants' for necessary modifications. Because of the changing economic situation i.e. due to COVID 19 pandemic the 'Resolution Applicant' withdrew from the 'CIRP' process of the 'Corporate Debtor'.

It is represented on behalf of the Respondent that the 'Insolvency & Bankruptcy Code Amendment Act', 2019 had commenced w.e.f. 16.08.2019 and calculating the 90 days' period as granted by the 'Adjudicating Authority' to consider and vote on the 'Plan' which came to an end on 15.11.2019. The main 'Financial Creditor' / 'State Bank of India' had abstained from voting on the 'Resolution Plan' while the same was approved by other members of the 'Committee of Creditors' having a vote of more than 44%.

It is the stand of the Respondent that because of the fact that no 'Resolution Plan' was approved by the 'Committee of Creditors' within the 'CIRP' period with requisite majority in terms of the Code, consequent withdrawal of the 'Resolution Applicant' from the 'Resolution Process' through e.mail dated 19.3.2020 and further that the mandated period of 'CIRP' had lapsed on 15.11.2019, the Respondent was left with no option but to project an Application seeking 'Liquidation' of the 'Corporate Debtor' as per Section 33(1)(a) of the Code.

The Learned Counsel for the Respondent submits that 'Corporate Insolvency Resolution Process' (CIRP) period expired on 15.11.2019 and that the 'Resolution Professional' could not convene a 'Committee of Creditors' Meeting (CoC) meeting and thereafter the CoC had become 'Functous Officio' (vide Judgement in 'Sanjay Kumar Ruia' V. 'Catholic Syrian Bank & Anr.' (Comp. App. (AT)(Ins.) 560/2018 Paragraph 17 and the judgement in 'ICICI Bank' V. 'Venkataranarao Nagarajan' (Vide Comp. App. (AT)(Ins.) 772/2018).

### **Observation**

At the outset, this Tribunal necessarily points out that in the instant case on 02.02.2018, the Insolvency had commenced and that the Respondent was appointed as 'Resolution Professional' on 17.04.2018. To put it precisely, the 180 days 'Corporate Insolvency Resolution Period' got expired on 01.08.2018. In fact, the 'Adjudicating Authority' by virtue of an order dated 01.08.2018 had granted extension of 90 days in respect of the CIRP period and that 270 days was over on 30.10.2018. It is worthwhile for this Tribunal to make a significant mention that the 'Resolution Professional', on 06.11.2018 had submitted his final report mentioning that no Resolution Plan could be approved as per Section 30(6) of the I&B Code during the CIRP period, because of the fact that the 'Resolution Plan' of

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the Maritime Trade Corporation was nonconforming and sought resultant directions for initiation of liquidation, as per Section 33(1)(a) of the I&B Code.

The Tribunal observed that that the expression/discussion by means of exchange of views in respect of the 'Resolution Plan' between the 'State Bank of India' and 'Resolution Applicant' after the lapse of expiry of CIRP period was on account of the bilateral participation between the 'Resolution Applicant' and the 'State Bank of India' had only enabled to reach an agreement in the interests of Resolution and unfortunately, the same proved futile. Continuing further, any alteration / change to the Resolution Plan is to be once again examined by the Resolution Professional and due certification is required that the Plan is in conformity with the provisions of the Code, prior to placing of the same before the Committee of Creditors for voting.

'Committee of Creditors' had not approved the 'Resolution Plan' till 15.11.2019(viz. the final day of CIRP), the CIRP period was not extended by the Adjudicating Authority on 19.03.2020 when the Resolution Applicant / Maritime Trade Corporation had withdrew its interest for pursuing the Resolution Plan, the CoC becoming 'Functuous Officio' and the Resolution Applicant despite the State Bank of India conveying the acceptance of Plan by its authorities subject to the inclusion of changes proposed by its legal team on 07.02.2020 and the 'Resolution Applicant' / Maritime Trade Corporation had not submitted the modified 'Resolution Plan' etc.; comes to a consequent conclusion that in the present case, there is no approved plan of the 'Committee of Creditors'. Looking at from that perspective the impugned order dated 01.03.2021 in IA No. 412/2021 in CP(IB) No. 117/Chd/ChD/2017 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench in directing the Corporate Debtor/Best Foods Ltd. to be Liquidated in the manner as laid down in Chapter III of the Code etc. and disposing of the aforesaid Interlocutory Application is free from any legal errors. Resultantly, the Appeal sans merits.

### **Held**

In fine, the instant Company Appeal (AT) (Insolvency) No.276 of 2021 stands dismissed. The Tribunal pertinently suggests that the 'Liquidator' may explore the possibility of selling the Company/business as a 'going concern', mainly with a view to see the livelihood of workers employed in Company/business

**Source: Company Appeal (AT) (Insolvency) No.276 of 2021, Dinesh Gupta VS vikram bajaj, 29th September, 2021**

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### ADJUDICATING AUTHORITY DID NOT PERMIT THE APPLICANT-APPELLANT TO BRING THE ADDITIONAL DOCUMENTS ON RECORD

Appellant was denied permission vide the Impugned Order in IA No. 3710/2021 to place certain documents on the record of IA No. 412/2021, which was under consideration of the Adjudicating Authority and therefore the present Appeal was preferred.

Upon being asked as to which are the concerned documents, the Learned Counsel for Appellant showed the letter dated 19.8.2021 of Small Industrial Development Bank of India (in short SIDBI) claim that since SIDBI has accepted a settlement with erstwhile Corporate Debtor M/s. Delicious Coco Water Private Limited, it should be taken on record by the Adjudicating Authority and considered.

The Learned Counsel for Respondent No.1 (Liquidator of Delicious Coco Water Private Limited) has vehemently opposed the admission of Appeal stating that the liquidation in the matter has been going on for about 2 years now, and since SIDBI has accepted the settlement offer of M/s. Delicious Coco Water Private Limited subject to the outcome of the application filed by the Corporate Debtor under Section 230 of the Companies Act, 2013, there is no need to admit this Appeal. He has further submitted that it would cause unnecessary delay in liquidation proceedings and hence the Appeal should not be admitted.

#### **Held**

The Adjudicating Authority took note of the Impugned Order wherein the Adjudicating Authority has recorded that IA No. 412 of 2021 was already heard and reserved for orders and hence the Adjudicating Authority did not permit the Applicant-Appellant to bring the additional documents on record. Moreover on perusal of SIDBI's letter dated 19.8.2021, it was found that SIDBI has accepted the offer of settlement subject to the decision of NCLT in the application under Section 230 of the Companies Act, 2013, wherein it has also stated that liquidation proceedings of the Corporate Debtor may continue. We are, therefore, not inclined to admit the Appeal.

**Source:Rajnish Gupta Vs Kg Somani Liquidator Of Delicious Coco Water Pvt Ltd & Anr, Company Appeal (At) (Insolvency) No. 775 Of 2021, Dated 28.9.2021**

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