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GRC Bulletin

June 2022

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About

Compliance Management

Vendor Audit Management

Labour Law Compiances

Compliance Enablement Service

About

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CORPORATE LAWS

SEBI REVISES AUDIT FRAMEWORK OF MARKET INFRASTRUCTURE INSTITUTIONS (MIIS)

In order to keep pace with the technological advancements in the securities market, based on discussions with Stock Exchanges, 'Market Infrastructure Institutions – MIIs and recommendations of the Technical Advisory Committee (TAC) of SEBI, the existing System Audit Framework has been reviewed.

MIIs are required to conduct System and Network Audit as per the framework enclosed in Annexure 1 and Terms of Reference (TOR) enclosed in Annexure 2. MIIs are also required to maintain a list of all the relevant SEBI circulars/ directions/ advice, etc. pertaining to technology and compliance thereof, as per the format enclosed as Annexure 3 and the same shall be included under the scope of System and Network Audit.

MIIs are also required to submit information with regard to exceptional major Non-Compliances (NCs)/ minor NCs observed in the System and Network audit as per the format enclosed as Annexure 4 and are required to categorically highlight those observations/NCs/suggestions pointed out in the System and Network audit (current and previous) which remain open.

Annexure 1	System and Network Audit Framework
Annexure 2	Terms of Reference (TOR) for System and Network Audit Program
Annexure 3	Format for monitoring compliance with SEBI circulars/guidelines/advisories related to Technology
Annexure 4	Exception Observation Reporting Format

#Source: Click here for more details

CORPORATE LAWS

SEBI ISSUED A CIRCULAR ON THE REVISED FORMAT OF THE SECURITY COVER CERTIFICATE, MONITORING AND REVISION IN TIMELINES

SEBI vide Circular no. SEBI/HO/MIRSD/MIRSD_CRADT/CIR/P/2022/67 dated May 19, 2022, has a revised format of security cover certificate, monitoring and revision in timelines.

A. Revised format of the Security Cover:

In terms of regulation 54 read with regulation 56(1) (d) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, listed entities are required to disclose security cover to Stock Exchange(s) and Debenture Trustee, and the format for preparation of security cover for listed debt securities was prescribed as per Annexure A of SEBI Circular dated November 12, 2020. Based on the recommendation of the Working Group, the security cover format has been revised and the format prescribed as per Annexure A of SEBI Circular dated November 12, 2020, stands rescinded. . The revised format for security cover is enclosed in Annexure I. The obligations of the listed entity and Debenture Trustee with respect to preparation and submission of security cover format are given as under:

Manner of preparation of security cover certificate by the listed entity

The listed entity shall be required to prepare the security cover certificate on a quarterly basis and the statutory auditor of the listed entity shall certify the book values of the assets provided in such certificate.
In case of loans/receivables or any other asset offered as security and the market value is not ascertainable in the specific quarter, then the listed entity may provide the carrying value/book value as per the format for security cover is enclosed in Annexure I.

Manner of preparation and submission of security cover certificate by Debenture Trustee(s)

Debenture trustee on a quarterly basis shall certify the market value of assets based on the due diligence carried out by it or its appointed agencies and shall submit the security cover certificate as per Annexure I. Debenture Trustee shall certify the security cover in respect of the secured debt securities, to the extent charged held by it.

Mandatory numbering of security cover certificates certified by the statutory auditor and chartered accountant (CA):

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The certificates certified by the statutory auditor of the issuer company and by the empanelled independent CAs of the Debenture Trustee shall have the Unique Document Identification Number (UDIN) generated in the manner prescribed by the relevant regulatory authority.

Qualifications/disclaimers in security cover certificates:
The Debenture Trustee shall ensure that the qualifications/disclaimer (by whatever name is called), do not impair the rights of debenture holders in terms of security provided. Further, if the Debenture Trustee is of opinion that such qualifications/disclaimer are affecting the rights of debenture holders, the Debenture Trustee shall be required to take corrective action in this regard.

B. Monitoring of covenants:

On a quarterly basis, the listed entity shall furnish the compliance status with respect to financial covenants of the listed debt securities certified by the statutory auditor of the listed entity to the Debenture Trustee. 8. Regulation 15(f) of SEBI (Debenture Trustees) Regulations, 1993 mandates the Debenture Trustee(s) to monitor the breach of covenants. Formulate the category wise list of covenants applicable to the particular issuance defining the frequency of each covenant to be monitored viz. continuous, quarterly, half-yearly, annual etc. A guidance note for the list of covenants prepared in consultation with Debenture Trustees is enclosed as Annexure-II.

C. Disclosure by Debenture Trustee:

In order to enhance transparency with respect to no-objection certificate (NOC)/no-dues certificate/consent/permission (by whatever name called) issued by Debenture Trustee(s) and monitoring of listed entity, Debenture Trustee shall make the following disclosures on Stock Exchange(s).

D. Revision in timelines of submission of security cover certificate, valuation report and Quarterly compliance report and regulatory compliance by Debenture Trustees

Based on the representation received from Debenture Trustees to align the timelines for submission and website disclosure of security cover certificate and quarterly compliance reports with the timelines prescribed for submission of financial results for listed issuer companies.

E. Monitoring of Recovery Expense Fund (REF) by Debenture Trustee(s)

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The circular, inter-alia, states that in order to enable the Debenture Trustee(s) to take prompt action for enforcement of security in case of 'default' in respect of listed debt securities, a REF shall be created which shall be used in the manner as decided in the meeting of the holders of debt securities.

The Stock Exchange(s) shall disclose the REFs created by the listed entities on a half-yearly basis. Such disclosure shall also include the details of the Debenture Trustee to the debt issue.

The provisions mentioned in Part A and B with respect to 'Revised format of the Security Cover' and 'Monitoring of Covenants' are applicable w.e.f October 1st, 2022. Other provisions of this circular shall come into effect with immediate effect.

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CBDT ISSUES CIRCULAR REGARDING USE OF FUNCTIONALITY UNDER SECTION 206AB AND 206CCA OF THE INCOME TAX, 1961

Two new sections 206AB and 206CCA were inserted in the Income-tax Act 1961 which took effect on 1st July, 2021. In order to ease this compliance burden, the Income-tax Department came out with the functionality "Compliance Check for Section 206AB & 206CCA", which was made available through reporting portal of the Income-tax Department. It enabled the tax deductor or the collector to feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee.

1. The provision of higher TDS under section 206AB is not applicable to tax to be deducted under sections 194-IA, 194-18 and 194M. This is in addition to the already existing provision of its non-applicability on tax to be deducted under sections 192, 192A, 194B, 194BB, 194LB and 194N.
2. The definition of a specified person has been amended in both section 206AB and section 206CCA. Now "specified person" means a person who satisfies both the following conditions:
    a. He has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted/collected. The previous year to be counted must be the one whose return filing date under sub-section (I) of section 139 has expired.
    b. The aggregate of tax deducted at source and tax collected at source is rupees fifty thousand or more in that previous year.
3. It has been provided that provisions of section 206AB will not apply in case of deduction of tax on the transfer of virtual digital asset (YDA) under section 1945 of the Act to a person being an individual or Hindu undivided family, whose sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of the profession, during the financial year immediately preceding the financial year in which such YDA is transferred or if such person does not have any income under the head " Profit and gains of business or profession.
4. A list of specified persons is prepared as of the start of the financial year 2022-23, taking the previous year 2020-2 1 as the relevant previous year. The list contains names of the taxpayers who did not file a return of income for the assessment year 2021-22 and have an aggregate of TDS and TCS of fifty thousand rupees or more in the previous year 2020-21.

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5. During the financial year 2022-23, no new names are added to the list of specified persons. This is a taxpayer-friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified persons more than once during the financial year.
6. If any specified person files a valid return of income (filed & verified) for the assessment year 202 1-22 during the financial year 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2022-23.
7. If any specified person files a valid return of income (fi led & verified) for the assessment year 2022-23, his name would be removed from the list of specified persons. This would be done on the due date for filing of the return of income for A Y 2022-23 or on the date of actual filing of valid return (filed & verified), whichever is later
8. The deductor or the collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of a non-specified person during that financial year.
9. It may be noted that as per the provisos of Section 206AB & 206CCA, the specified person shall not include a non-resident who does not have a permanent establishment (PE) in India. Since the functionality does not have the visibility of non-residents having PE in India, there is a likelihood that non-residents having PE in India may not get reflected in this list. Tax Deductors & Collectors are expected to carry out necessary due diligence in respect of non-residents regarding the applicability of section 206AB and section 206CCA to them.

#Source: **Click here for more details**

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CBDT ISSUES GUIDELINES UNDER CLAUSE (23FE) OF SECTION 10 OF THE INCOME-TAX ACT, 1961

The Finance Act, 2020, inter-alia, inserted clause (23FE) in section 10 of the Income-tax Act, 1961 to provide for exemption to wholly-owned subsidiaries of Abu Dhabi Investment Authority (ADIA), sovereign wealth funds (SWF) and pension funds (PF) on their income in the nature of dividend, interest and long-term capital gains arising from the investment made in infrastructure in India, during the period beginning with 01.04.2020 and ending on 31.03.2024 subject to fulfilment of certain conditions.

On 9th May 2022 a circular No. 9 of 2022 amended the following provisions of clause (23FE) of section 10 of the Act:

- Amended item (c) of sub-clause (iii) thereof to allow an exemption for investment by a specified person in Category I or II Alternative Investment Funds which invest in one or more of the companies, enterprises or entities as referred to in item 'b'.
- Inserted item (d) in sub-clause (iii) thereof, to allow investment by the specified person in a domestic company set up and registered on or after 01.04.2021, having a minimum of 75 per cent investments in eligible infrastructure entity;
- Inserted item (e) in sub-clause (iii) thereof, to allow investment by specified person in a Non-Banking Financial Company registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (hereinafter referred to as NBFC), having minimum 90 per cent lending in eligible infrastructure entity;
- Inserted Explanation 3 thereof, to provide that the method for determination of 50 per cent, 75 per cent or 90 per cent investment referred to in item (c), (d) or (e) of sub-clause (iii) of the said clause (23FE) shall be prescribed by the Central Government;
- inserted fourth proviso thereof,(c) of sub-clause (iii), has an investment of less than a hundred per cent in eligible infrastructure entity or in InvIT, income accrued or arisen to, or received by, or attributable to such investment, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the investment made in eligible infrastructure entity or in InvIT, in the prescribed manner.
- Inserted fifth proviso thereof (d) of sub-clause (iii), has an investment of less than a hundred per cent in eligible infrastructure entity, income accrued or arisen to, or received by, or attributable to such investments, directly or indirectly, which is exempt under this clause shall be calculated

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proportionately to the investment made in eligible infrastructure entity, in the prescribed manner.

- inserted sixth proviso thereof (e) of sub-clause (iii), has lending of less than hundred per cent in eligible infrastructure entity, income accrued or arisen to, or received by, or attributable to such borrowing, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the lending in eligible infrastructure entity, in the prescribed manner.
- First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of the said clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty. In exercise of the powers under this proviso, Board, with the approval of the Central Government, hereby issues the following guidelines:

Key Guidelines

4.1. Transfer of investment within 3 years by the specified person or AIF/ domestic Company/NBFC

4.1.1 As per clause (23FE) of section 10 of the Act, any income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, is exempt from income tax subject to certain conditions. One of such conditions is prescribed in sub-clause (ii) of clause (23FE) of section 10 of the Act

4.1.2. In such cases, as per the third proviso to clause (23FE) of section 10 of the Act, any income which has not been included in the total income of the specified person due to the provisions of this clause, shall be chargeable to income-tax as the income of the identified person of the previous year during which such specified person fails to satisfy any of the conditions of the said clause.

4.1.3. In this context, it is hereby clarified that any capital gain accruing or arising on the transfer of such investments (which have been transferred in violation of the three years’’ rule) will be treated as given in the circular

4.1.4. Further any interest or dividend on such investments (which is transferred in violation of the three years’ rule) which has been exempted from income-tax under clause (23FE) of section 10 of the Act in the earlier years, will be subjected to tax in the hands of the specified person as the

income of the previous year in which such investment is transferred in violation of the three-year rule by the specified person or AIF or domestic company or NBFC, as the case may be.

4.2. Eligible infrastructure entity carrying on other businesses as well

4.2.1. A specified person may invest in an eligible infrastructure entity. Such investment by specified person may be either directly or through an AIF or a domestic company or NBFC

4.2.2. In order to remove difficulty to the taxpayer, it is clarified that if eligible infrastructure entity carries on businesses other than the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA of the Act or such other business as the Central Government may, by notification in the Official Gazette, specify in this behalf (hereinafter referred as "eligible activity"), the exemption could still be provided if the profit before tax of the eligible infrastructure entity from eligible activity is 50% or more of the total profit before tax of the eligible infrastructure entity.

4.2.3. Where investment has been made by the specified person, either directly or through AIF or domestic company or NBFC, in different eligible infrastructure entities and one or more of such eligible infrastructure entities are hybrid infrastructure entities, exemption under rule 2DCA of the rules shall be computed as follows: (a) in respect of the hybrid infrastructure entities as per paragraph 4.2.2 of these guidelines; (b) in respect of other eligible infrastructure entities, as per rule 2DCA of the rules, to the extent attributable to the investment in such entities.

4.3. Violation of 50 per cent, 75 per cent or 90 per cent condition as per item (c), (d) or (e) of sub-clause (iii) of clause (23FE) of section 10 of the Act

4.3.1. Item (c), (d) and (e) of the said sub-clause (iii) of clause (23FE) of section 10 of the Act provide a threshold of minimum investment in an eligible infrastructure entity or InvIT.

4.3.2. To remove the difficulties, it is hereby clarified that if the AIF or domestic company or NBFC, as referred to in item (c), (d) or (e) of the said sub-clause, fails to meet the threshold of minimum investment in an eligible infrastructure entity or InvIT, as the case may be, during any subsequent previous year.

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4.4. Violation of one or more conditions in clause (23FE) of section 10 of the Act or rules thereunder or under the notification exempting the specified person under the said clause.

4.4.1. The exemption provided to the specified person under clause (23FE) of section 10 of the Act is subject to certain conditions provided under the said clause, relevant rules and also specific conditions provided in the notification issued in the case of the specified person.

4.4.2. The conditions provided under clause (23FE) of section 10 of the Act or prescribed under Rule 2DB of the Rules or under Circular No 15 of 2020, dated the 22nd July 2020 with F No. 370142/26/2020-TPL are essential conditions, as may be applicable, without which there is no case of an exemption under clause (23FE) of section 10 of the Act.

4.4.3. Para 4.3 carves out an exception to the "general rule" and provides that in case of violation of minimum threshold by the AIF or domestic company or NBFC, exemption under the said clause shall not be available to the specified person the previous year in which the violation took place and all subsequent previous years.

#Source: Click here for more details

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CBDT NOTIFIES THE FACELESS PENALTY (AMENDMENT) SCHEME, 2022

The Central Board of Direct Taxes has notified the Faceless Penalty (Amendment) Scheme, 2022. It shall come into force from the date of 27th May 2022. Notification No. 54/2022/F. No. 370142/51/2020-TPL (Part III).

Sr. No.	Amendment
1.	**Omitted: Paragraph 4 (A)(1)** the words —and vest it with the jurisdiction to impose penalty in accordance with the provisions of this Scheme‖ shall be omitted. (II) clause (ii) shall be omitted
2.	**Substituted: Paragraph 4 (A)(III)** for the words "as may be required for the purposes of imposing penalty" and the words "as may be required for the purposes of imposing penalty and the term penalty unit‖, wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board"
3.	**Substituted: Paragraph 4 (A)(IV)** in clause (iv), for the words "and such other functions as may be required for the purposes of review, and specify their respective jurisdiction", the words "and such other functions as may be required for the purposes of review and the term "penalty review unit", wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board"
4.	**Omitted: Paragraph 4 (B)(4)** the words: the Regional Faceless Penalty Centres", "Regional Faceless Assessment Centre" and "Regional Faceless Penalty Centre"
5.	**Substituted: Paragraph 5 (1)(B) for clause (xv) to (xxii)** (xv) the penalty unit shall, after considering the material on record including the response furnished, if any, as referred to in clauses

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	(viii), (x) and (xii) or report, if any, as referred to in clause (xiv), propose as mentioned in the notification (xvi) the National Faceless Penalty Centre, in accordance with the guidelines issued by the Board. (xvii) the penalty unit shall, in the case referred to in sub-clause (a) of clause xvi, pass the order imposing the penalty and serve the same on the assessee through the National Faceless Penalty Centre (xviii) the penalty unit shall, in the case referred to in sub-clause (b) of clause xvi, drop the penalty proceedings and send the intimation to the assessee through the National Faceless Penalty Centre
6.	**Omitted: Paragraph 6**
7.	**Substituted: Paragraph 8** (A) for the brackets, figures and words "(i) For the purposes of the Scheme", the words "For the purposes of the Scheme" **Omitted: Paragraph 8 (B**) In clause (b), the words "Regional Faceless Penalty Centres"
8.	**Substituted: Paragraph 9** 9. Authentication of electronic record: For the purposes of this Scheme, an electronic record shall be authenticated by,— (i) the National Faceless Penalty Centre by way of electronic communication; (ii) the penalty unit or the penalty review unit or technical unit or verification unit, as the case may be, by affixing digital signature; (iii) assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated

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	portal. Explanation. – For the purpose of this paragraph, —electronic verification code‖ shall have the same meaning assigned to it in the Explanation to sub-rule (3) of rule 12 of the Rules.
9.	**Omitted**: **Paragraph 11 (A**) in sub-paragraph (1), the words: or Regional Faceless Penalty Centre”. **Substituted: Paragraph 11 (B)** (3) Where the request for a personal hearing has been received, the income-tax authority of the relevant unit shall allow such hearing, through National Faceless Penalty Centre. (4) Hearing referred to in sub-paragraph (3) shall be conducted exclusively through video conferencing or video telephony, including the use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.
10	**Omitted: Paragraph 12** • The words “the Regional Faceless Penalty Centre” • The clause (ix), shall be omitted

#Source: Click here for more details

OTHER LAWS

MINISTRY OF POWER NOTIFIES THE TIMELINES FOR THE REPLACEMENT OF EXISTING METERS WITH SMART METERS

The Ministry of Power on 26th May 2022 notified the timelines for replacing existing meters with smart meters with a prepayment feature. This notification is in suppression of notification dated 17th August 2021.

All consumers (other than agricultural consumers) in areas with a communication network, shall be supplied electricity with Smart Meters working in prepayment mode, conforming to relevant IS, within the timelines specified below:

1. All Union Territories, all electrical divisions with high AT&C Loss (Urban Areas with AT&C loss >15% and rural areas with AT&C loss >25%), Industrial and Commercial consumers, and all Government offices at the Block level and above, shall be metered with smart meters, with prepayment mode, by 31st December 2023

These areas shall also be covered for smart Distribution Transformer (DT) metering by the Advanced Metering Infrastructure Service Provider (AMISP), on a priority basis, by 31st March 2023.

The State Regulatory Commission may, by notification, extend the said period of implementation, giving reasons to do so, only twice but not more than six months at a time, for a class or classes of consumers or for such areas as may be specified in that notification

2. All other areas shall be metered with smart meters, with prepayment mode, by 31st March 2025, and smart Distribution Transformer (DT) metering shall be completed by 31st December 2023.
3. All feeders shall be metered by 31st December 2022.
4. All the feeder meters shall be made communicable under National Feeder Monitoring System (NFMS) by 31st December 2022 and shall have Automatic Meter Reading (AMR) facility or shall be covered under Advanced Metering Infrastructure (AMI)
5. In areas which do not have a communication network, installation of prepayment meters, conforming to relevant IS, may be allowed by the respective State Electricity Regulatory Commission.
6. All consumer connections, having current-carrying capacity beyond that specified in relevant IS, may be provided with meters with smart meters having an AMR facility

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7. Distribution Transformers (DTs) and High Voltage Distribution System (HVDS) transformers having a capacity of less than 25 kVA and DTs feeding only agricultural consumers may be excluded from the above timelines.

#Source: **Click here for more details**

JUDICIAL

INSIGHT

JUDICIAL INSIGHT

CIRP CAN BE INITIATED DESPITE PENDENCY OF PROCEEDINGS BEFORE DRT, SARFAES

Facts of case:

- It is submitted that the Appellant obtained three Credit facility from the financial Creditor/1st Respondent to develop the mall for a tune of Rs. 5,20,00,000/- on various dates by offering the property in town bearing survey nos. 80 to 85 of Managiri bit village, KK Nagar Madurai North Taluk as collateral. Though the financial Credits obtained from the 1st Respondent Bank on various occasions, they have also repaid the interest without any default so far.
- However, the first Respondent Bank initiated proceedings under Section 7 of I & B Code,2016 before the Adjudicating Authority (NCLT Chennai) alleging certain defaults.
- However, the 1st Respondent did not brought to the knowledge of the Hon'ble NCLT that it had earlier issued a demand notice to the Appellant under Section 13 (2) of SARFAESI ACT, 2002 on 30.08.2018 for a default of Rs. 14,14,61,066/- followed by paper publication dated 27.09.2018.
- The authorised officer took symbolic possession of the property mortgaged as per Section 13(4) of the SARFAESI ACT, 2002. Thereafter, the subject property was attached with DRT Madurai Bench.
- It is submitted that the Hon'ble NCLT did not consider the fact that OA No. 497 of 2019 on the file of DRT Madurai against the Appellant for recovery of debts and the parallel application in CP 75 of 2021 before the Adjudicating Authority under Section 7 is amount to forum shopping.
- It is submitted that there is a symbolic and physical possession of the Appellant Company in the PBPT Proceedings and SARFAESI Proceedings, hence the initiation proceedings under Section 7 of the I & B Code, 2016 should have been kept in abeyance until the orders in PBPT had attained finality.
- The Ld. Counsel for applicant further submitted that the Proceedings before the Adjudicating Authority is barred by limitation and therefore prayed this Bench to allow the Appeal by setting aside the impugned order passed by the Adjudicating Authority in admitting and initiating the CIRP against the Corporate Debtor.

Issues of the Case:

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1. Whether the pendency of proceedings under SARFAESI ACT, DRT and before PBPT, prohibits the Respondent/financial Creditor for initiation of Proceedings under IBC, 2016?
2. Whether the debt and default is proved in respect of Corporate Debtor?
3. Whether the application is barred by limitation?
4. Whether the order under challenge is reasoned order dealing with all issues as raised by the Appellant/Corporate Debtor?

Observation of court:

1. It is the case of the Appellant that the financial Creditor issued notice under Section 13(2) of the SARFAESI ACT, 2002 for a default of Rs. 14,14,61,066/- for almost 12 accounts and the financial Creditor has also filed an application bearing OA No. 497 of 2019 before the DRT Madurai against the Appellant/Corporate Debtor for recovery of debts Rs. 19,73,47,599/- and filing the application before the Adjudicating Authority for default in loan amount to the tune of Rs. 8,04,86,434/- with interest for the very same loan facility would amount to forum shopping and hence initiation of CIRP by the Adjudicating Authority cannot be maintained. Further, the Ld. Counsel submitted that an application being IA 844 of 2021 filed before the Adjudicating Authority praying the Authority to keep abeyance till the matter in reference no. R-1929 of 2020 before the prohibition of Benami Property Transaction Act, 1988 is decided.
2. The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016.
3. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws.
4. Form-1 dated 09.03.2021 filed by the Respondents/financial Creditor at part -IV regarding particulars of financial debt shown as Rs. 5,20,00,000/- and the Appellant has in para 6 of the counter filed before the Adjudicating Authority admitted that the Appellant obtained three credit

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facility from the financial Creditor to a tune of Rs. 5,20,00,000/- on various dates by producing the subject property as collateral. In view of the reason the Appellant had admitted the debt and default.

5. The Respondent/financial Creditor in the application form-1 dated 09.03.2021 in part – IV column -2 with regard to date of default it is mentioned that the date of default is 31.05.2018, however the fact remains that the application filed by the Respondent/financial Creditor before the Adjudicating Authority is on 18.03.2021 which is within the period of limitation i.e. 3 years from the date of default as per Section 137 of the limitation Act since the limitation act applicable to the proceedings under IBC.
6. The order passed by the Adjudicating Authority in admitting the application filed by the 1st Respondent against the Corporate Debtor is a well-reasoned order and we do not find any legal or factual infirmity in the order and no interference is called for.

Decision:

- The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained.
- The Adjudicating Authority also took the stand that the existence of debt and default had been proved beyond reasonable doubt.
- The application filed before the Adjudicating Authority is within the period of limitation and accordingly the point is answered against the Appellant.
- The Appeal sans merit and the same is dismissed. No order as to costs.

Case Name: Amar Vora v City Union Bank Ltd. (NCLAT Chennai) (AT) (CH) (Ins) No. 130 of 2022

JUDICIAL

INSIGHT

EMPLOYEES ELIGIBLE FOR GRATUITY FOR PERIOD BEFORE THEIR EMPLOYMENT IS REGULARISED: KARNATAKA HIGH COURT

Facts of the case

- The respondents (workers) were initially employed as daily wage workers. The Government by its order regularised the services of respondent No.1 with certain cut off dates. The workmen retired from the services on receiving their pension amounts and gratuity.
- After such retirement, they submitted the applications before the Controlling Authority claiming that they were entitled to gratuity from the date of their induction as daily wage workers.
- The petitioners opposed the applications of respondent No.1 on the ground that they were Government employees and not employees under Section 2(e) of the Act, therefore the Controlling Authority has no jurisdiction to entertain such claims.
- In some of the cases, the petitioners preferred the appeals before the Appellate Authority. They also came to be dismissed. Following this, they approached the High Court.
- The Respondents raised grounds that the orders of the Controlling Authority, statutory appeal as provided under Section 7 of the Act lies. Therefore the petitions are not maintainable.
- The second contention is that respondent No.1 were employees within the meaning of Section 2(e) of the Act for the period commencing from their induction as daily wage workers till their regularisation. Therefore the said period should have been taken into consideration as the qualifying period of service for the purpose of computing gratuity.

Issue of the case:

Whether respondent No.1 were not the employees within the meaning of Section 2(e) of the Act?

Observation by the court:

- The bench referring to section 2(e) of the act said,

  "Of course on their regularisation, respondent No.1 was governed by the Karnataka Civil Services Rules (KCSR) and they have received pension and gratuity on their retirement. However, admittedly the petitioners paid gratuity only covering the period from the date of their

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regularisation till their retirement on attaining superannuation. While paying gratuity, the petitioners did not take into consideration the services rendered by respondent No.1 from the date of their appointment as daily wage workers till the date of their regularisation. During that period, respondent No.1 was not governed by the KCSR or for any other rules for payment of gratuity."

- The Hon'ble Supreme Court in para 18 of the latest judgment in Netram Sahu v. State of Chhattisgarh held that on regularization of services of daily wage worker, the State has no justifiable reasons to deny the benefit of gratuity to him and that was his statutory right under the Act. It was further held that Act being welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim
- Then it relied on Supreme Court and High Court judgments in the case,"The Controlling Authority considering the admissions of the petitioners' witness regarding date of employment of respondent No.1 as daily wage workers, their regularisation and non-payment of gratuity for the period they worked as daily wage workers and also referring to the judgments of this Court, rightly rejected the contention of the petitioners and passed the impugned orders."
- It added, "In some of the cases, the petitioners did not even file an appeal before the Appellate Authority on the ground that the Act is not applicable, therefore the order of the Controlling Authority was without jurisdiction."
- However, the court considered that some of the respondents had filed their claim applications after 10 years etc. It said, "The petitioners also being Government bodies and dealing with taxpayers money, this Court finds it just and proper to modify the order only with regard to the date from which the petitioners are liable to pay the interest."

Decision held:

The petitions are partly allowed. The impugned orders regarding payment of gratuity are confirmed. The petitioners are jointly and severally liable to pay the gratuity amount to respondent No.1 with interest thereon at 10% per annum from the date of the applications till the date of deposit.

Case Name: Chief Executive Officer V Anr And K.V.Puttaraju and others a/w Connected matters.

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