

WEEKLY UPDATES ON COMPANY LAW, SEBI, RBI AND IBC

Week 02 – January 06 to January 13, 2020

1

Companies Act 2013 during the week

Rules -1; Circulars -0; Notifications – 0; Orders- 0; Important Notices - 0

| S. No | Date of Issue | Rules/Circular/ Notification/Order | Contents thereof | Gist thereof |
|-------|---------------|---------------------------------------|--|---|
| 1 | 06.01.2020 | Rule | Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 | <p>MCA has brought in following changes to Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 through this amendment:</p> <p>Amendment:</p> <p><i>Rule 8A: Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary</i></p> <p>Earlier, every private company which is not covered under Rule 8 was required to appoint a whole time company secretary if their paid-up capital was five crores</p> |

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| | | | | <p>or more.</p> <p>Amendment:</p> <p>For the purpose of Secretarial audit as under section 204, following class of companies are required to annex to the Board's report, a secretarial audit report given by a company secretary in practice:</p> <p>(a) Every public company having a paid-up share capital of fifty Crore rupees or more; or</p> <p>(b) Every public company having a turnover of two hundred fifty Crore rupees or more; * [or]</p> <p>* (c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred Crore rupees or more.</p> <p>* inserted through Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 Dated 03rd January, 2020</p> <p>This amendment shall be applicable in respect of financial years commencing on or after 1st April 2020.</p> |
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2

SEBI during the week

Act -0; Rules -0; Regulations-0; General Orders – 0; Guidelines- 0;

Master Circulars-0; Circulars – 0; Press Release –0; Others -0;

| S. No | Date of Issue | Act/rules/circulars.... | Subject & Link | Gist thereof |
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| S. No | NEWS ON SECURITIES EXCHANGE BOARD OF INDIA |
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| 1. | Following the Securities and Exchange Board of India (SEBI) November 2019 directives, at least 49 listed companies disclosed loan defaults to stock exchanges on Tuesday. The companies include insolvency-hit Reliance Communication Ltd. (RCom), Jaypee Infratech Ltd., Religare Enterprises Ltd., Hindustan Construction Company Ltd. and Suzlon Energy Ltd among others. |
| 2 | The Securities and Exchange Board of India (Sebi) is considering relaxing the March 31 deadline for listed companies to separate the positions of chairman and managing director (CMD). While the market regulator gave ample time to India Inc to adhere to the rule, not many corporate houses have complied with it. |

3

RBI during the week

Notifications -1; Master Directions –0; Master Circulars –0; Circular -0;

Press Release –0;

| S. No | Date of Issue | Notifications/Master Directors/Master Circulars | Subject & Link | Gist thereof |
|-------|---------------|---|---|--|
| 1 | 09.01.2020 | Notification | Amendment to Master Direction (MD) on KYC | <p>With a view to leveraging the digital channels for Customer Identification Process (CIP) by Regulated Entities (REs), the Reserve Bank has decided to permit Video based Customer Identification Process (V-CIP) as a consent based alternate method of establishing the customer’s identity, for customer onboarding.</p> <p>Notification is provided as an attachment herewith.</p> |

| S. No | NEWS ON RESERVE BANK OF INDIA |
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| 1 | The Reserve Bank of India today said select banks in India can offer forex rates to Indian clients beyond the inter-bank market hours, which now run from 5 a.m. to 9 p.m. In effect, this opens up the forex market in India round the clock, allowing Indians to hedge their foreign exchange risks at anytime of the day. |
| 2 | The Reserve Bank of India (RBI) is planning to auction distressed private banks that are under the Prompt Corrective Action (PCA) framework for a prolonged period, the Business Standard reported. This is part of the RBI's plan to have a different rule book for distressed banks, the report said. |
| 3 | Markets regulator Sebi on Thursday came out with guidelines for entities for operating as investment advisers in International Financial Services Centre (IFSC), under which such advisers need to have a net worth of at least USD 1.5 million. |

4

IBC during the week

Notifications -1; Master Directions –0; Master Circulars –0; Circular –0;

Press Release –0;

| S.No | Date of Issue | Notifications/Master Directors/Master Circulars | Subject & Link | Gist thereof |
|------|---------------|---|--|--|
| 1 | 09.01.2020 | Notification | IBBI (Liquidation Process) (Amendment) Regulations, 2020 | <p>The Amendment has introduced the following changes to the 2016 Regulations:</p> <ul style="list-style-type: none"> • A person, who is not eligible under <i>Insolvency and Bankruptcy Code, 2016</i> (IBC) to submit a resolution plan for insolvency resolution of a corporate debtor, shall not be a party in any manner to a compromise or arrangement of the corporate debtor under section 230 of <i>the Companies Act, 2013</i>. • A secured creditor cannot sell or transfer an |

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| | | | | <p>asset, which is subject to security interest, to any person, who is not eligible under IBC to submit a resolution plan for insolvency resolution of the corporate debtor.</p> <ul style="list-style-type: none"> • A secured creditor, who proceeds to realise its security interest, shall contribute its share of the insolvency resolution process cost, liquidation process cost and workmen's dues, within 90 days of the liquidation commencement date. Such a creditor shall also pay excess of realised value of the asset, which is subject to security interest, over the amount of its claims admitted, within 180 days of the liquidation commencement date. Where the secured creditor fails to pay such amounts to the Liquidator within 90 days or 180 days, as the case may be, the asset shall become part of Liquidation Estate. • A Liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the Corporate Liquidation Account before he submits an |
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| | | | | <p>application for dissolution of the corporate debtor.</p> <ul style="list-style-type: none"> The Amendment also lays down a process for a stakeholder to seek withdrawal from the Corporate Liquidation Account. <p>IBBI (Liquidation Process) (Amendment) Regulations, 2020 is provided as an attachment herewith.</p> |
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| S. No | NEWS ON INSOLVENCY AND BANKRUPTCY CODE |
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| 1 | <p><u>Plea In SC Challenges Provisions Of IBC Ordinance 2019 Imposing Conditions On Homebuyers' Right</u></p> <p>A writ petition has been filed in the Supreme Court challenging Section 3 of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019. The said provision which adds certain provisos to Section 7 of the Insolvency and Bankruptcy Code (IBC) and purports to set out new conditions for real estate allottees to approach the NCLT, is alleged to be ultra vires the Constitution of India and in violation of Article 14 and 21.</p> |
| 2 | <p>The MSME sector, in a presentation on budget expectations to the Finance Minister Nirmala Sitharaman recently, has sought amendment in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The suggestion by the MSME body FISME has been made in the backdrop of the Corporate Insolvency Resolution Process (CIRP).</p> |
| 3 | <p><u>Can Insolvency Proceeding be initiated against Government Companies?</u></p> <p>The two-member bench of National Company Law Tribunal (NCLT) Mumbai, in the case of <i>Harsh Pinge v Hindustan Antibiotic Limited</i>, pronounced a contrary order in a case concerning initiation of insolvency proceedings by an operational creditor. The case primarily deals with the matter that puts a challenge, before the National Company law Appellate Tribunal and other NCLT, in</p> |

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| | admitting the plea of Commencement of Insolvency Resolution Process (CIRP) against the government companies as the subject matter of the case was resintegra. |
| 4 | Essel Group promoted Pan India Network Limited, which distributes online lotteries of various state governments under the 'Playwin' brand has defaulted on payment of various dues and loans of operational creditors. |
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| S. No | GENERAL NEWS |
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| 1 | More than 1,000 individuals have so far registered with the independent directors' database portal established under the Companies Act, |
| 2 | Reliance Power on Tuesday informed the stock exchanges that it has defaulted on a debt of Rs. 685 Crores. The company said that the default pertained to the quarter ended December 2019. |
| | As the January 7 deadline to resolve non-performing assets (NPAs) in the power sector has passed, around Rs 1 lakh crore of bad debt in the sector remains unresolved, according to banking sources. FE has learnt that banks may refer Coastal Energen, Rattan India (Nashik), Emco Energy, GVK Power (Goindwal Sahib), Simhapuri Thermal and Jaiprakash Power Ventures to the National Company Law Tribunal (NCLT). Lenders have already referred KSK Mahanadi and Meenakshi Energy to NCLT. |
| 3 | In a temporary relief to Tata Sons Pvt Ltd, the Supreme Court on Friday stayed the December 18 order of National Company Law Appellate Tribunal which reinstated Cyrus Mistry as the executive chairman of the Company. |
| 4 | Hearing a plea by Deloitte Haskins and Sells and KPMG arm BSR & Associates, the NCLAT on Friday reserved its order on the NCLT's jurisdiction over impleadment of auditors in the case involving alleged fraud in IFIN, a subsidiary of IL&FS |



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